

AGENDA

DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue South, Des Moines

February 25, 2016 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

CONSENT AGENDA

Page 1 Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes from the January 21st and January 28, 2016 regular City Council meetings.

Page 11 Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfer included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#145922-146057	\$ 479,790.80
Electronic Wire Transfers	#664-667	\$ 157,426.84
Payroll Checks	#18761-18765	\$ 3,900.06
Payroll Direct Deposit	#70001-70158	\$ 284,370.69
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers:		\$ 925,488.39

Page 13 Item 3: DRAFT ORDINANCE NO. 16-001 ANIMAL IN UNATTENDED MOTOR VEHICLE

Motion 1 is to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-001 on first reading.

Motion 2 is to enact Draft Ordinance No. 16-001 to adopt by reference RCW 16.52.340 entitled *"Leave or confine any animal in unattended motor vehicle or enclosed space-Class 2 civil infraction-Officers' authority to reasonably remove animal."*

Page 21 Item 4: 2016 VEHICLE PURCHASE

Motion is to authorize the City Manager or his designee to purchase the vehicles and equipment as identified in Attachment 1.

- Page 33 Item 5: SEXUAL ASSAULT AWARENESS MONTH
Motion is to approve the Proclamation recognizing April as Sexual Assault Awareness Month.
- Page 37 Item 6: DRAFT RESOLUTION 16-016: OPPOSING THE PROPOSED METHANOL PLANT IN TACOMA
Motion is to adopt Draft Resolution 16-016 in opposition to the proposed Methanol Plant in the City of Tacoma.
- Page 61 Item 7: SURPLUS PROPERTY-VEHICLES AND EQUIPMENT
Motion is to adopt Draft Resolution No. 16-015 declaring certain vehicles and equipment identified in Attachment 1 as surplus and authorize disposal of said surplus vehicles and equipment by auction or trade-ins.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Page 67 Item 1: PUBLIC HEARING ON DRAFT ORDINANCE NO. 15-198 AMENDING ADULT ENTERTAINMENT ZONING
Staff Presentation: Assistant City Attorney Tim George

NEXT MEETING DATE

March 10, 2016 City Council Regular Meeting

ADJOURNMENT

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue South, Des Moines**

January 21, 2016 – 7:00 p.m.

CALL TO ORDER

Mayor Pina called the meeting to order 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Kaplan.

ROLL CALL

Council present: Mayor Matt Pina; Mayor Pro Tem Vic Pennington; Councilmembers Melissa Musser, Jeremy Nutting, Luisa Bangs, Robert K. Back and Dave Kaplan.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Building and Public Works Director Dan Brewer; Engineering Services Manager Brandon Carver; Commander Barry Sellers; Management Consultant Grant Fredricks; Senior Planner Laura Techico; Human Resources Manager Maureen Murphy; Community Development Manager Denise Lathrop, Special Transportation Project Manager Len Madsen; Assistant City Attorney Tim George, Marina Maintenance Manager Scott Wilkins; Finance Director Dunyele Mason; City Clerk Bonnie Wilkins.

CORRESPONDENCE

There were no correspondences.

COMMENTS FROM THE PUBLIC

- Kevin Isherwood, Redondo Beach Drive; Marijuana shops.
- Dina Rohm, 28704 Redondo Beach Drive; Raised intersection in Redondo.
- Pete Stream, 28636 Redondo Beach Drive; Raised intersection in Redondo.
- Carol Stream, 28636 Redondo Beach Drive; Raised intersection in Redondo.
- Bill Linscott, 22335 6th Avenue S; Marina Tenants Association meeting and Economic Development.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Mayor Pro Tem Pennington

- Attended meeting at Judson Park.

Councilmember Kaplan

- South County Area Transportation Board meeting.
- Regional Transportation Committee meeting
 - Strategic planning.
 - Summary of budget.
 - Advanced Technology Presentation.
 - City of Kent provide project update.

Councilmember Back

- Environment Committee:
 - Selected as Chair.
 - 2016 Work Program.
 - Low Impact Development State Regulations:
 - Integrate into Code.
- Puget Sound Regional Council:
 - Workshop for newly Elected Officials.
- Sound Cities Association:
 - Orientation for newly Elected Officials.

Councilmember Bangs

- Des Moines Police Foundation Awards Banquet.
- Police Department Advisory Group.

Direction/Action

Motion made by Councilmember Bangs to add a Council liaison to the Police Advisory Group; seconded by Councilmember Kaplan.
The motion passed 7-0.

Councilmember Nutting

- No report.

Councilmember Musser

- Marijuana shops:
 - Licenses controlled by Liquor and Cannabis Board.
 - Zoning.
 - Map on City's web-site.
- Low Impact Development Standards.
 - State mandated EPA.

PRESIDING OFFICER'S REPORT

- Judson Park presentation.
- Marina Tenant Association meeting.

ADMINISTRATION REPORT

- Engineering Services Manager Carver answered questions brought up during Comments from the Public on the Redondo area raised intersection.

Item 1: PANATTONI/GSA PRESENTATION

Bart Brynestad, Donnie Belk, Travis Hale and Mike Nuremberger gave a power point presentation on the status of the Des Moines Creek Business Park development.

- Port of Seattle Airport Division meeting:
 - Flight Corridor Safety Management Obstruction Program:
 - No buildings protruding up too high
 - Trees are protruding up too high in the flight area:
 - 57 trees will need to be removed.
 - Most in North Hill/Des Moines Memorial Drive.
 - Trees removed in 2016 on Port owned property.
 - Trees removed in 2017 on government/commercial owned property.
 - Trees removed in 2018 on private property.
 - Presentation in the spring.
 - In the next edition of the Port's newsletter *Airmail*.
- City Manager Piasecki announced his retirement and touched on key successes of his 20 years of employment with the City and thanked staff for all their hard work.

CONSENT AGENDA

- Item 1: TRANSPORTATION GATEWAY PROJECT: CONSTRUCTION CONTRACT AWARD AND CONSULTANT AGREEMENT SUPPLEMENT FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES FOR THE SOUTH 216TH STREET, SEGMENT 1-A BETWEEN 24TH AVENUE S AND SR99
Motion is to award the S 216th Street Segment 1-A (24th Avenue S to SR99) public works contract to SCI Infrastructure in the amount of \$3,409,446.18, which includes all Bid Schedules (A through D), and authorize the City Manager to sign said contract substantially in the form as submitted. I further authorize a contingency for the construction project of up to \$340,945 (10%) to cover unforeseen conditions and change orders as determined necessary by the Planning, Building and Public Works Director

Direction/Action

Motion made by Councilmember Kaplan to approve the Consent Agenda; seconded by Councilmember Nutting.
 The motion passed 7-0.

PUBLIC HEARING

- Item 1: COMBINED PUBLIC HEARING: DRAFT ORDINANCE VACATING DMCBP TRACT E RIGHT OF WAY AND DRAFT RESOLUTION AMENDING THE DMCBP MASTER PLAN AND APPROVING THE 2ND ADDENDUM TO THE AMENDED AND RESTATED SECOND DEVELOPMENT AGREEMENT FOR THE DES MOINES CREEK BUSINESS PARK
 Staff Presentation: Planning, Building and Public Works Director
 Dan Brewer

Mayor Pina opened the public hearing at 8:04 p.m.

Planning, Building and Public Works Director Brewer gave a power point presentation and introduced two letters into the record; Letter from City of SeaTac and City of Des Moines response.

Mayor Pina asked three times if anyone wished to speak; seeing none Mayor Pina asked Council if they had any questions.

Seeing none, Mayor Pina closed the public hearing at 8:24 p.m.

Direction/Action

Motion made by Councilmember Musser to suspend City Council Rule 26(a) in order to enact Draft Ordinance No. 15-216 on first reading; seconded by Councilmember Kaplan.

The motion passed 7-0.

Motion 1B made by Councilmember Musser to enact Draft Ordinance 15-216 vacating a portion of City right-of-way generally described as des Moines Creek Business Park Tract E located along the South 214th Street right-of-way in the City of Des Moines, for limited purpose and authorize the City Manager to sign the exclusive easement substantially in the form as submitted; seconded by Councilmember Kaplan.

The motion passed 7-0.

Motion 2 made by Councilmember Musser to adopt Draft Resolution 15-215 amending the DMCBP Master Plan and approving the Second Addendum to the Amended and Restated Second Development Agreement with the Port of Seattle regarding the Des Moines Creek Business Park, and authorize the City Manager to sign the Addendum substantially in the form as submitted; seconded by Councilmember Kaplan.

The motion passed 7-0.

Mayor Pina read Draft Ordinance No. 15-216 and Draft Resolution No. 15-215 into the record.

NEW BUSINESS

Item 1:

2016-2017 ON-CALL CONSULTANT AGREEMENTS FOR CIVIL
ENGINEERING SERVICES

Staff Presentation: Engineering Services Manager Brandon Carver

Engineering Services Manager Carver gave a brief power point presentation to Council.

Direction/Action

Motion made by Councilmember Kaplan to approve the Consultant Agreement for On-Call Civil Engineering Services (2016-2017) with AMEC, BergerABAM, Exeltech, HWAGeoSciences, Inc., KPFF, KPG, Parametrix, Tetra Tech each up to \$1,000,000.00 and authorize the City Manager to sign the Agreements substantially in the form as submitted; seconded by Councilmember Nutting.

The motion passed 7-0.

Item 2: PROFESSIONAL SERVICES CONTRACT FOR RECRUITMENT SERVICES
Staff Presentation: Human Resources Manager Maureen Murphy

Human Resources Manager Murphy gave a brief presentation to Council.

Direction/Action

Motion made by Mayor Pro Tem Pennington to have an Ad Hoc Council Committee created, to be appointed by the Mayor, regarding the selection process for a City Manager and to allow the Committee to consider and make recommendations to the full Council; seconded by Councilmember Nutting. The motion passed 7-0.

To allow more time to review the recruitment firms, Mayor Pina asked Council to move the agenda item to the February 11, 2016 meeting.

EXECUTIVE SESSION

At 8:54 p.m. Council went into Executive Session for the purpose of Labor Negotiations under RCW 42.30.140(4)(a) and Pending Litigation under RCW 42.30.110(1)(i) for 30 minutes. In attendance were: Mayor Pina; Mayor Pro Tem Pennington; Councilmembers Musser, Nutting, Bangs, Back and Kaplan; City Manager Piasecki; City Attorney Bosmans; Assistant City Attorney George; Finance Director Mason and Human Resources Manager Murphy.

At 9:23 p.m. Mayor Pina extended the Executive Session an additional 15 minutes. At that time, City Attorney Bosmans, Assistant City Attorney George and Finance Director Mason left the meeting.

The Executive Session concluded at 9:34 p.m.

No formal action was taken.

At 9:53 p.m. Council resumed the regular meeting.

NEXT MEETING DATE

January 28, 2015 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Kaplan to adjourn; seconded by Mayor Pro Tem Pennington. The motion passed 7-0.

The meeting was adjourned at 9:53 p.m.

Respectfully Submitted,
Bonnie Wilkins, CMC
City Clerk

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MINUTES

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers 21630 11th Avenue South, Des Moines

January 28, 2016 – 7:00 p.m.

CALL TO ORDER

Mayor Pina called the meeting to order at 7:02 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Back.

ROLL CALL

Council present: Mayor Matt Pina; Mayor Pro Tem Vic Pennington; Councilmembers Melissa Musser, Jeremy Nutting, Luisa Bangs and Robert K. Back.

Councilmember Dave Kaplan was absent.

Direction/Action

Motion made by Councilmember Nutting to excuse Councilmember Kaplan; seconded by Mayor Pro Tem Pennington.
The motion passed 6-0.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager/Economic Development Director Michael Matthias; Police Chief Delgado; Harbormaster Joe Dusenbury; Planning, Building and Public Work Director Dan Brewer; Parks, Recreation and Senior Services Director Patrice Thorell; Planning, Marina Maintenance Manager Scott Wilkins; Associate Transportation Engineer Andrew Merges; Finance Director Dunyele Mason; Human Resources Manager Maureen Murphy; City Clerk Bonnie Wilkins.

CORRESPONDENCE

There were no correspondences.

COMMENTS FROM THE PUBLIC

- Pete Stream, 28636 Redondo Beach Drive S; Traffic calming installations and raised intersection in Redondo.
- Carol Stream, 28636 Redondo Beach Drive S; Redondo Parking Management Plan/Parametrix Study and raised intersection in Redondo.
- Don Carmignani, 815 S 216th Street; Wesley Home construction of new campus.
- Jim Langston, 600 S 220th; Sale of Landmark on the Sound.
- Rick Johnson, 28624 Redondo Beach Drive; Valley Cities and chickens.
- Ben Stewart, 22515 6th S; Marina Tenants Association-how they can help with Marina issues.
- Sheila Bush, 24614 8th Avenue S; Thanked Michael for his presentation to the Marina Tenants Association.
- Thelma VanNoy, 22532 6th Avenue S; Thanked Council for the new building on 223rd and 7th Avenue.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Mayor Pro Tem Pennington

- South Shores Condominium Association meeting.

Councilmember Back

- Association of Washington Cities:
 - City Action Days:
 - Advocacy 101 and 201.
- Attended the Marina Tenants Association Marina Master Plan meeting.

Councilmember Bangs

- Attended the Marina Tenants Association Marina Master Plan meeting:
 - Clear presentation from Harbormaster.
 - Questions were very well addressed.
- Attended SCORE site visit.

Councilmember Nutting

- No report.

Councilmember Musser

- Appointed Chair of the Municipal Facilities Committee meeting:
 - Marina:
 - New breakwater & floats.
 - Restrooms need renovations.
 - North bulkhead and Beach Park bulkhead repairs.
 - Next meeting February 25th

PRESIDING OFFICER'S REPORT

- South Shore Condominium Association meeting:
 - Attended with Mayor Pro Tem Pennington & Councilmember Kaplan.
- Ad Hoc Executive Search Committee has been formed:
 - Mayor Pina
 - Mayor Pro Tem Pennington
 - Councilmember Kaplan
- Invitations to Special Events.

ADMINISTRATION REPORT

- Weekly Tuesday afternoon Council Future meeting:
 - Room for two more Councilmembers to attend.
- Marine View Drive Bridge-Des Moines Creek Trail:
 - WSDOT to assess.
 - Trail closed for safety reasons.
- Request for Appropriations to replace Marina Bulkhead.
- Assistant City Manager/Economic Development Director Matthias came to the podium to answer questions regarding the Landmark on the Sound.
- Planning, Building and Public Works Director Brewer came to the podium to address the questions regarding neighborhood traffic calming on Redondo Beach Drive.
- Police Chief Delgado came to the podium to announce that the Mt. Rainier High School Pacific Islander Club will attend the February 4th Council meeting and discuss their mission.
- Staff will be looking into South Shores Condominium crosswalks.

- Addressed comments made by Sheila Brush regarding retirement.

CONSENT AGENDA

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes from the December 17, 2015 regular City Council meeting.

Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfer included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#145591-145736	\$1,302,238.81
Payroll Checks	#18752-18756	\$ 5,422.23
Payroll Direct Deposit	#30001-30165	\$ 289,201.86
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers:		\$1,596,862.90

Item 3: ARTS COMMISSION APPOINTMENT

Motion is to confirm the Mayoral appointment of Sheri Verberg to a three year term on the City of Des Moines Arts Commission effective immediately and expiring on December 31, 2018.

Direction/Action

Motion made by Councilmember Nutting to approve the Consent Agenda; seconded by Councilmember Bangs.

The motion passed 6-0.

EXECUTIVE SESSION

At 7:55 p.m. Council went into Executive Session. The purpose of the Executive Session was to discuss Labor Negotiations under RCW 42.30.140(4)(a). The Executive Session is expected to last 15 minutes. In attendance were Mayor Pina; Mayor Pro Tem Pennington; Councilmembers Musser, Nutting, Bangs and Back; City Manager Piasecki; Assistant City Manager Matthias; Human Resources Manager Murphy; Harbormaster Dusenbury; Parks, Recreation & Senior Services Director Thorell.

At 8:13 p.m. Mayor Pina extended the meeting an additional 15 minutes.

At 8:28 p.m. the Executive Session concluded and Council resumed the regular meeting.

NEXT MEETING DATE

February 4, 2015 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Bangs to adjourn; seconded by Mayor Pro Tem Pennington. The motion passed 6-0.

The meeting was adjourned at 8:29 p.m.

Respectfully Submitted,
Bonnie Wilkins, CMC
City Clerk

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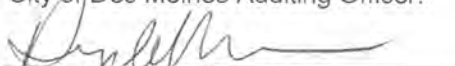
CITY OF DES MOINES
Voucher Certification Approval
25-Feb-16

Auditing Officer Certification

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of **Feb 25, 2016** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer:


 Dunyela Mason, Finance Director

	# From	# To	Amounts
Claims Vouchers:			
Total A/P Checks/Vouchers	145922	- 146057	479,790.80
Electronic Wire Transfers	664	- 667	157,426.84
Total claims paid			637,217.64
Payroll Vouchers			
Payroll Checks	18761	- 18765	3,900.06
Direct Deposit	70001	- 70158	284,370.69
Payroll Checks		-	
Direct Deposit		-	
Payroll Checks		-	
Direct Deposit		-	
Total Paychecks/Direct Deposits paid			288,270.75
Total checks and wires for A/P & Payroll			925,488.39

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Ordinance No. 16-001 Animal
in unattended motor vehicle

ATTACHMENTS:

1. Draft Ordinance No. 16-001
2. RCW 16.52.340

FOR AGENDA OF: February 25, 2016

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: February 16, 2016

CLEARANCES:

- ☒ Legal VG
- ☐ Economic Development N/A
- ☐ Finance N/A
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☐ Planning, Building & Public Works N/A
- ☐ Police N/A
- ☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation

The purpose of this agenda item is to enact Draft Ordinance No. 16-001 which will adopt by reference the newly enacted state law (RCW 16.52.340 – Attachment 2) prohibiting the confinement of an animal in an unattended vehicle under circumstances which could harm the animal and providing animal control or police officers the authority to reasonably remove confined animals without liability for damage to property caused by the removal actions.

Suggested Motion

FIRST MOTION: “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 16-001 on first reading.”

SECOND MOTION: “I move to enact Draft Ordinance No. 16-001 to adopt by reference RCW 16.52.340 entitled “*Leave or confine any animal in unattended motor vehicle or enclosed space—Class 2 civil infraction—Officers’ authority to reasonably remove animal.*”

Background

In 2015, the state legislature enacted RCW 16.52.340 entitled "*Leave or confine any animal in unattended motor vehicle or enclosed space—Class 2 civil infraction—Officers' authority to reasonably remove animal.*" This statute is intended to protect the health and safety of animals who have been confined and are reasonably likely to suffer harm from exposure to excessive heat, cold, lack of ventilation or lack of necessary water. A violation of this code is a class 2 civil infraction (\$250 fine). The statute also gives the animal control officer or police officer the authority to reasonably remove an animal confined in an enclosed space or vehicle without liability for damage to property resulting from removal actions.

Discussion

By enacting Draft Ordinance No. 16-001, the state law will be incorporated by reference into the Des Moines Municipal Code and any violation of the law can be pursued in the Municipal Court.

Alternatives

The alternative would be not to enact Draft Ordinance No. 16-001.

Financial Impact

None.

Recommendation or Conclusion

It is recommended that the City Council enact Draft Ordinance No. 16-001 on first reading.

CITY ATTORNEY'S FIRST DRAFT 01/07/2016

DRAFT ORDINANCE NO. 16-001

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the City's Criminal Code and animals left unattended or confined in motor vehicles or enclosed spaces; and amending DMMC 9.16.010 by adopting RCW 16.52.340 by reference.

WHEREAS, the City of Des Moines previously adopted by reference certain sections of chapter 16.52 RCW, entitled Prevention Of Cruelty to Animals, and

WHEREAS, the state legislature amended chapter 16.52 RCW to add RCW 16.52.340, entitled "Leave or confine any animal in unattended motor vehicle or enclosed space-Class 2 civil infraction-Officers' authority to reasonably remove animal" in 2015, and

WHEREAS, by enacting Draft Ordinance No. 16-001, the state law will be incorporated by reference into the Des Moines Municipal Code and any violation of the law can be pursued in the Des Moines Municipal Court, and

WHEREAS, chapter 16.52 RCW has been filed in the office of the City Clerk for examination by the public during the time this Ordinance has been under consideration by the Council prior to adoption as required by RCW 35A.12.140, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and general welfare to establish comprehensive, uniform, and current provisions for the City's Criminal Code and to adopt RCW 16.52.340 by reference; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 9.16.010 and section 15 of Ordinance No. 1036 as amended by section 1 of Ordinance No. 1145 as amended by section 14 of Ordinance No. 1604 is amended to read as follows:

State provisions adopted.

The following state statutes are adopted by reference and are applicable within the City:

Ordinance No. ____
Page 2 of 3

RCW

- 9.08.030 False certificate of registration of animals - False representation as to breed.
- 9.08.065 Definitions.
- 9.08.070 Pet animals - Taking, concealing, injuring, killing, etc. - Penalty.
- 16.52.011 Definitions - Principles of liability.
- 16.52.015 Enforcement - Law enforcement agencies and animal care and control agencies.
- 16.52.080 Transporting or confining in unsafe manner - Penalty.
- 16.52.085 Removal of animals for feeding and care - Examination - Notice - Euthanasia.
- 16.52.090 Docking horses - Misdemeanor.
- 16.52.095 Cutting ears - Misdemeanor.
- 16.52.100 Confinement without food and water - Intervention by others.
- 16.52.110 Old or diseased animals at large.
- 16.52.165 Punishment - Conviction of misdemeanor.
- 16.52.180 Limitations on application of chapter.
- 16.52.185 Exclusions from chapter.
- 16.52.190 Poisoning animals - Penalty.
- 16.52.193 Poisoning animals - Strychnine sales - Records - Report on suspected purchases.
- 16.52.200 Sentences - Forfeiture of animals - Liability for costs - Penalty - Education, counseling.
- 16.52.207 Animal cruelty in the second degree - Penalty.
- 16.52.210 Destruction of animal by law enforcement officer - Immunity from liability.
- 16.52.340 Leave or confine any animal in unattended motor vehicle or enclosed space-Class 2 civil infraction-Officers' authority to reasonably remove animal.

NEW SECTION. Sec. 2. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction,

Ordinance No. ____
Page 3 of 3

such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

NEW SECTION. Sec. 3. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its final passage by the Des Moines City Council in accordance to law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2016 and signed in authentication thereof this ____ day of _____, 2016.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Effective Date: _____

Published: _____

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RCW 16.52.340

Leave or confine any animal in unattended motor vehicle or enclosed space—Class 2 civil infraction—Officers' authority to reasonably remove animal.

(1) It is a class 2 civil infraction under RCW 7.80.120 to leave or confine any animal unattended in a motor vehicle or enclosed space if the animal could be harmed or killed by exposure to excessive heat, cold, lack of ventilation, or lack of necessary water.

(2) To protect the health and safety of an animal, an animal control officer or law enforcement officer who reasonably believes that an animal is suffering or is likely to suffer harm from exposure to excessive heat, cold, lack of ventilation, or lack of necessary water is authorized to enter a vehicle or enclosed space to remove an animal by any means reasonable under the circumstances if no other person is present in the immediate area who has access to the vehicle or enclosed space and who will immediately remove the animal. An animal control officer, law enforcement officer, or the department or agency employing such an officer is not liable for any damage to property resulting from actions taken under this section.

(3) Nothing in this section prevents the person who has confined the animal in the vehicle or enclosed space from being convicted of separate offenses for animal cruelty under RCW 16.52.205 or 16.52.207.

[2015 c 235 § 1.]

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2016 Vehicle Purchases

AGENDA OF: February 25, 2016

DEPT. OF ORIGIN: Planning, Building & Public Works

ATTACHMENTS:

DATE SUBMITTED: February 17, 2016

1. 2016 Vehicle Purchase:

- PO for 4 Police Patrol Vehicles
PBPW 2/17/2016 #018
- PO for 3 Police Administrative Vehicle
PBPW 2/17/2016 #019
- PO for 1 John Deere Trim and Surrounds
Mower PBPW 2/17/2016 #020

CLEARANCES:

[X] Legal PB
 [X] Finance DM
 [] Marina N/A
 [] Parks, Recreation & Senior Services _____
 [X] Planning, Building & Public Works DJB
 [] Police _____
 [] Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AX

Purpose and Recommendation:

The purpose of this agenda item is to seek Council authorization to purchase 7 Police Vehicles and 1 Parks Mower, consistent with the adopted 2016 Budget. The Planning, Building & Public Works Department recommends the purchase of the vehicles identified in Attachment 1. The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to authorize the City Manager or his designee to purchase the vehicles and equipment as identified in Attachment 1."

Background:

The adopted 2016 Budget includes the replacement and purchase of the following vehicles and equipment: Seven (7) new Police Department fleet vehicles; one (1) Parks Department mower.

Discussion:**Police Department**

Of the seven new police vehicles being purchased, four will be setup for patrol and three set up as Administration and detective vehicles. The new vehicles are 2016 Ford Police AWD Interceptors Midsize Utility Model (Ford Explorer). The 4 patrol vehicles will be black with white doors. The Administration and detective vehicles will be the same Ford Interceptor model as the patrol vehicles other than the colors. There will be one black, one dark blue and one silver. The total price for the 4 patrol vehicles including tax, equipment and set up is \$252,102.72 or \$63,025.68 per vehicle. The total price for the 3 Administrative vehicles including tax, equipment and set up is \$115,443.54 or \$38,480.18 per vehicle. The price difference between the administrative and patrol vehicles varies as the patrol vehicles require more lights, video, computer and radio equipment. Following Council authorization, these vehicles will be ordered in late February 2016 and should be ready for fleet service in May 2016.

Public Works and Parks Maintenance Division

There is one mower included in the 2016 budget. The new mower is a John Deere 2653B Precision Trim and Surrounds Reel Mower with a 72 inch cutting width. Following Council authorization the mower will be ordered in late February 2016 with delivery in April 2016. The base price for the mower including tax is \$34,724.29.

There is a corresponding Council agenda item and Draft Resolution to address the surplus of the existing fleet vehicles that these purchases will replace,

Alternatives:

Council could decide to revisit the fleet replacements identified in the 2016 Budget.

Financial Impact:

The adopted 2016 Budget includes \$360,000 for the police vehicles and \$30,500 for the mower. The approximately \$ 7,550 funding shortfall for police vehicles and \$4,225 funding shortfall for the mower should be covered by the sale proceeds from the disposal of the surplus vehicles and equipment and annual interest earnings within the equipment replacement fund.

Recommendation/Conclusion:

Staff recommends purchase of the identified vehicles and mower and asks Council to approve the suggested motion.

Concurrence:

The Finance, Legal, and Planning, Building and Public Works Departments concur.

CITY OF DES MOINES

Finance Division
 21630 11TH Avenue South
 Des Moines WA 98198-6317
 Phone 206.870.6511 Fax 206.870.6540

**PURCHASE ORDER**

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

P.O. NUMBER: PBPW 2/17/2016 #018

TO:
Columbia Ford
Attn: Marie Tellinghussen
700 7th Avenue
Longview WA 98632

SHIP TO:
Don Leadbetter, Equipment Shop
City of Des Moines WA
21650 11th Avenue South
Des Moines WA 98198-6317
206.870.6525 FAX 206.870.6596

Email: mariet@colford.com
 Vehicle Quote #2016-2-339

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
2/17/2016	John Blackburn			Net 30 - \$200 discount per vehicle if pd within 20 days of delivery

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
4	Each	2016 Ford Police Interceptor Utility/SUV AWD (K8A/500A) (Code #2016-502-001) Color: Shadow Black	\$26,587.00	\$106,348.00
4	Each	Alternative Engine, 3.5L V6 EcoBoost w/ 6-speed Automatic Transmission (131 mph top speed) (99T/44C) (Code #2016-502-004)	3,274.00	13,096.00
4	Each	Pre-wiring for grille lamp, siren and speaker (60A) (Code #2016-502-017)	47.00	188.00
4	Each	Noise Suppression Bonds (Ground Straps)(60R) (Code #2016-502-019)	90.00	360.00
4	Each	Side Marker LED, Sideview Mirrors (Driver side – Red/Passenger side – Blue) (Located on backside of exterior mirror housing) (LED lights only. Wiring & controller not included) (Code #2016-502-020)	259.00	1,036.00
4	Each	Ballistic Door Panel – Driver only (90D) (Code #206-502-026)	1,411.00	5,644.00
4	Each	Dark Car Feature (Courtesy lamp disable when any door is opened) (43D) (Code #2016-502-033)	16.00	64.00
4	Each	Dome Lamp – Red/White in Cargo Area (17T) (Code #2016-502-035)	46.00	184.00
4	Each	Doors/Locks: Hidden Door Lock Plunger w/ Rear Door Handles Inoperable (included w/ ready for the road pkg) (Code #2016-502-039)	143.00	572.00
4	Each	Fleet Keyed Alike (call for availability w/ key codes)(N/A w/ Remote Keyless Entry #595) (KEY) (Code 2016-502-040)	44.00	176.00
4	Each	Power Windows, Driver Control (deletes rear power window controls)(18W) (Code #2016-502-043)	23.00	92.00

4	Each	Rear Console Plate (wiring conduit from front console plate to rear seat)(N/A with interior Upgrade Pkg #65U or Front Console Plate Delete #85D)(85R) (Code #2016-502-045)	32.00	128.00
4	Each	Remappable (4) switches on steering wheel (if ordered with SYNC includes Voice Button) (61R/61S) (Code #2016-502-048)	139.00	556.00
4	Each	Spot Lamp, LED Bulb, Driver Only (Whelen) (51T) (Code #2016-502-053)	374.00	1,496.00
4	Each	2 nd Row Vinyl Seats in lieu of cloth (Code #2016-502-073)	(54.00)	(216.00)
4	Each	Front Headlamp Housing Only (includes pre-drilled hole for side marker police use and pre-molded side warning LED holes w/ standard twist lock sealed capability)(does not include LED installed lights)(Not available w/ Ready for the Road Pkg #67H)(86P) (Code #2016-502-077)	113.00	452.00
Authority:			SUBTOTAL	\$130,176.00
			9.5% SALES TAX	12,366.72
			SHIPPING & HANDLING	
			OTHER	
			TOTAL	\$142,542.72

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

INTERNAL INSTRUCTIONS:

CHARGE TO DM CITY CODE: 501.100.040.594.21.64.00

Ordered by:

Date

Authorized by:

Date

At the direction of the Des Moines
City Council taken at an open public
meeting on _____

Peggy Volin

From: Don Leadbetter
Sent: Thursday, February 18, 2016 7:56 AM
To: Peggy Volin
Subject: FW: Vehicle Quote - 2016-2-339 - DES MOINES, CITY OF - POLICE DEPARTMENT - 21709

From: NOREPLY@des.wa.gov [mailto:NOREPLY@des.wa.gov]
Sent: Wednesday, February 10, 2016 3:09 PM
To: Don Leadbetter <DLeadbetter@desmoineswa.gov>
Cc: Steve.Hatfield@des.wa.gov
Subject: Vehicle Quote - 2016-2-339 - DES MOINES, CITY OF - POLICE DEPARTMENT - 21709

Vehicle Quote Number: 2016-2-339 [Create Purchase Request](#) [View organization purchase requests](#)

This is a **quote** only. You must create a purchase request to order this vehicle(s)

Contract & Dealer Information

Contract #: 03713	Dealer Contact: Marie Tellinghisen
Dealer: Columbia Ford (W403)	Dealer Phone: (360) 423-4321 Ext: 187
700 7th Avenue	Dealer Email: mariet@colford.com
Longview WA 98632	

Organization Information

Organization: DES MOINES, CITY OF - POLICE DEPARTMENT - 21709
 Email: dleadbetter@desmoineswa.gov

Color Options

Shadow Black - 4

Tax Exempt: N

Vehicle Options

Order Code	Option Description	Qty	Unit Price	Ext. Price
2016-502-001	2016 Ford Police Interceptor Utility/SUV AWD (K8A/500A)	4	\$26,587.00	\$106,348.00
2016-502-004	Alternative Engine, 3.5L V6 EcoBoost with 6-speed Automatic Transmission (131mph top speed)(99T/44C)	4	\$3,274.00	\$13,096.00
2016-502-017	Pre-Wiring for grille lamp, siren and speaker (60A)	4	\$47.00	\$188.00
2016-502-019	Noise Suppression Bonds (Ground Straps)(60R)	4	\$90.00	\$360.00
2016-502-020	Side Marker LED, Sideview Mirrors (Driver side - Red / Passenger side - Blue) (Located on backside of exterior mirror housing) (LED lights only. Wiring and controller "not" included.) (Must also order Pre-wiring for grille lamp, siren and speaker #60A) (63B)	4	\$259.00	\$1,036.00

2016-502-026 Ballistic Door Panel - Driver only (90D)	4	\$1,411.00	\$5,644.00
2016-502-033 Dark Car Feature (courtesy lamp disable when any door is opened) (43D)	4	\$16.00	\$64.00
2016-502-035 Dome Lamp – Red/White in Cargo Area(17T)	4	\$46.00	\$184.00
2016-502-039 Doors/Locks: Hidden Door Lock Plunger with Rear Door Handles Inoperable (included with Ready for the Road Package #67H)(52P)	4	\$143.00	\$572.00
2016-502-040 Fleet Keyed Alike (Call dealer for available key codes)(N/A with Remote Keyless Entry #595) (KEY)	4	\$44.00	\$176.00
2016-502-043 Power Windows, Driver Control (deletes rear window power controls) (18W)	4	\$23.00	\$92.00
2016-502-045 Rear Console Plate (wiring conduit from front console plate to rear seat) (N/A with Interior Upgrade Package #65U or Front Console Plate Delete #85D) (85R)	4	\$32.00	\$128.00
2016-502-048 Remappable (4) switches on steering wheel (if ordered with SYNC, includes Voice Button) (61R/61S)	4	\$139.00	\$556.00
2016-502-053 Spot Lamp, LED Bulb, Driver Only (Whelen)(51T)	4	\$374.00	\$1,496.00
2016-502-073 2nd Row Vinyl Seats in lieu of cloth	4	(\$54.00)	(\$216.00)
2016-502-077 Front Headlamp Housing Only (includes pre-drilled hole for side marker police use and pre-molded side warning LED holes with standard twist lock sealed capability)(does not include LED installed lights)(Not available with Ready for the Road Package #67H)(86P)	4	\$113.00	\$452.00

Quote Totals

Total Vehicles:	4
Sub Total:	\$130,176.00
8.3 % Sales Tax:	\$10,804.61
Quote Total:	\$140,980.61

9.5% tax \$ 12,366.72
Total \$142,542.72

CITY OF DES MOINES

Finance Division
 21630 11TH Avenue South
 Des Moines WA 98198-6317
 Phone 206.870.6511 Fax 206.870.6540

**PURCHASE ORDER**

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

P.O. NUMBER: PBPW 2/17/2016 #019

TO:
Columbia Ford
Attn: Marie Tellinghusen
700 7th Avenue
Longview WA 98632

SHIP TO:
Don Leadbetter, Equipment Shop
City of Des Moines WA
21650 11th Avenue South
Des Moines WA 98198-6317
206.870.6525 FAX 206.870.6596

Email: mariet@colford.com
 Vehicle Quote #2016-2-339

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
2/17/2016	John Blackburn			Net 30 - \$200 discount per vehicle if pd within 20 days of delivery

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
3	Each	2016 Ford Police Interceptor Utility/SUV AWD (K8A/500A) (Code #2016-502-001) Color: (1) Shadow Black, (1) Dark Blue, (1) Metallic Silver Gray	\$26,587.00	\$79,761.00
3	Each	Interior Upgrade, (includes full carpeting, carpeted floor mats, center floor console w/ cupholders)(retains column shifter)(deletes standard console mounting plate between front seats) (65U) (Code #2016-502-022)	348.00	1,044.00
3	Each	Dome Lamp – Red/White in Cargo Area (17T) (Code #2016-502-035)	46.00	138.00
3	Each	Remote Keyless Entry w/ Two transmitters (N/A w/ Fleet Keyed Alike) (595) (Code #2016-502-044)	235.00	705.00

Authority:

At the direction of the Des Moines
 City Council taken at an open public
 meeting on _____.

SUBTOTAL	\$81,648.00
9.5% SALES TAX	7,756.56
SHIPPING & HANDLING	
OTHER	
TOTAL	\$89,404.56

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

INTERNAL INSTRUCTIONS:

CHARGE TO DM CITY CODE: 501.100.040.594.21.64.00

Ordered by:

Date

Authorized by:

Date

*Collective***Don Leadbetter**

From: NOREPLY@des.wa.gov
Sent: Tuesday, February 16, 2016 6:46 AM
To: Don Leadbetter
Cc: Steve.Hatfield@des.wa.gov
Subject: Vehicle Quote - 2016-2-398 - DES MOINES, CITY OF - POLICE DEPARTMENT - 21709

Vehicle Quote Number: 2016-2-398[Create Purchase Request](#)[View organization purchase requests](#)

This is a **quote** only. You must create a purchase request to order this vehicle(s)

Contract & Dealer Information

Contract #: 03713

Dealer: Columbia Ford (W403)
 700 7th Avenue
 Longview WA 98632

Dealer Contact: Marie Tellinghiusen

Dealer Phone: (360) 423-4321 Ext: 187

Dealer Email: mariet@colford.com

Organization Information

Organization: DES MOINES, CITY OF - POLICE DEPARTMENT - 21709

Email: dleadbetter@desmoineswa.gov

Color Options

Shadow Black - 1

Dark Blue - 1

Sterling Gray Metallic - 1

Tax Exempt: N

Vehicle Options

Order Code	Option Description	Qty	Unit Price	Ext. Price
2016-502-001	2016 Ford Police Interceptor Utility/SUV AWD (K8A/500A)	3	\$26,587.00	\$79,761.00
2016-502-022	Interior Upgrade, (Includes full carpeting, carpeted floor mats, center floor console w/ cupholders)(retains column shifter)(deletes standard console mounting plate between front seats) (Not available with Ready for the Road or Cargo Wiring Packages)(65U)	3	\$348.00	\$1,044.00
2016-502-035	Dome Lamp - Red/White in Cargo Area(17T)	3	\$46.00	\$138.00
2016-502-044	Remote Keyless Entry w/Two Transmitters (N/A with Fleet Keyed Alike)(595)	3	\$235.00	\$705.00

Quote Totals

Total Vehicles: 3
Sub Total: \$81,648.00
8.3 % Sales Tax: ~~\$6,776.78~~
Quote Total: ~~\$88,424.78~~

TAX 9.5% \$7756.56
 Total \$89404.56

CITY OF DES MOINES

Finance Division
 21630 11TH Avenue South
 Des Moines WA 98198-6317
 Phone 206.870.6511 Fax 206.870.6540

**PURCHASE ORDER**

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

P.O. NUMBER: PBPW 2.17.2016 #020

TO:
 Pacific Golf & Turf, LLC
 Attn: Mike Korvas
 1818 Bickford Avenue
 Snohomish WA 98290

SHIP TO:
 Don Leadbetter, Equipment Shop
 City of Des Moines WA
 21650 11th Avenue South
 Des Moines WA 98198-6317
 206.870.6521 FAX 206.870.6596

mkorvas@pacificgolfturf.com Quote #12725185

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
2.17.2016	John Blackburn			Net/30

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1	Each	John Deere Trim & Surrounds Mower	\$31,711.68	\$31,711.68

Authority:

SUBTOTAL	\$31,711.68
9.5% SALES TAX	3,012.61
SHIPPING & HANDLING	
OTHER	
TOTAL	\$34,724.29

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

INTERNAL INSTRUCTIONS:

CHARGE TO DM CITY CODE: 501.100.040.594.76.64.00

Ordered by:

Date

Authorized by:

Date

At the direction of the Des Moines
 City Council taken at an open public
 meeting on _____.



Quote Summary**Prepared For:**

City Of Des Moines
WA
Home: 206-8706521

Prepared By:

Mike Korvas
Pacific Golf & Turf LLC
1818 Bickford Avenue
Snohomish, WA 98290
Phone: 360-568-7798
mkorvas@pacificgolfturf.com

Quote Id: 12725185**Created On:** 01 February 2016**Last Modified On:** 08 February 2016**Expiration Date:** 11 March 2016

Equipment Summary

JOHN DEERE TRIM AND
SURROUNDS MOWER

Selling Price

\$ 31,711.68 X

Qty

1 =

Extended

\$ 31,711.68

Equipment Total**\$ 31,711.68**

Quote Summary

Equipment Total

\$ 31,711.68

SubTotal

\$ 31,711.68

Sales Tax - (9.50%)

\$ 3,012.61

Total

\$ 34,724.29

Down Payment

(0.00)

Rental Applied

(0.00)

Balance Due**\$ 34,724.29**

Salesperson : X _____

Accepted By : X _____



Selling Equipment

Quote Id: 12725185

JOHN DEERE TRIM AND SURROUNDS MOWER

Hours:

Stock Number:

Code	Description	Qty
1224TC	2653B PrecisionCut Trim and Surrounds Mower	1

Standard Options - Per Unit

001A	US/Canada	1
0443	All Other Countries	1
1204	(3) QA7 Five Blade 26 In. Cutting Units	1
1316	(3) 3 In. (7.6 cm) Diameter Heavy Duty Grooved Disc Front Rollers	1
1409	(3) FTC/GTC ONLY Counter Weight Kit	1
2010	Deluxe Suspension Seat with Armrest	1
9741	(3) QA7 26 In. Fairway Tender Conditioners Shaft and Blades	1
9744	(3) QA7 FTC Gear Drive	1

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Sexual Assault Awareness Month
Proclamation

AGENDA OF: February 25, 2016

DEPT. OF ORIGIN: Administration

ATTACHMENT:
1. Proclamation

DATE SUBMITTED: February 18, 2016

CLEARANCES:

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to show Council support and proclaim the month of April as Sexual Assault Awareness Month

Suggested Motion

MOTION: "I move to approve the Proclamation recognizing April and Sexual Assault Awareness Month.

Background:

Sexual Violence is a widespread problem that affects people of all genders, ages, races, religions, incomes, professions, ethnicities and sexual orientations.

Founded by the Pennsylvania Coalition Against Rape in 2000, the National Sexual Violence Resource Center (NSVRC) develops and disseminates resources regarding all aspects of sexual violence prevention and intervention.

One out of three girls, one out of five boys and 23% of women are the victims of sexual assault. And, an estimated 60% of victims of sexual assault go unreported.

Sound Cities Association is asking member cities to join in the pledge recognize the month of April as Sexual Assault Awareness Month.

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City of Des Moines



CITY COUNCIL
21630 11th AVENUE S, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, Sexual Assault Awareness Month calls attention to the fact that sexual violence is widespread and impacts every person in this community, and

WHEREAS, rape, sexual assault, and sexual harassment harm our community, and statistics show that one out of three girls, one out of five boys, and 23% of women are the victims of sexual assault, and

WHEREAS, child sexual abuse prevention must be a priority to confront the reality that one in six boys and one in four girls will experience a sexual assault before the age of 18; and

WHEREAS, young people experience heightened rates of sexual violence, and youth ages 12 to 17 are two and a half times as likely to be victims of rape or sexual assault; and

WHEREAS, on campus, one in five women and one in 16 men are sexually assaulted during their time in college; and

WHEREAS, we must work together to educate our community about sexual violence prevention, support survivors and speak out against harmful attitudes and actions; and

WHEREAS, prevention is possible when we increase education, awareness and community involvement; and

WHEREAS, each day of the year is an opportunity to create change for the future; and

NOW THEREFORE, THE DES MOINES COUNCIL HEREBY PROCLAIMS the month of April as

SEXUAL ASSAULT AWARENESS MONTH

in the City of Des Moines, and encourages all citizens to join in this special observance, and join advocates and communities across the country in taking action to prevent sexual violence.

SIGNED this day 25th of February, 2016.

Matt Pina, Mayor

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Resolution 16-016: Opposing
the Proposed Methanol Plant in Tacoma

ATTACHMENTS:

1. Draft Resolution 16-016
2. City of Federal Way Resolution 16-701
3. Information from 2-18-2016 Environment
Committee Meeting

FOR AGENDA OF: February 25, 2016

DEPT. OF ORIGIN: Planning, Building & Public
Works

DATE SUBMITTED: February 18, 2016

CLEARANCES:

☒ Legal AB

☐ Finance N/A

☐ Marina N/A

☐ Parks, Recreation & Senior Services N/A

☒ Planning, Building & Public Works DB

☐ Police N/A

☐ Economic Development Manager

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AI

Purpose and Recommendation

The purpose of this agenda item is for City Council to consider Draft Resolution 16-016 in opposition to the proposed Methanol Plant in the City of Tacoma. The following motion will appear on the consent calendar:

Suggested Motions

Motion 1: "I move to adopt Draft Resolution 16-016 in opposition to the proposed Methanol Plant in the City of Tacoma."

Background

At the February 11, 2016 Council meeting, the City Council directed staff to prepare a Resolution in opposition to the proposed Methanol Plant in Tacoma (Attachment 1). The City of Federal Way adopted a similar resolution in opposition to the Methanol Plant (Attachment 2).

Discussion

This topic was discussed at the February 18, 2016 Council Environment Committee. Materials distributed to the Committee are included in Attachment 3.

Alternatives

The City Council may:

- 1) Adopt the Draft Resolution as Proposed.
- 2) Adopt the Draft resolution with revisions.
- 3) Decline to Adopt the Draft Resolution.

Financial Impact

None.

Recommendation or Conclusion

Staff recommends that the City Council pass the suggested motion.

PLANNING, BUILDING & PUBLIC WORKS FIRST DRAFT 2/18/16

DRAFT RESOLUTION NO. 16-016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, opposing the development and operation of a natural gas-to-methanol production plant in the City of Tacoma.

WHEREAS, Northwest Innovation Works Tacoma, LLC ("NWIW"), a business venture formed with funding from the Chinese government and British Petroleum, has proposed to develop and operate a natural gas-to-methanol production plant in the City of Tacoma on approximately 125 acres leased from the Port of Tacoma, and

WHEREAS, the development and operation of the proposed project has created concern for the health and safety of citizens and an impact on resources, and

WHEREAS, the potential air pollution, water pollution, and exposure to methanol produced by this project could be related to various diseases, cause serious negative health impacts, and have unknown impacts on the natural environment and human health, and

WHEREAS, the development and operation of this project has the potential for increased risks of exposure to pollutants and toxic chemicals due to spills, leaks, fires, explosions, and natural or other disasters, and

WHEREAS, the project has generated concerns about the methods and costs to address mitigation measures such as accident and disaster preparedness, health impacts, decreased property values, and medical expenses due to increased exposure, and

WHEREAS, the project has generated concerns about the methods and costs of restoring damaged ecosystems such as waterways, plants, and animals, and

WHEREAS, the development and operation of this project will require an estimated water consumption of between 10 to 14 million gallons per day and, at full production, require up to 450 megawatts of electrical power, and

Resolution No. ____
 Page 2 of 5

WHEREAS, the City of Des Moines shares both a border and a shoreline with the City of Federal Way and is with close proximity to the proposed project site in the Port of Tacoma, and

WHEREAS, despite the City of Des Moines' close proximity to this proposed project, neither the City of Tacoma nor the Port of Tacoma has reached out to the City of Des Moines or its residents regarding the potential impacts of this proposed plant, and

WHEREAS, the lack of transparency regarding the public process and input surrounding the project is of great concern to the City of Des Moines and its residents, and

WHEREAS, it is unclear what the exact environmental impacts to the City of Des Moines and its residents will be, and

WHEREAS, the City of Des Moines is still dealing with environmental impacts that resulted from the former Asarco Smelter which was located in the City of Tacoma, and

WHEREAS, environmental impacts such as air quality and the safety of residents will not stop at the King-Pierce County line, and

WHEREAS, the February 5, 2016 City of Tacoma EIS Draft Scope of Work for the NWIS Methanol Plant does not clearly state that the off-site impacts to Des Moines' residents will be taken into consideration; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Opposition to proposed project. Due to a lack of information and the apparent absence of an adequate and transparent process surrounding this proposed project, the Des Moines City Council is opposed to Northwest Innovation Work's methanol plant proposal at this time.

Sec. 2. Scoping comments. The Des Moines City Council submits the following issues for inclusion into the EIS Scope of Work by the City of Tacoma:

Resolution No. ____
Page 3 of 5

(1) Consideration of off-site impacts that extend into the City of Des Moines.

(2) Environmental impacts, safety records and mitigation measures for other methanol facilities, on an international basis for the methanol industry and the principals involved with the Tacoma project.

(3) Public health risks of exposure to methanol pollutants, including air quality, water quality and usage, soil leeching, and industrial accidents.

(4) Workplace safety risks for employees of the methanol plant and neighboring industrial users of the Port of Tacoma.

(5) Risk analysis for industrial accidents and impact of man-made or natural disasters, both during construction and operation.

(6) Pipeline safety, during construction and operation.

(7) Short and long term impacts on natural resources during construction and operation, including:

(a) Impacts of dredging;

(b) Air and soil plume formation and migration;

(c) Water temperatures, both in Puget Sound, nearby rivers and streams, and watersheds;

(d) Water supply impacts, including drought-year planning; and

(e) Impacts to wildlife and marine species.

(8) Cost-benefit analysis during construction and operation, including:

(a) Net job gain or loss to regional and U.S. economies as a result of the project, and contribution to the U.S. trade deficit with China;

Resolution No. ____
Page 4 of 5

- (b) Impacts to other U.S. industries;
- (c) Consideration of other geographic or technical alternatives to the project location; and
- (d) Economic volatility of the benefitting industry.

(9) Environmental justice issues related to economically distressed communities, minority communities, and efforts to address language and cultural barriers to participation of these communities in the process.

This list is not intended to be all inclusive of the potential impacts to be considered, but rather, a beginning point from which to expand as the impacts are more fully examined.

Sec. 3. Severability. If any section, sentence, clause or phrase of this Resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Sec. 4. Corrections. The City Clerk and the codifiers of this Resolution are authorized to make necessary corrections to this Resolution including, but not limited to, the correction of scrivener/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

Sec. 5. Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

Sec 6. Effective date. This Resolution shall be effective immediately upon passage by the Des Moines City Council.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of February, 2016 and signed in authentication thereof this ____ day of February, 2016.

Resolution No. ____
Page 5 of 5

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

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RESOLUTION NO. 16-701**A RESOLUTION of the City Council of the City of Federal Way, Washington, opposing the development and operation of a natural gas-to-methanol production plant in the City of Tacoma.**

WHEREAS, Northwest Innovation Works Tacoma, LLC (“NWIW”), a business venture formed with funding from the Chinese government and British Petroleum, has proposed to develop and operate a natural gas-to-methanol production plant in the City of Tacoma on approximately 125 acres leased from the Port of Tacoma; and

WHEREAS, the development and operation of the proposed project has created concern for the health and safety of citizens and the impact on resources; and

WHEREAS, the potential air pollution, water pollution, and exposure to methanol produced by this project could be related to various diseases, cause serious negative health impacts, and have unknown impacts on the natural environment and human health; and

WHEREAS, the development and operation of this project has the potential for increased risks of exposure to pollutants and toxic chemicals due to spills, leaks, fires, explosions, and natural or other disasters; and

WHEREAS, the project has generated concerns about the methods and costs to address mitigation measures such as accident and disaster preparedness, health impacts, decreased property values, and medical expenses due to increased exposure; and

WHEREAS, the project has generated concerns about the methods and costs of restoring damaged ecosystems such as waterways, plants, and animals; and

WHEREAS, the development and operation of this project will require an estimated water consumption of between 10 to 14 million gallons per day and, at full production, require up to 450 megawatts of electrical power; and

WHEREAS, the City of Federal Way shares both a border and a shoreline with the City of Tacoma and is within two miles of the project site at the Port of Tacoma; and

WHEREAS, despite the City of Federal Way's close proximity to this proposed project, neither the City of Tacoma nor the Port of Tacoma has reached out to the City of Federal Way or its residents regarding the potential impacts of this proposed plant; and

WHEREAS, the lack of transparency regarding the public process and input surrounding the project is of great concern to the City of Federal Way and its residents; and

WHEREAS, it is unclear what the exact environmental impacts to the City of Federal Way and its residents will be; and

WHEREAS, environmental impacts such as air quality and the safety of residents will not stop at the King-Pierce County line; and

WHEREAS, the February 5, 2016 City of Tacoma EIS Draft Scope of Work for the NWIW Methanol Plant does not clearly state that the off-site impacts to Federal Way residents will be taken into consideration;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, RESOLVES AS FOLLOWS:

Section 1. Opposition to Proposed Project. Due to a lack of information and the apparent absence of an adequate and transparent process surrounding this proposed project, the Federal Way City Council is opposed to Northwest Innovation Work's methanol plant proposal at this time.

Section 2. Scoping Comments. The Federal Way City Council submits the following issues for inclusion into the EIS Scope of Work by the City of Tacoma:

1. Consideration of off-site impacts that extend into the City of Federal Way.
2. Environmental impacts, safety records and mitigation measures for other methanol facilities, on an international basis for the methanol industry and the principals involved with the Tacoma project.
3. Public health risks of exposure to methanol pollutants, including air quality, water quality and usage, soil leeching, and industrial accidents.
4. Workplace safety risks for employees of the methanol plant and neighboring industrial users of the Port of Tacoma.
5. Risk analysis for industrial accidents and impact of man-made or natural disasters, both during construction and operation.
6. Pipeline safety, during construction and operation.
7. Short and long term impacts on natural resources during construction and operation, including:
 - a) Impacts of dredging;
 - b) Air and soil plume formation and migration;
 - c) Water temperatures, both in Puget Sound and the Hylebos Watershed;
 - d) Water supply impacts, including drought-year planning; and
 - e) Impacts to wildlife and marine species.
8. Cost-benefit analysis during construction and operation, including:
 - a) Net job gain or loss to regional and U.S. economies as a result of the project, and contribution to the U.S. trade deficit with China;
 - b) Impacts to other U.S. industries;
 - c) Consideration of other geographic or technical alternatives to the project location; and
 - d) Economic volatility of the benefitting industry.
9. Environmental justice issues related to economically distressed communities, minority communities, and efforts to address language and cultural barriers to participation of these communities in the process.

This list is not intended to be all inclusive of the potential impacts to be considered, but rather, a beginning point from which to expand as the impacts are more fully examined.

Section 3. Severability. If any section, sentence, clause or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

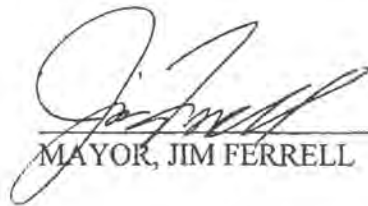
Section 4. Corrections. The City Clerk and the codifiers of this resolution are authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this resolution is hereby ratified and affirmed.

Section 6. Effective Date. This resolution shall be effective immediately upon passage by the Federal Way City Council.

RESOLVED BY THE CITY COUNCIL OF THE CITY OF FEDERAL WAY,
WASHINGTON this 11th day of February 2016.

CITY OF FEDERAL WAY



MAYOR, JIM FERRELL

ATTEST:



CITY CLERK, STEPHANIE COURTNEY, CMC

APPROVED AS TO FORM:



A handwritten signature in cursive script, reading "Amy Jo Pearsall", is written over a horizontal line.

CITY ATTORNEY, AMY JO PEARSALL

FILED WITH THE CITY CLERK:	<u>02/11/2016</u>
PASSED BY THE CITY COUNCIL:	<u>02/11/2016</u>
RESOLUTION NO.:	<u>16-701</u>

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Northwest Innovation Works lease and location



Northwest Innovation Works is proposing a facility at the Port of Tacoma to convert natural gas to methanol.

The methanol will be used as feedstock in Asia to produce olefin, a compound used in such consumer goods as plastic components, cell phones and carpet fibers.

Coal is traditionally used to produce olefins. Using methanol instead could reduce carbon emissions by 70 percent.

The site is the former Kaiser Aluminum property, which the Port bought in 2003.

Since then, we have removed thousands of tons of waste from the site, dismantled contaminated buildings and cleaned up the property.

This proposal will put a former industrial site back into productive use, creating green jobs and economic growth for our community.



Environmental review process

The City of Tacoma is the SEPA (State Environmental Policy Act) lead agency. A typical environmental review is broken into three parts: scoping, draft Environmental Impact Statement (EIS) and a final EIS.

Scoping

60-day comment period, which is twice as long as the standard 30-day period.

- Dec. 15, 2015: Scoping notice published
- Jan. 21, 2016: Public hearing
- Feb. 5, 2016: Draft scope published
- Feb. 10, 2016: Second public hearing
- Feb. 16, 2016: Third public hearing
- March 4, 2016: Public comment period closes

Draft EIS

- September 2016 (est.): Draft EIS to be issued. The City will hold two public hearings during public comment period

Final EIS

- January 2017 (est.): Final EIS to be issued

More information about SEPA process
www.cityoftacoma.org

Lease background

The Port of Tacoma commission authorized the lease May 1, 2014, with Northwest Innovation Works. The 30-year lease includes the option for one 25-year extension. The lease covers about 90 acres of the former Kaiser site, and the 16-acre East Blair One wharf.

Lease terms include three phases

- **Feasibility:** During the feasibility period, NWIW designs engineering plans, goes through environmental review and secures permits.
- **Construction:** During construction, the company will pay half rent. With an estimated \$3.4 billion investment, NWIW estimates about 1,000 jobs during peak construction.
- **Full operations:** NWIW will pay full rent at \$6,000 per acre, \$8,000 per acre for preferential/non-exclusive use of the East Blair One wharf, plus wharfage and leasehold excise tax. Full operations are expected to create more than 260 full-time, family-wage manager and labor positions.

Why Tacoma?

We have the opportunity to be part of a global climate solution. We can help reduce greenhouse gases to address climate change by providing cleaner alternatives to the coal and oil currently used to produce consumer goods, as we work collectively to green our lifestyles.

We have the skilled labor, geography, plentiful natural resources and a world-class port to supply Asia with a cleaner manufacturing feedstock.

- **Skilled labor:** Our history of manufacturing means we have the skilled labor to build, run and maintain a facility like this.
- **Geography:** We have industrially zoned property in the Tacoma Tideflats with close proximity to Asia.
- **Natural resources:** We have access to supplies of natural gas, water and clean, cost-effective sources of electricity.
- **World-class port:** The Port of Tacoma has invested billions of dollars and almost 100 years in shipping infrastructure and services to become one of North America's top ports.

Why not Tacoma? We have the opportunity to be a leader in building a bridge to a cleaner future for generations to come.



Background on the former Kaiser Aluminum site

The Port of Tacoma bought the abandoned aluminum smelter in 2003. The sale included about 96 acres and related structures in the Industrial area next to the Blair Waterway. The Port purchased the property with the express intent to dismantle the facility, finish cleaning up the site and put it back into productive use.



Activity at Kaiser's Tacoma facility stopped in 2002 after more than 60 years. At full operation, the facility employed 350 people and was capable of producing about 73,000 metric tons of aluminum per year.

During the past 10 years, the Port has removed thousands of tons of waste from the site, dismantled buildings and cleaned up significant portions of the property. The Port's total cost to purchase the property and clean it up will add up to about \$32.7 million.

We are pleased to finally see the site developed and put back into long-term productive use that will create family-wage jobs that will have a direct effect on reducing global greenhouse gases to address climate change.

Kaiser Aluminum smelter in October 1968

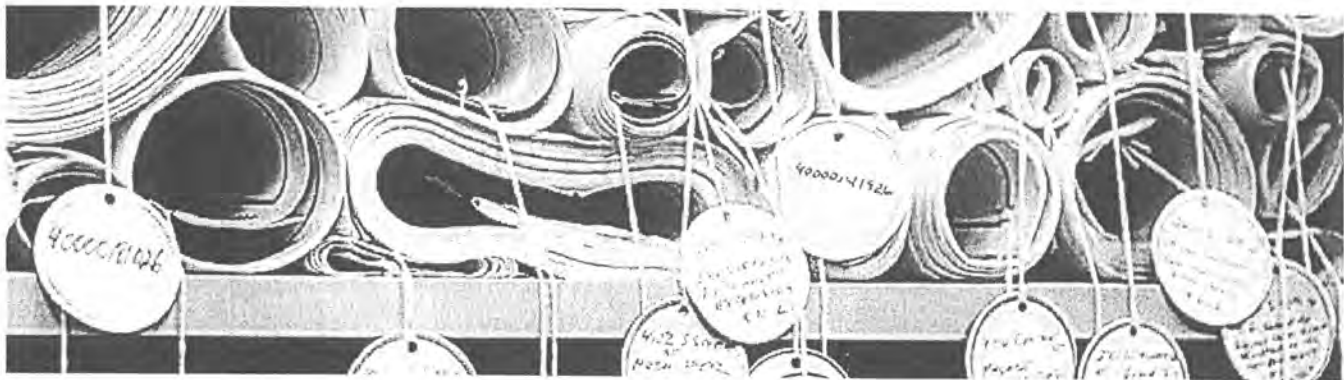
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City of Tacoma

W A S H I N G T O N

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Latest - Draft Scope of Work Released

As of February 5, 2016, the Draft EIS Scope of Work and Appendix 1 (the Draft Scoping Report) for the Proposed Methanol Plant project are available for public review and comment. The documents are posted below.

Methanol Plant EIS Draft Scope of Work (February 5, 2016)

Methanol Plant EIS Draft Scoping Report (Appendix 1 of the Scope of Work) (February 5, 2016)

Determination of Significance and Notice of Public Scoping Meetings (updated January 27, 2016)

Public Scoping Meetings

As announced in the notice posted above, the City of Tacoma has scheduled the following three public scoping meetings to provide information about the proposed project and to provide an opportunity to make oral comment on the scope of the Environmental Impact Statement (EIS):

1. *(held)* Thursday, January 21, 2016, 6:30 PM, at Greater Tacoma Convention & Trade Center, 1500 Broadway. The transcript and recording of this meeting are posted below.

- Scoping Meeting Transcript (January 21, 2016)
- Scoping Meeting Recording Part 1 Intro (January 21, 2016)
- Scoping Meeting Recording Part 2 (January 21, 2016)
- Scoping Meeting Recording Part 3 (January 21, 2016)

2. *(held)* Wednesday, February 10, 2016, 6:30 PM, at Greater Tacoma Convention & Trade Center, 1500 Broadway. The transcript and recording of this meeting will soon be posted here.

3. *(upcoming)* Tuesday, **February 16**, 2016, 6:30 PM, at Meeker Middle School, 4402 Nassau Avenue NE. The doors will open at 5:00 for speaker sign-up and the meeting will begin at 6:30; speakers will be called upon in the order of sign-up. This meeting is being scheduled to make it easier for Northeast Tacoma residents to attend.

Written Comments due March 4

In addition to oral comment, written comments will be accepted at the public scoping meetings. Comment forms will be available. Comments may also be e-mailed to Tacoma.Methanol.SEPA@cityoftacoma.org.

All submitted comments will be entered in the proposal's environmental review record as scoping comments. **Written comments are due no later than Friday, March 4, 2016, 5:00 PM.**

Background

Northwest Innovation Works, Tacoma, LLC (NWIW) proposes to develop and operate a natural gas-to-methanol production plant and export facility on approximately 125 acres in the Port of Tacoma. The project objective is the manufacture and shipment of methanol to global markets for use as a feedstock for manufacturing olefins used in the production of plastics and other materials.

Through ongoing engineering efforts, NWIW has identified design features that allow for greater volumes of water to be reused throughout the methanol production process. These design features mean water usage at the facility will be reduced by approximately 28 percent to an estimated 10.4 million gpd. This is a decline from earlier preliminary estimates of 14.4 million gpd.

The City of Tacoma is the Lead Agency for the purposes of completing environmental review pursuant to the Washington State Environmental Policy Act (SEPA). Under state regulations at WAC 197-11 and Tacoma Municipal Code 13.12, the City has issued a Determination of Significance, requiring the preparation of an Environmental Impact Statement (EIS).

The EIS is not a substitute for permit review. It is a process that develops information that is used to support permit review and development of recommended mitigation measures related to potential impacts to matters such as transportation, fire, health and safety. Key permits for this project include the City of Tacoma Shoreline Substantial Development Permit, Department of Ecology Water Quality Certification, the Department of Fish and Wildlife's Hydraulic Project Approval, the U.S. Army Corps of Engineers' Sections 10 and 404 permits, and a Notice of Construction air contaminant permit from Puget Sound Clean Air Agency. The federal permits will likely involve a thorough review of waterway operations by the US Coast Guard.

This page will provide current information related to the preparation of the Draft and Final EIS, the public process for that EIS, schedules, and related documents.

Additional information can be found in the following documents:

Project Update to the City Council (January 13, 2016)

SEPA Lead Agency Status (November 18, 2015)

Staff Contact

Tacoma.methanol.sepa@cityoftacoma.org

Ian Munce, Project Manager
(253) 573-2478

Shirley Schultz
(253) 591-5121

Northwest Innovation Works Tacoma Proposed Methanol Plant

[About Tacoma](#) [City Jobs](#) [City Departments](#) [Residential Resources](#) [Business Resources](#) [Site Map](#)

This is the official site of the City of Tacoma, 747 Market Street, Tacoma, WA 98402 (253) 591-5000

People with hearing or speech impairments may contact us through Washington Relay Services (800) 833-6388 (TTY or ASCII) (800) 833-6386 (VCO) or (877) 833-6341 (STS)

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**Determination of Significance, Notice of Request for EIS Scoping Comments, and
Notice of Public Scoping Meeting: Updated January 27, 2016**

Proponent: Northwest Innovation Works, Tacoma, LLC
Project Name: Tacoma Manufacturing and Marine Export Facility (TMMEF)
Location of Proposal: Blair-Hylebos Peninsula, Port of Tacoma: 3400 Taylor Way, Tacoma, tax parcels: 0321363034, 0321363037, 0321363033, 0321363013, 0321363033, 0321363036, and 0321354035; see attached map (also at www.cityoftacoma.org/planning, under 'Proposed Methanol Plant')
SEPA Lead Agency: City of Tacoma – File No. SEPA2015-40000260025

Project Description: Northwest Innovation Works, Tacoma, LLC (NWIWT) proposes to develop and operate a natural gas-to-methanol production plant and export facility on approximately 125 acres in the Port of Tacoma (Port). The project objective is the manufacture and shipment of methanol (a liquid) to global markets for use as a feedstock for manufacturing olefins used in the production of plastics and other materials. The characteristics of the proposed project are described below.

As proposed, the plant will include up to four methanol production lines, each with a production capacity of 5,000 metric tons per day, for a total of 20,000 metric tons per day. The plant will also include ancillary elements such as an administrative and lab building, employee parking, access roadways, fire suppression facilities, air separation units, air storage, water storage and treatment facilities, wastewater treatment facilities, cooling towers, a flare system for the disposal of flammable gases and vapors, substations and emergency generators. Plant components are proposed to be primarily located on approximately 110 acres of Port property situated at the southwest base of the Blair-Hylebos peninsula. Construction is expected to proceed in two phases, each including two production lines totaling production capacity of 10,000 metric tons per day.

The plant will utilize ultra-low emissions (ULE) reforming technology, which will emit substantially lower greenhouse gas and other air pollutants compared to conventional technologies for reforming natural gas to methanol.

Natural gas will be delivered to the methanol plant via a new lateral pipeline, which will transmit odorized gas. Northwest Pipeline GP will be responsible for obtaining permits and constructing this lateral pipeline. This lateral pipeline will connect the existing regional pipeline to the NWIWT project site over an approximately 10-mile corridor through unincorporated Pierce County, the Puyallup Tribe of Indians Reservation, and the cities of Sumner, Puyallup, Fife, Tacoma, and potentially others. Separately, Northwest Pipeline GP is pursuing expansion of its regional pipeline between Sumas and Longview, Washington which is being permitted through the Federal Energy Regulatory Commission. NWIWT anticipates using natural gas distribution capacity that will be provided by that portion of the Northwest Pipeline regional expansion project between Sumas and Tacoma.

The production process will require up to approximately 10.4 million gallons per day of water, which will be supplied by the City of Tacoma Domestic water and sanitary services for on-site personnel use will be obtained from the City of Tacoma. Treated process wastewater (up to approximately 1.44 million gallons per day) will be discharged to the City of Tacoma's wastewater treatment works.

A construction stormwater permit will be required. Stormwater management post-construction will be discharged through Port of Tacoma outfalls or through the City of Tacoma's stormwater system.

At full production, the project will require up to approximately 450 megawatts of electrical power, which will be transmitted through the existing transmission system with localized upgrades if necessary.

The anticipated yearly production at full capacity is approximately 7.2 million metric tons of methanol. Up to approximately 300,000 metric tons of methanol will be stored in storage tanks at atmospheric

pressure and ambient temperature and surrounded by secondary containment. Storage tanks will be co-located with plant components, as well as on approximately 15 acres of land adjacent to or in close proximity to the main 110 acre plant site. Methanol product will be transferred by pipeline across Port property from the storage area to the Port's existing deep draft marine terminal (the "East Blair One [EB1] terminal") on the Blair Waterway. Roadway improvements to access the EB1 terminal may be necessary. NWIWT anticipates loading between four and seven ships per month depending on vessel size. The Port will be responsible for obtaining permits for modifications to the dock, as well as localized dredging, if necessary, in the vicinity of the berth.

The plant will be operated in compliance with applicable fire, health, and safety regulations and codes. Plant safety features will include fire suppression systems, fire safety equipment, and storage and containment systems designed to current industry standards and regulatory requirements. NWIWT will conduct process safety management assessments and develop emergency response plans in accordance with applicable local, state and federal regulations.

Determination of Significance: NWIWT acknowledges the issuance of a Determination of Significance as the SEPA Threshold Determination in order to initiate SEPA scoping for an Environmental Impact Statement ("EIS") for the TMMEF Project. The EIS is not a substitute for permit review. It is a process that develops information that is used to support permit review and development of recommended mitigation measures related to potential impacts associated with matters such as transportation, fire, health and safety. Key permits for this project include the City of Tacoma Shoreline Substantial Development Permit, Department of Ecology Water Quality Certification, the Department of Fish and Wildlife's Hydraulic Project Approval, the U.S. Army Corps of Engineers' Sections 10 and 404 permits, and a Notice of Construction air contaminant permit from Puget Sound Clean Air Agency. The federal permits will likely involve a thorough review of waterway operations by the US Coast Guard.

Scoping: Consistent with TMC Chapter 13.12, the City of Tacoma, as SEPA lead agency, is initiating a 60-day scoping process beginning December 15, 2015 and ending on February 17, 2016 to narrow the scope of the EIS. The NWIWT Project EIS will discuss the probable significant adverse impacts of the proposed action, the no-action alternative, and alternatives that are capable of attaining the proposal's objectives stated above. The Blair-Hylebos Terminal Redevelopment Project FEIS (Feb. 2009) and the Tacoma LNG FEIS (Nov. 2015) are proposed for incorporation, to the extent relevant, by reference under WAC 197-11-600(4)(b) to provide additional information and analysis in preparation of the project-specific TMMEF EIS. The City has determined that Environmental Health and Safety ("EH&S") will be areas of emphasis in the EIS.

In addition to the foregoing topics, agencies, affected tribes, and members of the public are invited and encouraged to comment on the scope of this EIS. You may comment on alternatives, proposed mitigation measures, probable significant adverse impacts, permits, licenses and/or other approvals that may be required. The City will use the scoping comments to help define the topics to be examined closely in the project-specific EIS. Methods for presenting your comments are described below. All comments are due no later than 5 p.m. on ~~February 17, 2016~~ March 4, 2016.

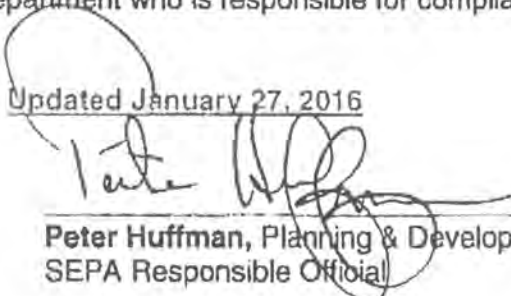
- **EIS Public Scoping Meetings (2-3)** – The first EIS Public Scoping Meeting is scheduled to begin at 6:30 p.m. on Thursday January 21, 2016 at the City Convention Center, 1500 Broadway; NWIWT will have representatives and materials available in the foyer to share currently available information beginning at 5 p.m. The second EIS Public Scoping Meeting is scheduled to begin at 6:30 p.m. on Wednesday, February 10, 2016, in the 5th Floor Exhibit Hall at the City Convention Center, 1500 Broadway (doors will open at 5:00 p.m. for speaker sign-up; speakers will be called upon in order of sign-up). The third EIS Public Scoping Meeting is scheduled for February 16 at Meeker Middle School in NE Tacoma. Doors will open at 5:00 p.m. for speaker sign-up; the meeting will begin at 6:30 p.m. We are locating the third meeting to make it easier for NE Tacoma residents to attend.

- City staff plan to have a draft Scope of Work available and posted on the project web page no later than February 5, 2016. As much as possible, the second and third hearings should focus on the details of the Scope of Work.
- The purpose of the public scoping meeting is to provide information about the proposed project and to provide an opportunity to make oral comment on the scope of the EIS. Additionally, written comments will be accepted at this meeting (comment forms will be available) which will be entered in the proposal's environmental review record as scoping comments. Additional information may be found at www.cityoftacoma.org/planning.
- **Submittal of written comments** - Written comments may be submitted via mail, e-mail or fax to the City's Project Manager, as follows:

Project Manager: Ian Munce, AICP, Principal Planner
Address: City of Tacoma: Planning & Development Services Department
 747 Market Street, Suite 345, Tacoma, WA 98402
E-mail: tacoma.methanol.sepa@cityoftacoma.org
Phone#|Fax #: (253) 573-2478 | (253) 591-5433

Responsible Official: The Responsible Official is the designated person within the City of Tacoma's Planning & Development Services Department who is responsible for compliance with the SEPA lead agency procedural responsibilities.

Issuance Date: December 15, 2015, Updated January 27, 2016



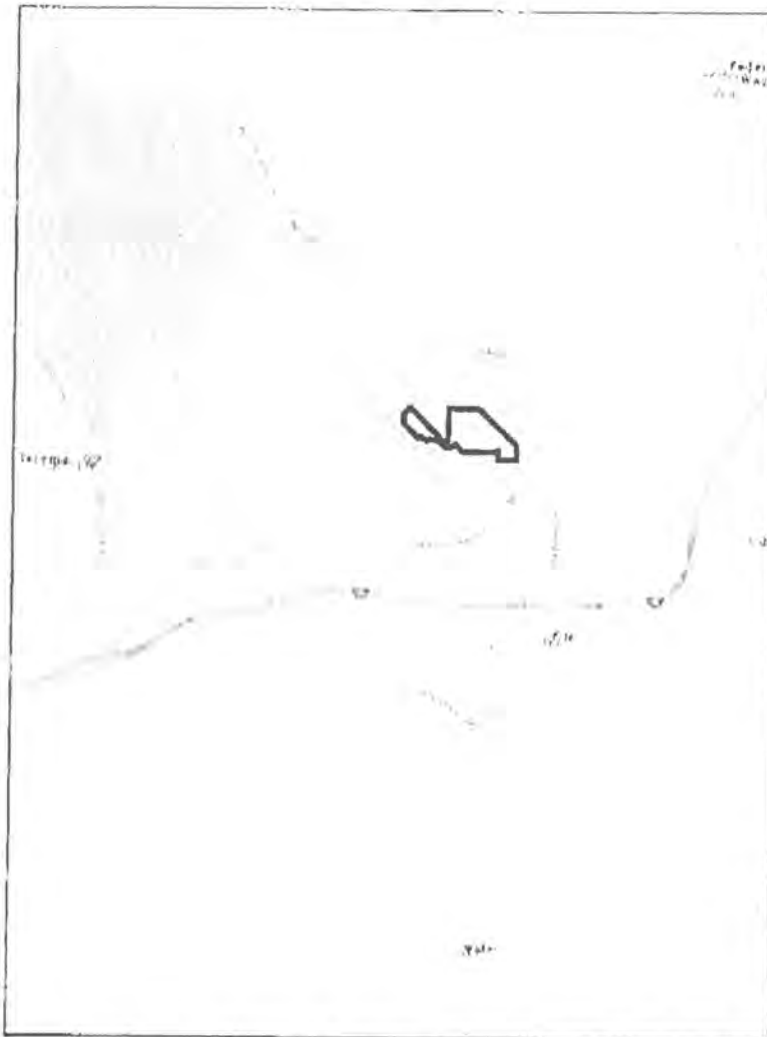
Peter Huffman, Planning & Development Services Director
 SEPA Responsible Official

Tacoma Daily Index Publication: *December 15, 2015 and December 22, 2015, Updated January 27, 2016*

The City of Tacoma does not discriminate on the basis of disability in any of its programs, activities, or services. To request this information in an alternative format or a reasonable accommodation, please contact the City Clerk's Office at 253.591.5505. TTY or speech-to-speech users please dial 711 to connect to Washington Relay Services.

PROJECT AREA MAP

Proponent: Northwest Innovation Works, Tacoma, LLC
Project Name: Tacoma Manufacturing and Marine Export Facility (TMMEF)
SEPA Lead Agency: City of Tacoma
Agency File No.: SEPA2015-40000260025



Proposed Tacoma Methanol Manufacturing and Export Facility

 Project Location*

* Approximately 15 acres of land adjacent to or in close proximity to the location shown above will be needed for storage tanks.



Contact: Ian Munce
 Building and Land Use Services
 City of Tacoma
 747 Market Street, Room 345, Tacoma, WA 98402
 (253) 573-2478 | Tacoma.methanol.sepa@cityoftacoma.org

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Surplus Property – Vehicles and Equipment

AGENDA OF: February 25, 2016

DEPT. OF ORIGIN: Planning, Building & Public Works

ATTACHMENTS:

1. Draft Resolution No. 16-015

DATE SUBMITTED: February 17, 2015

CLEARANCES:

☒ Legal JB
☒ Finance DM
☐ Marina N/A
☐ Parks, Recreation & Senior Services _____
☒ Planning, Building & Public Works DSB
☐ Police _____
☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation:

The purpose of this agenda item is to seek Council authorization to surplus certain City vehicles and equipment. Consistent with the adopted 2016 budget, the Planning, Building and Public Works Department recommends that the vehicles and equipment identified in Attachment 1 be declared surplus and disposed of. The following motion will appear on the consent calendar:

Suggested Motion

Motion: “I move to adopt Draft Resolution No. 16-015 declaring certain vehicles and equipment identified in Attachment 1 as surplus and authorize disposal of said surplus vehicles and equipment by auction or trade-in.”

Background:

The adopted 2016 Budget includes the replacement and purchase of several vehicles and equipment including seven (7) Police Department fleet vehicles and one Parks mower.

Discussion:**Police Department**

As the new police vehicles are put into service, the existing police vehicles 511, 523, 525, 529, 530, 538 and 541 will become available for surplus. Staff anticipates the surplus of these seven police vehicles will be around June 2016.

Public Works and Parks Maintenance Division

The new Parks mower will be ordered in February of 2016. After delivery staff anticipates the existing mower will be available for surplus around June 2016.

Alternatives:

Council could decide to revisit the fleet replacements identified in the 2016 Budget.

Financial Impact:

The Equipment Replacement fund owns the vehicles to be sold and therefore the proceeds from the disposals will remain in the Equipment Replacement fund. The use of the proceeds will go first to cover any shortfall in funding the purchase of the replacement vehicles and the remainder used to reduce future contributions to the fund.

Recommendation/Conclusion:

Staff recommends declaration of the vehicles as surplus, authorize disposal of the identified vehicles and asks Council to approve the suggested motion.

Concurrence:

The Police, Finance, Legal, and Planning, Building and Public Works Departments concur.

CITY ATTORNEY'S FIRST DRAFT 2/17/16

DRAFT RESOLUTION NO. 16-015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, declaring certain City vehicles and equipment surplus, and authorizing disposal of surplus vehicles and equipment by auction or trade-in.

WHEREAS, during regular business the City accumulates vehicles and equipment, and

WHEREAS, the City intends to dispose of unneeded vehicles and equipment as allowed by law as surplus, and

WHEREAS, the City of Des Moines typically sells surplus vehicles and equipment at public auction to the highest bidder or trades-in surplus vehicles and equipment at reputable dealerships, and

WHEREAS, the City desires to surplus the vehicles and equipment identified in Exhibit "A" attached to this Resolution; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. The vehicles and equipment identified by Exhibit "A" are hereby declared by this Resolution to be surplus vehicles and equipment.

Sec. 2. The City Manager is authorized to dispose of the items identified by Exhibit "A" by auction, or trade-in.

Sec. 3. The City Manager is authorized to establish a minimum bid/sale amount for the property identified in Exhibit "A" as deemed to protect the City's interests.

Sec. 4. The City Manager is authorized to contract for professional auction services where the cost of such services does not exceed twenty-five percent (25%) of the amount bid, plus reasonable advertising fees.

Resolution No. ____
 Page 2 of 2

Sec. 5. All net proceeds from the disposal of the surplus property identified in Exhibit "A" shall be deposited into the Equipment Rental Fund.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of ____, 2015 and signed in authentication thereof this ____ day of ____, 2015.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

EXHIBIT "A"
Resolution No. 16-015

Number	Description	Approximate Value
511	Tan 2005 2008 Ford Taurus, License 38332, VIN # 1FAHP53285A266009	\$1,000
523	Blue 2008 Ford Crown Victoria, License 47415D, VIN # 2FAHP71V88X145999	\$1,500
525	Blue 2008 Ford Crown Victoria, License 447420D, VIN # 2FAHP71V08X146001	\$1,500
530	Gray 2011 Ford Crown Victoria, License 52137D, VIN # 2FABP7BVXBX116581	\$2,000
539	Silver 2011 Crown Victoria, License 52823D, VIN # 2FABP7BV6BX182738	\$2,000
516	Blue 2007 Chevrolet Tahoe, License 541351D, VIN # 1GNFKO3087R354149	\$4,000
529	Blue 2007 Dodge Caravan, License 45124D, VIN # 1D8GP24E57BG195962	\$1,500
P-200	Green 2653A John Deere mower, VIN #TC2653D100590	\$2500

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing on Draft Ordinance
No. 15-198 amending Adult Entertainment Zoning

FOR AGENDA OF: February 25, 2016

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: February 17, 2016

1. Draft Ordinance No. 15-198
2. Map showing current zoning
3. Map showing proposed zoning
4. Map showing zoning with increased distance disqualifiers
5. Secondary Effects Studies
6. Police Response Logs for Adult Entertainment Addresses

CLEARANCES:

- ☒ Legal JS
- ☐ Finance N/A
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Planning, Building & Public Works DJB
- ☐ Police N/A
- ☐ Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to hold a public hearing to consider Draft Ordinance No. 15-198 which amends the adult entertainment zoning requirements found in DMMC 18.160.030 and DMMC 18.52.010(B) to create consistency and to increase the distance required between adult entertainment uses.

Suggested Motion

Motion 1: I move to suspend Rule 26(a) to pass Draft Ordinance No. 15-198 on first reading.

Motion 2: I move to enact Draft Ordinance No. 15-198 amending the adult entertainment zoning requirements found in DMMC 18.160.030 and DMMC 18.52.010(B) to create consistency and to increase the distance required between adult entertainment uses.

Alternate Motion: "I move to pass Draft Ordinance No. 15-198 to a second reading on _____ or as soon thereafter as the matter may be heard."

Background

The last time the City Council amended the adult entertainment zoning regulations in Des Moines was in the year 2000. In order to adequately address the various impacts to public health, safety, morals and general welfare that adult uses present, it is important to review the zoning regulations and make amendments as needed based on the realities of 2016.

Regulations related to adult uses must be carefully considered in light of federal and state constitutional guarantees regarding freedom of expression. Regulations imposed on sexually oriented businesses have been challenged in the courts over many years. The result of these challenges is a body of court decisions that conclude that local governments may impose reasonable time, place, and manner regulations on adult businesses as long as a substantial public interest in regulating the use (in a way that does not suppress speech) is demonstrated, and as long as reasonable alternative locations are provided for the use. *While local governments cannot totally ban sexually oriented businesses*, location and licensing restrictions may be imposed since the courts recognize that communities are entitled to protect themselves against the "secondary effects" of such businesses.

The legislative record supporting adoption of an ordinance containing new or more stringent adult use regulations may come under judicial scrutiny and it is therefore important to adequately establish that record. Studies demonstrating the secondary effects of adult uses on surrounding properties as well as the impact the current adult use businesses have had on the City are provided as attachments to this agenda.

Discussion

"Adult entertainment" includes a wide variety of businesses that provide sexually oriented goods or services, including bookstores, peep booths, panorams, movie theaters, video rental stores, and live entertainment or dance establishments. Adult entertainment, including books and videos as well as dancing, has been defined as "speech" that is protected under the First Amendment of the United States Constitution. It is also protected by Article 1, Section 5 of the Washington Constitution, which states that "every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right," and which provides greater protection for speech than does the First Amendment of the US. Constitution. *O'Day v. King County*, 109 Wn.2d 796, 802 (1988).

The City of Des Moines has zoning regulations for adult uses found in chapter 18.160 DMMC (Adult Entertainment Facility Zoning) and the commercial use table found in DMMC 18.52.010(B). Staff was asked by the City Council to review those regulations and increase the distance required between adult uses if this amendment complied with the State and Federal Constitutions. During that review process a number of inconsistencies in the code were discovered. This Draft Ordinance corrects those inconsistencies as well as increases the distance required between adult uses. These amendments are outlined below:

Identifying and eliminating inconsistencies

Currently inconsistencies exist between chapter 18.160 DMMC (Adult Entertainment Facility Zoning) and the commercial use table found in DMMC 18.52.010(B).

The specific chapter relating to adult entertainment facilities (Chapter 18.160 DMMC) allows adult uses in all commercial zones of the City, as long as those uses are not within 1000 feet of a residential zone, a school, a day care, a church, a public facility, or another adult use. This chapter also specifically permits adult uses in the Pacific Ridge Commercial Zone so long as the properties obtain access exclusively from Pacific Highway and are not within 500 feet of another adult use.

According to the commercial use table found in DMMC 18.52.010(B), adult uses are limited to the Pacific Ridge Commercial Zone and the Highline Commercial Zone but must be further than 500 feet from churches, schools, day care centers, public facilities, and other adult uses.

Draft Ordinance No. 15-198 addresses these conflicts by limiting adult uses only to the Pacific Ridge Commercial Zone for properties with direct access off Pacific Highway and eliminates the inconsistencies between distance requirements. The Draft Ordinance as written would limit adult uses to the Pacific Ridge Commercial Zone as long as the property obtained its sole access from Pacific Highway and as long as the property is at least 500 feet from the property line of a church, school, day care center, public facility, and at least 1,000 feet from the property line of another adult use.

As it relates to the Pacific Ridge Commercial Zone, the attached maps demonstrate the existing adult entertainment locations in context with the current siting criteria in the code (Attachment 2), the existing adult entertainment locations in relation to the proposed siting criteria under Draft Ordinance 15-198 (Attachment 3), and the two locations if the distance for all disqualifying sites was increased to 1000 feet (Attachment 4).

Secondary Effects and Legislative Record

It is well settled that a city may use its authority to enact zoning and licensing regulations covering adult uses to address the secondary effects of such activities. *Renton v. Playtime Theatres*, 475 U.S. 41, 47 (1986). Those secondary effects may be adverse impacts in the surrounding community (e.g. declining property values, neighborhood blight or increased crime) or they may be unlawful activities or public health or safety dangers resulting from an adult use.

The general rule in enacting legislation is that cities are not required to rely solely on their own studies, but may look to and rely on studies conducted by other communities which support the proposed legislation. *Renton*, 475 U.S. at 51. Consequently, a city weighing the option of whether and how to regulate adult retail businesses may rely on studies conducted by other cities, including cities located in other states. Below is a list of five studies conducted by cities concerning the secondary impacts of adult entertainment uses. These studies can be relied on to establish the secondary effects of adult entertainment uses on a community.

Secondary effects papers and studies

A number of papers and studies were reviewed to support the increase in distance requirements for adult uses. These studies are listed below. Although hundreds of studies have been conducted on this issue, this agenda item was compiled using the most recent relevant studies from across the United States as well as any studies that could be found from King County. The following studies have been attached to the packet as Attachment 5:

1. *The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence*, A. C. Weinstein and R. McCleary, Cardozo Arts and Entertainment Law Review, December, 2011, Volume XX, p.30, (2011).
2. *Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination using Spatial Analysis*, McCord, E.S. and R. Tewksbury, Criminology, (2013).
3. *Summary of Land Use Studies Relating to Secondary Effects of "Adult Businesses"*.
4. *Adult Cabarets in Seattle*, Department of Planning and Development, City of Seattle, City Council, March 28, 2006, Seattle, WA, (2006).
5. *Do "off-site" adult businesses have secondary effects? Legal doctrine, social theory, and empirical evidence*, Richard McCleary, Alan C. Weinstein, Baldy Center for Law and Social Policy (2009).

Secondary Effects Statistics in Des Moines

A review of police reports and calls for service in the City of Des Moines tend to confirm the cited studies that found that adult entertainment uses have negative secondary effects on communities. A review of police responses from March 18, 2014 to December 31, 2014 as well as from January 1, 2015 to August 12, 2015 shows that there was a disproportionate number of police responses to the addresses of the adult entertainment uses as opposed to those other addresses within the Response Zones as classified by the Des Moines Police Department (Response Zones are created by the police department. The two adult uses in Des Moines are located in Response Zone 2-51 and 2-42). Below the numbers have been compiled indicating that police responses to 22862 Pacific Highway South represented 4.7% of police responses to Zone 2-51 during the 2014 period and 1% of the police responses during the 2015 period reviewed. This address only represents 0.2% of the total number of individual addresses in that zone. Similarly, the police responses to 21635 Pacific Highway South represented 1.4% during the 2014 period and 1.2% during the 2015 period reviewed. Again, this address represents 0.2% of the individual addresses in Zone 2-42. These numbers indicate that there is a disproportionate number of police responses to these adult use businesses and support the requirement that an increased distance be required between adult uses to diminish the secondary effects these uses have on surrounding properties. The detailed numbers are provided below:

22862 Pacific Highway South

3/18/14-12/31/14

Secrets Adult Store = 29 police responses

Total for Zone 2-51 = 609 police responses

Percentage of Police Responses = 4.7% of police responses in Zone 2-51

Total number of individual addresses in Zone 2-51 = 519 (0.2% per site)

1/1/15-8/12/15

Secrets Adult Store = 5 police responses

Zone 2-51 = 493 police responses

Percentage of Police Responses = 1% of police responses in Zone 2-51

Total number of individual addresses in Zone 2-51 = 519 (0.2% per site).

21635 Pacific Highway South

3/18/14-12/31/14

Adult Airport Video Store = 14 police responses

Zone 2-42 = 822 police responses

Percentage of Police Responses = 1.4% of police responses in Zone 2-42

Total number of individual addresses in Zone 2-42 = 488 (0.2% per site).

1/1/15-8/12/15

Adult Airport Video Store = 9 police responses

Zone 2-42 = 713 police responses

Percentage of Police Responses = 1.2% of police responses in Zone 2-42

Total number of individual addresses in Zone 2-51 = 488 (0.2% per site).

The police responses to each address above are provided as Attachment 6.

Alternatives

The City Council may:

1. Adopt the Draft Ordinance as written or with amendments or
2. Decline to adopt the Draft Ordinance and leave the zoning for adult uses the same.

Financial Impact

None.

Recommendation or Conclusion

Staff recommends adopting the Draft Ordinance as written.

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CITY ATTORNEY'S FIRST DRAFT 11/16/2015

DRAFT ORDINANCE NO. 15-198

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to adult entertainment facilities, amending DMMC 18.160.030 and DMMC 18.52.010B, Commercial Zone Primary Uses Chart and Footnotes 35, 46 and 78, to update and provide consistency in the Zoning Code, and increasing the distance required between adult entertainment facilities from 500 feet to 1,000 feet.

WHEREAS, the Des Moines City Council is committed to protecting the general welfare of the City through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses while preserving constitutionally protected forms of expression, and

WHEREAS, the City Council finds that adult entertainment, activity, retail or use requires special supervision from the public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons and employees of said businesses as well as the citizens of the City, and

WHEREAS, the City Council finds that concerns about crime and public sexual activity generated and/or occurring within or nearby the adult entertainment, activity, retail, or use are legitimate, substantial, and compelling concerns of the City which demand reasonable regulation, and

WHEREAS, the City Council finds that adult entertainment, activity, retail, or use, due to their nature, have secondary adverse impacts upon the health, safety, and welfare of the citizenry through increases in crime and opportunity for spread of sexually transmitted diseases, and

WHEREAS, there is convincing documented evidence that adult entertainment, activity, retail, or use have a detrimental effect on both the existing businesses around them and the surrounding residential and commercial areas adjacent to them, causing increased crime, the downgrading of quality of life and property values and the spread of urban blight. Reasonable regulation of the location of these facilities will provide for the protection of the community, protect residents, patron, and employees from the adverse secondary effects of such retail facilities, and

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WHEREAS, the City recognizes that adult entertainment, activity, retail, or use, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods, day care centers, religious facilities, public parks, libraries, schools, and other adult entertainment, activity, retail, or use, thereby having a deleterious impact upon the quality of life in the surrounding areas. It has been acknowledged by courts and communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure the adverse secondary effects of the uses are minimized, and

WHEREAS, this Ordinance is intended to protect the general public health, safety, and welfare of the citizenry of the City through the regulation of the location of adult entertainment, activity, retail, or use. The regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around adult retail uses, and to isolate dangerous and unlawful conduct associated with these facilities, and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment to the United States Constitution, or Article 1, Section 5 of the Washington State Constitution, but to enact content neutral legislation which addresses the negative secondary impacts of adult entertainment, activity, retail, or use, and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials, and

WHEREAS, a public hearing is required for enacting an Ordinance to amend Title 18 DMMC commonly referred to as the Zoning Code, and

WHEREAS, a notice of intent to adopt the proposed code amendments was sent to the Washington State Department of Commerce for a 15-day expedited review and comment period in

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accordance with State law and expedited review was granted on December 15, 2015, and

WHEREAS, the City Council set the date for the public hearing on Draft Ordinance No. 15-198 by Resolution No.1321, fixing the public hearing for February 25, 2016, and

WHEREAS, the Planning, Building and Public Works Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the changes proposed by this Ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), a final determination of non-significance and public hearing notice were issued and published on January 21, 2016, in the *Seattle Times*, and the appropriate comment period expired on February 5, 2016, and the appeal period concluded on February 15, 2016, and

WHEREAS, a public hearing was held on February 25, 2016, where all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health, safety, and welfare; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 18.160.030 and section 354 of Ordinance No. 1591 are amended to read as follows:

Adult entertainment facilities prohibited in certain areas.

~~_____ (1) Adult entertainment facilities as defined in this Title are prohibited:~~

~~_____ (a) Within 1,000 feet of any Residential Zone or any single-family or multiple-family residential use;~~

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~~_____ (b) Within 1,000 feet of any public or private elementary or secondary school;~~

~~_____ (c) Within 1,000 feet of any day care center for children, nursery, or preschool;~~

~~_____ (d) Within 1,000 feet of any church or other facility or institution used primarily for religious purposes;~~

~~_____ (e) Within 1,000 feet of any public park or public facility open to families, including post offices, City Hall, and medical clinics; and~~

~~_____ (f) Within 1,000 feet of any other adult retail use.~~

~~As used herein, the distances shall mean the straight-line distance between the edge or corner of the property on which the adult retail use is located to the nearest edge or corner of the property of another adult retail use or any of the sensitive uses set forth above.~~

~~_____ (2) Exception. Adult entertainment facilities, as defined in this Title, shall only be permitted within the PR-C Zone south of South 216th Street:~~

(a) So long as such uses are located within a building that fronts Pacific Highway South and obtains its access exclusively from such highway; and

(b) So long as such uses are located no less than 500 feet from the property lines of churches, common schools, day care centers, and public facilities, and one thousand (1,000) feet from any other adult entertainment or adult retail use. As used herein, the distances shall mean the straight-line distance between the edge or corner of the property on which the adult retail use is

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located to the nearest edge or corner of the property of the disqualifying site.

Sec. 2. DMMC 18.52.010B, Commercial Zone Primary Uses Chart and Footnotes 35, 46 and 78, and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A are each amended to read as follows:

TABLE 18.52.010B

COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Accessory buildings and uses (as described in the applicable zone)	P	P	P	P	P	P	P	P	P
Admin, support services	P/L _[3]		P	P/L _[16]	P/L _[22]		P	P	P
Adult family homes				P	P		P	P	P
Adult entertainment facilities							P/L _[46] (7-8)		
Adult theaters						P/L _[35]	P/L _[46] (7-8)		
Amusement and recreational services				P/L _[16]	P/L _[22]				P/L _[68]
Amusement parks	CUP	CUP	CUP	CUP		CUP	CUP	CUP	CUP
Animal or veterinary services			P	P	P	P	P	P	P
Antenna system (one)	P/L _[6]								
Animal grooming	P/L _[3]		P	P	P		P	P	P
Antenna systems (not accessory)	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Apparel and accessories stores	P/L _[11]		P	P	P	P	P	P	P
Arrangement of passenger transportation	P/L _[3]			P	P		P	P	P
Art galleries	P			P	P		P	P	P
Art, glassware manufacturing			P	P	P				P

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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Art, ornamental ware				P	P				P
Arts, entertainment, and recreation facilities				P/L _[16]	P/L _[22]		P	P	P
Auction houses or stores				P	P	P/L _[41]	P		P
Automobile, body, paint, interior and/or glass repair				P/L _[18]	P/L _[25]		P/L _[48]		P/L _[70]
Automobile, detail shop				P/L _[18]	P/L _[25]		P/L _[48]		P/L _[70]
Automobile, maintenance and repair				P/L _[18]	P/L _[25]	P	P/L _[48]		P/L _[70]
Automobile, parking	P/L _[5]		P	P/L _[16] [20]	P/L _[22]	P	P	P/L _[54]	P/L _[72]
Automobile, sales						P	P/L _[43]		
Automobile, service stations				P/L _[18]	P/L _[25]	P/L _[36]	P/L _[48]		P/L _[70]
Automobile, trailer sales						P	P		
Automotive equipment, rental and leasing				P	P	P	P	P/L _[53]	P
Bakeries, manufacturing and retail sales	P/L _[1]		P			P		P/L _[55]	P/L _[73]
Ballparks	CUP	CUP	CUP	CUP	CUP	CUP	CUP		CUP
Banks				P	P		P	P	P
Barber, beauty and hairstyling shops	P/L _[3]			P	P		P	P	P
Bed and breakfast facilities				P	P		P	P	P
Boats, building and repairing (less than 48 feet)						P	P		
Boats, repair/sale						P	P		
Boat moorage	P/L _[3]					P/L _[42]			
Botanical and zoological gardens				P	P		P		P
Bookbinding			P			P		P	P
Booster stations	UUP	UUP	UUP	UUP		UUP	UUP	UUP	UUP
Boxing and wrestling arenas	CUP	CUP	CUP	CUP		CUP	CUP	CUP	CUP
Building materials and garden equipment supply	P/L _[1]		P	P	P	P/L _[28]	P		P
Car washes				P/L _[18]	P/L _[25]	P			P/L _[70]
Carpentry and cabinet shops	P/L _[1] [2]		P	P	P	P	P		P

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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Casino hotels and motels				P	P		P	P	P
Cemeteries	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Ceramics, manufacture						P/L _[29]			
Columbariums, crematories, mausoleums with permitted cemeteries	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Commercial and industrial machinery and equipment, rental and leasing			P			P	P		
Community care facilities				P	P		P	P	P/L _[74]
Community gardens				P	P				P
Community housing services				P/L _[80]	P/L _[80]				P/L _[80]
Confectionery, manufacture			P			P		P/L _[56]	P/L _[73]
Contractors, general	P/L _[3]		P/L _[14]			P	P	P	P
Convention facilities			P	P	P	P		P	P
Correctional institutions			P						
Couriers and messengers	P/L _[3]		P				P	P	P
Data processing, business and record storage	P/L _[3]		P	P	P	P	P	P	P
Day care centers and mini- day care providers	CUP	CUP	CUP	CUP	CUP		CUP	CUP	CUP
Death care services	P/L _[3]		P	P	P	P/L _[42]	P		P
Distribution centers, home deliveries			P			P			
Drive-in or drive-through facilities	P			P/L _[18]	P/L _[25]		P		P/L _[70]
Dry cleaning and laundering services	P/L _[3]		P	P	P	P	P	P	P
Educational services		P	P/L _[7]	P	P/L _[27]	P/L _[37]	P	P	P
Electric power generation, biomass			P/L _[12]						
Electrical appliances and supplies, retail sales, wholesale trade and repairs						P			
Equipment rental and leasing			P	P/L _[16]	P/L _[22]	P	P		P/L _[68]
Fairgrounds and rodeos	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Family day care providers					P/L _[80]		P/L _[80]	P/L _[80]	P/L _[80]

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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Financial and insurance services			P	P	P		P	P	P
Fish hatcheries and preserves					P				
Fix-it shops			P	P	P	P	P		P
Food, frozen or cold storage lockers			P	P	P	P			P
Food stores	P/L _[1]		P	P	P		P	P	P
Footwear and leather goods repair	P		P	P	P	P	P	P	P
Foreign trade			P/L _[13]						
Fraternal organizations/societies		P	P/L _[7]	P	P		P	P	P
Fuel dealers, other							P		
Furniture, home furnishings and equipment, sales	P/L _[1] [2]		P	P	P	P	P	P	P
Furniture, repair	P/L _[2] [3]		P	P	P	P	P	P	P
Gambling, amusement, and recreation industries			P/L _[7]	P/L _[16]	P/L _[22]		P	P	P
Garages, public						P/L _[30]			
General merchandise stores	P/L _[1]		P/L _[9]	P/L _[15]	P/L _[21]		P	P	P
Glass, edging, beveling, silvering			P			P/L _[31]			
Glass, stained glass studios	P					P			
Golf courses, with accessory driving ranges, clubhouses and pitch and putt				P	P	CUP	P		P
Golf driving ranges	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Hardware store	P/L _[1]		P	P		P	P	P	P
Health care and social services			P/L _[81]	P/L _[81]	P		P/L _[81]	P/L _[81]	P/L _[74] [81]
Heating oil dealers							P		
Horticultural and landscaping services			P	P	P				P
Horticultural nurseries	UUP	UUP	UUP	UUP		P	UUP		UUP
Hospitals (except mental and alcoholic)				P	P	P	P	P	P

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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Hospitals (mental and alcoholic)	CUP	CUP	CUP	CUP		CUP	CUP	CUP	P/L _[74]
Hotels				P	P	P/L _[40]	P/L _[47]	P	P
Information establishments						P	P	P	P
Internet service providers			P				P	P	P
Job printing, newspapers, lithography, and publishing						P		P	
Kennels, commercial			P	P	P		P	P/L _[57]	P
Labor camps (transient)	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Laboratories			P	P	P	CUP	P	P	P
Laboratories (incl. medical, dental, or photographic)			P/L	P	P	P	P	P	P
Laundry, industrial			P				P		
Legal services	P/L _[3]		P	P	P	P	P	P	P
Libraries (public)	P			P	P		P	P	P
Light manufacturing, fabrication, and assembly			P/L _[8]						
Limousine/taxi service							P		
Machine shop			P			P/L _[32]			
Management of companies and enterprises	P/L _[3]		P	P	P		P	P	P
Manufactured home sales							P		
Marijuana producer/processor, recreational			P/L _[79]	P/L _[79]		P/L _[79]		P/L _[79]	P/L _[79]
Marijuana retailer, recreational				P/L _[79]		P/L _[79]		P/L _[79]	P/L _[79]
Marinas					P/L _[24]				
Mixed use	UUP	UUP	UUP	UUP	P/L _[26]	UUP	P/L _[50]	P/L _[58]	
Motels				P	P	P/L _[40]	P/L _[47]		P
Motion picture services	P/L _[3]			P	P		P	P	P
Museums	P		P/L _[7]	P	P		P	P	P
Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility)				P	P		P		
Offices, business and	P/L _[3]		P		P/L _[26]	P	P	P	P

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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
professional									
Open air theaters	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Parcel service delivery	P/L _[3]		P			P	P/L _[51]		
Parole or probation offices			P	P	P		P		P
Pawnshop			P	P	P	P	P		P
Personal and business services	P/L _[3]		P/L _[7]	P/L _[16]	P/L _[22]		P	P	P/L _[68]
Pet boarding			P	P	P		P	P/L _[69]	P
Pet shop	P/L _[1]			P	P	P/L _[33]	P	P	P
Photocopying and duplicating services	P/L _[1] _[3]		P	P	P		P	P	P
Photo finishing	P/L _[1]		P	P	P	P	P	P	P
Planned unit development	P								
Postal service	P		P	P	P		P		P
Professional, scientific, technical services	P/L _[3]		P	P	P		P	P	P
Professional offices, medical, dental	P/L _[3]		P	P	P		P	P	P
Public administration facilities	P		P	P/L _[17]	P/L _[23]		P/L _[49]	P/L _[60]	P/L _[66]
Public facilities	P		P/L _[10]	P	P		P	P	P
Public utility facilities	P/L _[4]		P/L _[10]		P	P/L _[34]	P/L _[52]	P/L _[61]	
Publishing, telecommunications, Internet service providers, data processing services	P/L _[3]		P	P	P	P	P	P	P
Race tracks, drag strips, motorcycles hills and Go-Kart tracks	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Real estate renting and leasing	P/L _[3]		P	P	P	P	P	P	P
Recreational facilities – commercial	CUP	CUP	CUP	CUP	CUP	P	CUP		CUP
Recreational vehicles, sales and storage						P	P		
Religious grant writing, civic and professional organizations	P/L _[3]	P	P/L _[7]	P	P	P	P	P	P
Repair services	P/L _[2] _[3]		P/L _[7]	P/L _[16]	P/L _[22]		P		P/L _[63]

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Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
				[18]	[25]				[70]
Repossession services	P/L _[3]		P	P	P				P
Restaurants	P		P/L _[9]	P	P	P	P	P	P
Retail services and trade	P/L _[1]		P/L _[7]	P/L _[15] [18]	P/L _[21]	P	P/L _[43]	P	P/L _[67]
Retirement housing		P		P	P		P	P	
Reupholster	P		P	P/L _[19]	P	P	P	P	P/L _[71]
Saws and filing shops			P			P			
Sewage treatment plants	UUP	UUP	UUP	UUP		UUP	UUP		UUP
Signs, manufacturing						P			
Self-storage/mini-warehouse leasing			P				P/L _[44]	P/L _[62]	
Services to buildings and dwellings	P/L _[3]		P	P	P		P		P
Services, miscellaneous	P/L _[3]		P/L _[7]	P/L _[16] [18]	P/L _[22]		P/L _[45] [48]	P/L _[63]	P/L _[68] [70]
Spectator sports	CUP		CUP	P	P		P		P
Stadiums	CUP	CUP	CUP	CUP		CUP	CUP		CUP
Supermarkets	P/L _[1]		P	P	P		P	P	P
Taverns and cocktail lounges	P/L _[1]		P	P	P	P/L _[38]	P	P/L _[64]	P/L _[75]
Telecommunication facilities	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Telephone exchanges						P			
Tire sales and service	P/L _[3]						P		
Theaters				P	P	P/L _[35]	P	P/L _[65]	P/L _[76]
Towing operations						UUP			
Transportation and wholesale trade			P/L _[11]						
Water transportation					CUP				
Welding repair	P/L _[2] [3] [82]		P	P/L _[16] [82]	P/L _[82]	P	P		P/L _[68] [82]
Wholesale business			P			P		P/L _[66]	P/L _[77]
Wholesale trade and distribution of groceries				CUP					CUP

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~~35. Reserved. Adult Motion Picture Theaters. This regulation applies to all parts of Table 18.52.010B that have a [35]. Adult motion picture theaters are prohibited within 500 feet of the property lines of churches, schools, preschool through high school, public facilities, adult entertainment facilities, or other adult motion picture theaters.~~

46. Arts, Entertainment, and Recreation. This regulation applies to all parts of Table 18.52.010B that have a [46]. Adult entertainment facilities ~~and adult motion picture theaters are only permitted with the PR-C Zone prohibited north of south of~~ South 216th Street and are prohibited within 500 feet of the property lines of churches, common schools, day care centers, and public facilities, and within 1000 feet of any ~~or~~ other adult entertainment facilities or adult motion picture theaters. Adult entertainment facilities are subject to the additional standards of chapters 5.48 and 18.160 DMMC.

~~48. Reserved. Adult Entertainment Facilities. This regulation applies to all parts of Table 18.52.010B that have a [78]. Adult entertainment facilities are subject to the additional standards of chapters 5.48 and 18.16 DMMC.~~

NEW SECTION. Sec. 3. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

NEW SECTION. Sec. 4. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its final passage by the Des Moines City Council in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2015 and signed in authentication thereof this ____ day of ____, 2015.

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M A Y O R

APPROVED AS TO FORM:

City Attorney

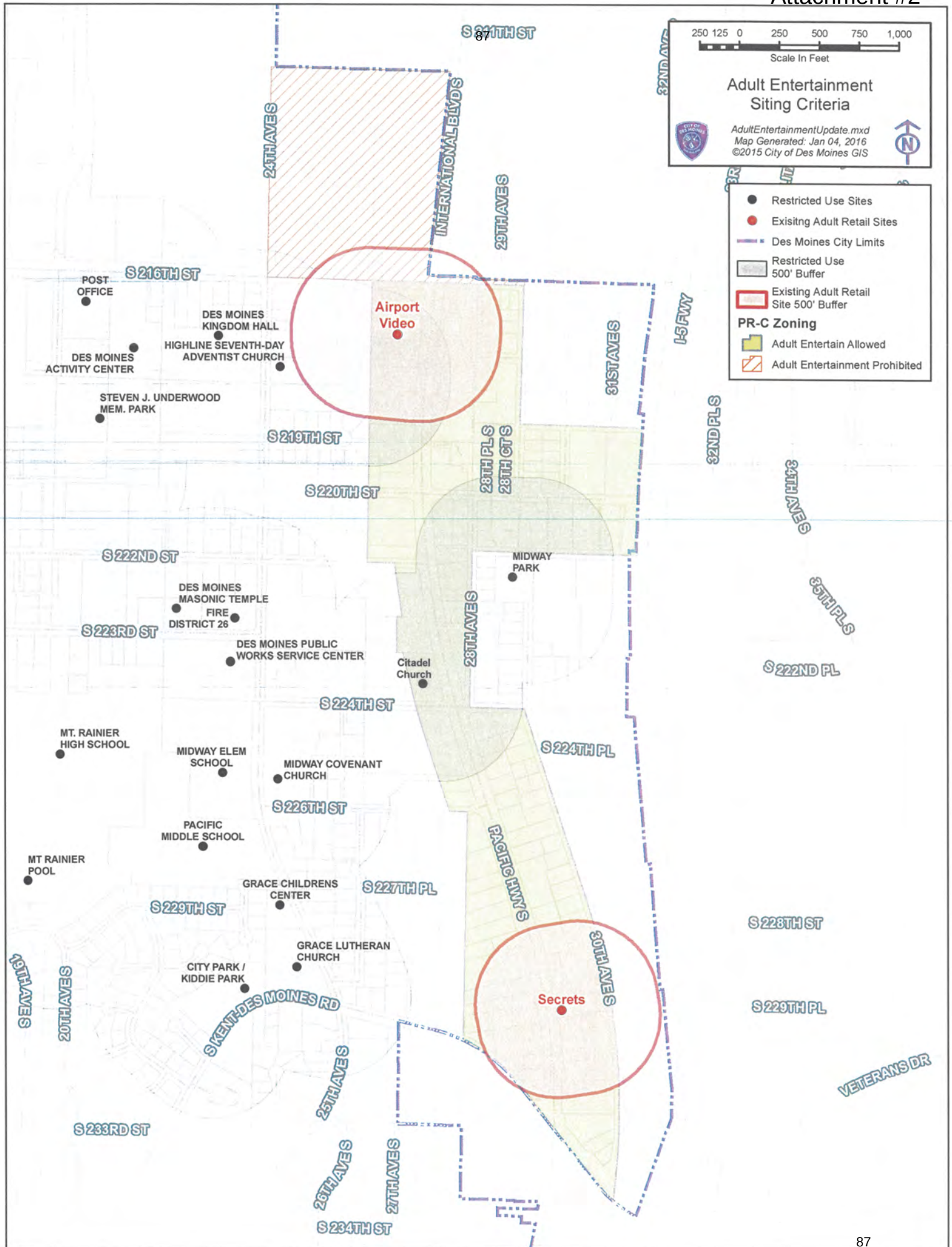
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City Clerk

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THE ASSOCIATION OF ADULT BUSINESSES WITH SECONDARY EFFECTS: LEGAL DOCTRINE, SOCIAL THEORY, AND EMPIRICAL EVIDENCE*

ALAN C. WEINSTEIN* & RICHARD MCCLEARY**

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INTRODUCTION

In the decade since the U.S. Supreme Court's decision in *City of Los Angeles v. Alameda Books, Inc.*,¹ the adult entertainment industry²

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¹ *City of L.A. v. Alameda Books, Inc.*, 535 U.S. 425 (2002).

has attacked the legal rationale local governments rely upon as the justification for their regulation of adult businesses: that such businesses are associated with so-called negative secondary effects.³ These attacks have taken a variety of forms, including: trying to subject the studies of secondary effects relied upon by local governments to the *Daubert* standard⁴ for admission of scientific evidence in federal litigation;⁵ producing studies that purport to show no association between adult businesses and negative secondary effects in a given jurisdiction;⁶ and claims that distinct business models⁷ and/or specific local conditions⁸ are not associated with the secondary effects demonstrated in the studies relied on by many local governments.

In this Article, we demonstrate that, contrary to the industry's claims, methodologically appropriate studies confirm criminological theory's prediction that adult businesses are associated with heightened incidences of crime regardless of jurisdiction, business model, or location and thus, such studies should have legal and policy effects supporting regulation of adult businesses.

² Commercially available adult entertainment in the form of "adult cabarets" (or "strip clubs") featuring live dancers and retail stores selling pornographic magazines and electronic media – some of which also feature so-called "viewing booths" – is a multi-billion dollar industry. See, e.g., Ronald Weitzer, *Sex Work: Paradigms and Policies*, in *SEX FOR SALE: PROSTITUTION, PORNOGRAPHY, AND THE SEX INDUSTRY 1* (Ronald Weitzer ed., 2d ed. 2010) ("In 2006 alone, Americans spent \$13.3 billion on X-rated magazines, videos and DVDs, live sex shows, strip clubs, adult cable shows, computer pornography, and commercial telephone sex. Rentals and sales of X-rated films jumped from \$75 million in 1985 to \$957 million in 2006. In just one decade, the number of X-rated films released annually more than doubled, from 5700 in 1995 to 13,588 in 2005. There are around 3500 strip clubs in America and the number has grown over the past two decades.").

³ See generally Christopher J. Andrew, *The Secondary Effects Doctrine: The Historical Development, Current Application, and Potential Mischaracterization of an Elusive Judicial Precedent*, 54 RUTGERS L. REV. 1175 (2002); John Fee, *The Pornographic Secondary Effects Doctrine*, 60 ALA. L. REV. 291, 292 (2009) ("[A] regulation will be treated as content-neutral and subject to intermediate scrutiny, despite its content-discriminatory form, if the primary purpose of the regulation is to control the secondary effects rather than the primary effects of speech").

⁴ *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579, 590 (1993) ("[I]n order to qualify as 'scientific knowledge' [under Federal Rule of Evidence 702,] an inference or assertion must be derived by the scientific method[, but does not need to be 'known' to a certainty].").

⁵ See, e.g., Bryant Paul et al., *Government Regulation of "Adult" Businesses Through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects*, 6 COMM. L. & POL'Y 355, 356 (2001).

⁶ See, e.g., Daniel Linz et al., *Peep Show Establishments, Police Activity, Public Place, and Time: A Study of Secondary Effects in San Diego, California*, 43 J. SEX RES. 182 (2006).

⁷ See, e.g., *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288, 294 (5th Cir. 2003) (declaring adult business ordinance unconstitutional because none of the secondary effects studies cited in the legislative record had studied "take-home" adult media stores where no adult entertainment is presented or viewed on the premises), *opinion clarified* 352 F.3d 938 (5th Cir. 2003). *Contra* *Doctor John's v. Wahlen*, 542 F.3d 787, 793 (10th Cir. 2008) (rejecting claim that the "on-site/off-site" distinction is relevant in initially judging whether a local government reasonably relied on the studies in enacting its regulations); *Richland Bookmart, Inc. v. Knox Cnty.*, 555 F.3d 512, 526 (6th Cir. 2009) (holding that a local government may rely on a study of secondary effects that did not address the particular category of adult business challenging the ordinance).

⁸ See, e.g., *Abilene Retail #30, Inc. v. Bd. of Comm'rs*, 492 F.3d 1164, 1175 (10th Cir. 2007), *cert. denied*, 552 U.S. 1296 (2008) (ruling that a local government in a rural area could not have reasonably relied on studies of secondary effects that did not examine businesses in an entirely rural area).

I. LAND-USE REGULATION OF ADULT ENTERTAINMENT BUSINESSES⁹ AND THE EVOLUTION OF THE SECONDARY EFFECTS DOCTRINE

In the late 1960s, Boston's city planners proposed to concentrate the city's adult businesses in a single, small "adult entertainment district" located in the city's downtown area near Chinatown. Popularly known as the "Combat Zone," the district was formally established in 1974.¹⁰ This proposal had two theoretical advantages. First, it would keep vice activity out of the city's other districts. Second, it would allow the police to focus resources on a small area, thereby reducing the risk of crimes associated with vice. These theoretical advantages, however, were not realized in practice. Soon after the district had been established, crime and disorderly conduct escalated and the failure of Boston's "Combat Zone" experiment was obvious.¹¹

At about this same time, city officials in Detroit began to notice "the emergence of clusters of 'adult' movie theatres and bookstores together with topless bars and 'go go' establishments in certain areas of the City."¹² Detroit then added adult entertainment businesses to an existing ordinance that already prohibited the concentration of a number of other businesses that were associated with negative effects on surrounding properties – including bars, transient hotels, and poolrooms – by setting minimum distances between adult businesses and certain other uses.¹³ Several existing adult businesses that were being forced to relocate challenged the constitutionality of the Detroit ordinance, but the ordinance was upheld by the district court noting that the city had relied on the opinions of social scientists and real estate experts who agreed that prohibiting adult businesses from concentrating in any one area would mitigate negative effects on surrounding properties associated with a concentration of such businesses: primarily increased crime and downward pressure on property values.¹⁴

After the Sixth Circuit reversed the district court's decision because it saw the ordinance as a prior restraint,¹⁵ a fractured Supreme

⁹ This article focuses exclusively on land-use regulation of adult entertainment businesses. We do not discuss, other than tangentially, two other forms of regulation that have been used extensively: restrictions on nudity in adult performances and licensing of adult businesses, owners and employees. The Supreme Court has decided two cases involving restrictions on nudity – *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991) and *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) – and two cases involving licensing of adult entertainment: *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990) and *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004). For a discussion of these forms of regulation, see generally, BRIAN W. BLAESSER & ALAN C. WEINSTEIN, *FEDERAL LAND USE LAW & LITIGATION* ch. 6 (2011 ed. 2011).

¹⁰ Nicole Stelle Garnett, *Relocating Disorder*, 91 VA. L. REV. 1075, 1106–07 (2005).

¹¹ *Id.* at 1107; see also Norman Marcus, *Zoning Obscenity: Or, the Moral Politics of Porn*, 27 BUFF. L. REV. 1, 3–4 (1978); see generally WESLEY G. SKOGAN, *DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS* (1990).

¹² *Am. Mini Theatres, Inc. v. Gribbs*, 518 F.2d 1014, 1015 (6th Cir. 1975), *rev'd sub nom. Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50 (1976).

¹³ *Id.* at 1016, 1018.

¹⁴ *Id.* at 1018.

¹⁵ *Id.* at 1019–20.

Court upheld the ordinance.¹⁶ Justice Stevens' plurality opinion in *Young v. American Mini Theatres, Inc.*¹⁷ viewed the pornographic speech at issue as not worthy of the most robust protection under the First Amendment, citing the Court's treatment of commercial speech as precedent for varying the protection afforded under the First Amendment.¹⁸ Justice Powell, who provided the fifth vote to uphold the ordinance, wrote separately to argue that Detroit was justified in enacting the ordinance because it was aimed at mitigating adverse secondary effects associated with the regulated businesses.¹⁹

Although *Young* accepted that regulations could be based on the enacting legislative body's concern with addressing the secondary effects associated with adult businesses, it said nothing about the quantity or quality of the evidence that was needed to demonstrate that such a concern was legitimate. These questions were addressed ten years later in *City of Renton v. Playtime Theatres, Inc.*²⁰ In the early 1980s, the Seattle suburb of Renton, Washington, enacted a zoning ordinance that in many respects resembled the ordinance challenged in *Young*. Since Renton had no adult businesses at the time the ordinance was enacted, it could not base its regulations on a study of secondary effects in Renton itself and so looked to a Washington Supreme Court opinion reviewing studies from nearby Seattle.²¹ The following year, two theaters located in a district where adult businesses were prohibited began to show "X-rated" films and immediately sought a declaratory judgment that the ordinance was unconstitutional.²² The trial court upheld the ordinance, but the Ninth Circuit reversed.²³

The Supreme Court reversed the Ninth Circuit, ruling that the ordinance complied with the *Young* standard in that its sole purpose was the mitigation of secondary effects. Further, the Court explicitly stated that a city did not have to conduct its own study of secondary effects or produce evidence of secondary effects in addition to those already available from other cities before enacting an ordinance regulating adult businesses, so long as the city reasonably believed that whatever studies or evidence it relied on were relevant to the problem the city was

¹⁶ *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 72-74 (1976).

¹⁷ *Id.*

¹⁸ *Id.* at 68-69.

¹⁹ *Id.* at 80-82. Justice Stewart, joined by Justices Brennan, Marshall and Blackmun dissented, arguing that the ordinance was unconstitutional because its distinction between theaters was based on the content of the films they exhibited and thus was not a valid content neutral regulation of the time, place or manner of expression. *Id.* at 83-88. Justice Blackmun also dissented separately, objecting to the majority's refusal both to consider respondent's vagueness claims and to overturn the ordinance on those grounds. *Id.* at 88.

²⁰ *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

²¹ *Id.* at 50-51 (discussing *Northend Cinema, Inc. v. City of Seattle*, 585 P.2d 1153 (Wash. 1978) (en banc)).

²² *Id.* at 43.

²³ *Id.*

addressing.²⁴ *Renton* thus legitimized the practice of basing the governmental purpose for enacting a local adult business ordinance on secondary effects studies from other communities. *Renton* also set a reliability threshold, albeit a low one, for the government's secondary effects evidence: the evidence need only be "reasonably believed to be relevant to the problem that the city addresses."²⁵

The Supreme Court revisited this issue sixteen years later in its decision in *City of Los Angeles v. Alameda Books, Inc.*²⁶ In 1977, Los Angeles had conducted a comprehensive secondary effects study that found, among other things, that concentrations of adult businesses were associated with high ambient crime rates. Based on this finding, Los Angeles enacted an ordinance requiring adult businesses to be separated by a minimum distance. In 1983, concerned that the ordinance contained a loophole that would allow multiple adult businesses to operate in a single structure, the city amended the ordinance to prohibit the operation of more than one adult business in the same building or structure. Instead of requiring minimum distances between adult businesses, the amended ordinance required minimum distances between distinct adult entertainment activities. Adult businesses that combined on-site coin-operated video viewing booths with sales of videos for off-site use were prohibited and existing multiple-activity businesses were forced to segregate their on-site and off-site activities.²⁷

In 1995, two multiple-activity businesses challenged the amended ordinance. Since the 1977 study had said nothing about the secondary effects of combining multiple activities under one roof, they argued that Los Angeles had no evidence that multiple-activity businesses were associated with secondary effects. The district court agreed and the Ninth Circuit affirmed on the ground that because the 1977 Los Angeles study had not investigated the effects of multiple-activities under one roof, the evidence for the amended ordinance did not meet *Renton*'s threshold of being reasonably relevant.²⁸ But the U.S. Supreme Court took a different view.

As often happens in First Amendment cases, the Supreme Court's decision in *Alameda Books* did not produce a clear majority holding. Justice O'Connor authored a plurality opinion, joined by Chief Justice Rehnquist and Justices Thomas and Scalia, with Justice Scalia also filing a concurring opinion. Justice Kennedy filed an opinion concurring in the judgment, but departing from the rationale announced

²⁴ *Id.* at 51–52 (Justice Rehnquist wrote: "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.").

²⁵ *Id.*

²⁶ *City of L.A. v. Alameda Books, Inc.*, 535 U.S. 425 (2002).

²⁷ *Id.* at 429–33. Justice Souter characterized this model as "commercially natural, if not universal." *Id.* at 465 (Souter, J., dissenting).

²⁸ *Id.* at 420–30 (majority opinion).

by Justice O'Connor. Justice Souter authored a dissenting opinion, joined by Justices Stevens and Ginsburg and, in part, by Justice Breyer.²⁹

While acknowledging the limitations of the 1977 study, Justice O'Connor argued that Los Angeles could infer from its study that concentrations of adult *activities* would also be associated with secondary effects and, thus, that Los Angeles had complied with the evidentiary requirement of *Renton*. Justice O'Connor's opinion criticized the Ninth Circuit for imposing too high a bar for cities that seek merely to address the secondary effects of adult businesses.³⁰ The Ninth Circuit found that the 1977 study did not provide reasonable support for the 1983 amendment because the study focused on the secondary effects associated with a concentration of establishments rather than a concentration of operations within a single establishment. While acknowledging that the city's 1977 study did not assess whether multiple adult businesses operating under one roof were associated with an increase in secondary effects, Justice O'Connor argued that the city could infer that a concentration of operations, no less than a concentration of establishments, would be associated with an increase in negative secondary effects. She also criticized the Ninth Circuit for implicitly requiring that the city must not merely provide reasonable support for a theory that justifies its ordinance, but also prove that its theory is the only plausible one.³¹

Justice O'Connor then addressed what evidentiary standard a city would need to meet. After noting that in *Renton* the Court "held that a municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection between speech and a substantial, independent government interest," Justice O'Connor wrote:

This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton*. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.³²

²⁹ *Id.* at 428.

³⁰ *Id.* at 436–37.

³¹ *Id.* at 437–38.

³² *Id.* at 438–39.

Applying this test to the case at hand, Justice O'Connor concluded that, given the early stage of the litigation, the city had complied with the evidentiary requirement of *Renton*.³³

Both Justice Scalia and Justice Kennedy wrote concurring opinions. Justice Scalia did nothing more than reiterate his long-standing claim that businesses engaged in "pandering sex" are not protected under the First Amendment and that communities may not merely regulate them with impunity, but may suppress them entirely.³⁴

Justice Kennedy wrote a lengthy concurring opinion to express concern that "the plurality's application of *Renton* might constitute a subtle expansion" of what is permitted under that case.³⁵ Justice Kennedy contended that *Alameda Books* raised two evidentiary questions for the Court. "First, what proposition does a city need to advance in order to sustain a secondary-effects ordinance? Second, how much evidence is required to support the proposition?"³⁶ He argued that the plurality answered only the second question, and while he believed that answer was correct, in his view more attention needed to be paid to the first.³⁷

The critical inquiry that Justice Kennedy believed the plurality skipped was "how speech will fare under the city's ordinance."³⁸ In his view, shared by Justice Souter's dissenting opinion, a "city may not assert that it will reduce secondary effects by reducing speech in the same proportion."³⁹ In short, "[t]he rationale of the ordinance must be that it will suppress secondary-effects-and not by suppressing speech."⁴⁰ Applying this first step to the ordinance in this case, Justice Kennedy argued that it would have one of two effects when applied to an establishment operating two adult businesses under one roof: one of the businesses must either move or close. Since the latter of these effects cannot lawfully be the rationale for the ordinance—i.e., the city cannot lawfully seek to reduce the *amount* of secondary effects merely by reducing the *number* of adult businesses—the city's rationale must be that affected businesses will relocate rather than close and that the resulting dispersion of businesses will reduce secondary effects but not substantially diminish the number of businesses.

Having identified the city's "proposition," Justice Kennedy next asked whether the city had presented sufficient evidence to support that proposition. In line with the plurality, Justice Kennedy argued for

³³ *Id.* at 439, 442.

³⁴ *Id.* at 443–44 (Scalia, J., concurring) (citing his opinions in *City of Erie v. Pap's A.M.*, 529 U.S. 277, 310 (2000) (Scalia, J., concurring), and *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 256–61 (1990) (Scalia, J., dissenting in part and concurring in part)). The holding in *FW/PBS* was subsequently modified by *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004).

³⁵ *Alameda Books*, 535 U.S. at 445 (Kennedy, J., concurring).

³⁶ *Id.* at 449.

³⁷ *Id.*

³⁸ *Id.* at 450.

³⁹ *Id.* at 449.

⁴⁰ *Id.* at 449–50.

significant deference to local government fact-finding in making this inquiry. Citing *Renton* and *Young*, he contended that cities “must have latitude to experiment, at least at the outset, and that very little evidence is required.”⁴¹ He also cautioned that “[a]s a general matter, courts should not be in the business of second-guessing the fact-bound empirical assessments of city planners,” noting: “The Los Angeles City Council knows the streets of Los Angeles better than we do. It is entitled to rely on that knowledge; and if its inference appears reasonable, we should not say there is no basis for its conclusion.”⁴² Here, Justice Kennedy found that, for purposes of surviving a motion for summary judgment, the city’s proposition is supported by both its 1977 study and “common experience” and that the 1983 ordinance was reasonably likely to reduce secondary effects substantially while reducing the number of adult entertainment businesses very little.⁴³

In his dissenting opinion, Justice Souter, joined by Justices Stevens and Ginsburg and in part by Justice Breyer, argued that imposing stricter evidentiary standards on governments would guard against potential abuses. Justice Souter was concerned about what he viewed as the significant risk that courts will approve ordinances that are effectively regulating speech based on government’s distaste for the viewpoint being expressed.

Adult speech refers not merely to sexually explicit content, but to speech reflecting a favorable view of being explicit about sex and a favorable view of the practices it depicts; a restriction on adult content is thus also a restriction turning on a particular viewpoint, of which the government may disapprove.⁴⁴

For Justice Souter, the risk of viewpoint discrimination may be addressed by imposing on government a requirement that it demonstrate empirically

that the effects exist, that they are caused by the expressive activity subject to the zoning, and that the zoning can be expected either to ameliorate them or to enhance the capacity of the government to combat them (say, by concentrating them in one area), without suppressing the expressive activity itself.⁴⁵

Justice Souter claimed that his call for empirical evidence did not impose a Herculean task on government; rather, the harms allegedly

⁴¹ *Id.* at 451.

⁴² *Id.* at 451–52 (citations omitted).

⁴³ *Id.* at 450–51.

⁴⁴ *Id.* at 457 (Souter, J., dissenting).

⁴⁵ *Id.*

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caused by adult establishments “can be shown by police reports, crime statistics, and studies of market value, all of which are within a municipality’s capacity or available from the distilled experiences of comparable communities.”⁴⁶ He also noted that the need for “independent proof” can vary with the proposition that needs to be established and thus “zoning can be supported by common experience when there is no reason to question it.”⁴⁷

In the final section of his dissent, which Justice Breyer did not join, Justice Souter applied this standard to the case at hand and argued that the city offered neither a rationale nor evidence to support the proposition that an adult bookstore combined with video booths would produce the claimed secondary effects.⁴⁸

Although *Alameda Books* reaffirmed *Renton* in crucial respects, thereby supporting government regulation of adult businesses, Justice O’Connor’s plurality opinion described *exactly* how an adult business *could* challenge such regulations:

This is not to say that a municipality can get away with shoddy data or reasoning. The municipality’s evidence must fairly support the municipality’s rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality’s evidence does not support its rationale or by furnishing evidence that disputes the municipality’s factual findings, the municipality meets the standard set forth in *Renton*. If plaintiffs succeed in casting doubt on a municipality’s rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.⁴⁹

The adult entertainment industry, along with some scholars, soon began to “cast doubt” on the legal rationale local governments rely upon as the justification for their regulation of adult businesses in both of the ways suggested by Justice O’Connor’s opinion. As noted previously, these efforts have taken a variety of forms: trying to subject the studies of secondary effects relied upon by local governments to the *Daubert* standard for scientific evidence in federal litigation;⁵⁰ producing jurisdiction-specific studies that purport to show no association between adult businesses and negative secondary effects;⁵¹ and claims that distinct business models⁵² and/or specific local conditions⁵³ are not

⁴⁶ *Id.* at 458–59.

⁴⁷ *Id.* at 459.

⁴⁸ *Id.* at 461–64.

⁴⁹ *Id.* at 438–39 (majority opinion).

⁵⁰ *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993). See, e.g., Paul, et al., *supra* note 5.

⁵¹ See, e.g., Linz et al., *supra* note 6.

⁵² See, e.g., *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288, 294 (5th Cir. 2003) (declaring adult business ordinance unconstitutional because none of the secondary effects studies

associated with the secondary effects demonstrated in the studies relied on by many local governments. With a few exceptions,⁵⁴ most of these challenges have failed. The decisions to date indicate that so long as a regulation has a plausible rationale and is supported by at least some evidence, the courts continue to show substantial deference to legislatures.⁵⁵

In the following sections, we describe each of the major types of challenges to the rationales for adult entertainment regulations, discuss how those have been treated in the courts, and, where appropriate, critique each in terms of both methodological validity and criminological theory.

II. CHALLENGES BASED ON *DAUBERT* CLAIMS

In the wake of *Alameda Books*, Daniel Linz, a Professor in the Department of Communication at the University of California, Santa Barbara, who has frequently been retained as an expert witness for adult businesses,⁵⁶ co-authored an article⁵⁷ arguing that when the studies relied upon by most jurisdictions are subjected to “appropriate” scrutiny, they are revealed to be seriously flawed methodologically and should not be accepted by courts as supporting the government’s claim that it is regulating adult businesses because of their demonstrated association with negative secondary effects. The methodological rules endorsed in the article are derived from the four criteria for admissibility of scientific expert witness testimony stated by Justice

cited in the legislative record had studied “take-home” adult media stores where no adult entertainment is presented or viewed on the premises), *opinion clarified*, 352 F.3d 938 (5th Cir. 2003). *Contra* Doctor John’s v. Wahlen, 542 F.3d 787, 793 (10th Cir. 2008) (rejecting claim that the “on-site/off-site” distinction is relevant in initially judging whether a local government reasonably relied on the studies in enacting its regulations); *Richland Bookmart, Inc. v. Knox Cnty.*, 555 F.3d 512, 526 (6th Cir. 2009) (holding that a local government may rely on a study of secondary effects that did not address the particular category of adult business challenging the ordinance).

⁵³ See, e.g., *Abilene Retail #30, Inc. v. Bd. of Comm’rs*, 492 F.3d 1164, 1175 (10th Cir. 2007), *cert. denied*, 552 U.S. 1296 (2008) (ruling that local government in rural area could not have reasonably relied on studies of secondary effects, none of which examined businesses in an entirely rural area).

⁵⁴ See, e.g., *Encore Videos*, 330 F.3d 288; *Abilene Retail*, 492 F.3d 1164.

⁵⁵ See, e.g., *G.M. Enters., Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Giovani Carandola, Ltd. v. Fox*, 396 F. Supp. 2d 630, 651 (M.D.N.C. 2005) (deferring to North Carolina General Assembly’s belief that “sexually oriented businesses are associated with higher incidents of crime”). *But see* *R.V.S., L.L.C. v. City of Rockford*, 361 F.3d 402 (7th Cir. 2004) (finding it unreasonable for city officials to believe that secondary effects were associated with a business where dancers performed wearing fully opaque clothing over the pubic area, buttocks and breasts when the city had no evidence of secondary effects associated with such businesses and plaintiff’s two experts testified no studies demonstrated adverse secondary effects from such businesses; nor did the experts believe such effects could be found).

⁵⁶ JULES B. GERARD & SCOTT D. BERGTHOLD, *LOCAL REGULATION OF ADULT BUSINESSES* 295 (2011 ed. 2010).

⁵⁷ Paul et al., *supra* note 5. Professor Linz’s co-authors, Bryant Paul and Bradley Shafer were, at the time the article was published, respectively, a Ph.D. candidate in the UC, Santa Barbara Department of Communication and an attorney in private practice in Lansing, Michigan. Bryant Paul is currently an Assistant Professor in the Department of Telecommunications at Indiana University. Bradley Shafer is still in private practice in Lansing.

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Blackmun's opinion in *Daubert v. Merrell Dow Pharmaceuticals*.⁵⁸

Following publication of the article, plaintiffs challenging adult business regulations attempted to cast doubt on the government's factual basis for regulating adult businesses by introducing the article.⁵⁹ These attempts have largely been unsuccessful. The Tenth Circuit's discussion of the article in *Doctor John's v. Whalen*⁶⁰ and the subsequent discussion by the Minnesota federal district court in *PAO Xiong v. City of Moorhead*,⁶¹ illustrate the approach to the article by courts that have rejected it as a basis for casting doubt on a city's rationale or evidence. In 2008, the Tenth Circuit stated:

The article's main premise is also problematic because it argues that secondary effects studies relied on by municipalities should meet the requirements of *Daubert v. Merrell Dow Pharm., Inc.* . . . However, the Supreme Court has "flatly rejected [the] idea" of requiring cities to rely on empirical analysis. . . . In fact, among the specific empirical studies that the Supreme Court rejected in *City of Erie*, were Dr. Linz's studies cited by an amicus curiae, and relied on by the dissent.⁶²

One year later, the Minnesota federal district court elaborated:

Requiring adherence to scientific standards of analysis would be inconsistent with the deference that municipal authorities are given to analyze and address community issues when acting in their legislative function. In fact, adopting such an analytical standard would require municipalities to ignore the valid, but not necessarily scientific, concerns expressed by average citizens in their communities. Further, other courts have concluded that the analysis advocated by the Linz article is insufficient to meet the burden to

⁵⁸ *Daubert v. Merrill Dow Pharm.*, 509 U.S. 579 (1993). In brief, the four criteria are: (1) Has the scientific theory or technique used by the witness been tested—or can it be tested—for reliability?; (2) Has the theory or technique used been subjected to peer review and publication?; (3) In the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error; and (4) To what degree has the theory or technique been accepted in the scientific community? *Id.* at 593–94. Subsequently, in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), the Court adopted similar criteria for the admissibility of all evidence. See also *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997) (addressing issue of the standard of appellate review for admissibility decisions made by courts under *Daubert*).

⁵⁹ See, e.g., *Doctor John's v. Whalen*, 542 F.3d 787 (10th Cir. 2008); *G.M. Enters., Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003).

⁶⁰ *Doctor John's*, 542 F.3d at 787.

⁶¹ *PAO Xiong v. City of Moorhead*, 641 F. Supp. 2d 822 (D. Minn. 2009).

⁶² *Doctor John's*, 542 F.3d at 792 (citations omitted). The court also noted:

At first glance, the article does appear to cast doubt on secondary effects studies generally in stating that its authors reviewed 107 relevant studies. However, the article only analyzes the 10 most frequently cited studies by municipalities, and the City of Roy only relies on 4 of those 10 studies. Consequently, it is difficult to see how the article casts doubt on the other 14 studies relied on by the City, let alone the other 7 reports and the many cases cited by the ordinance.

Id. at 791–92.

cast doubt on a municipality's reasoning, even when supplemented by additional evidence, and the Court finds the reasoning employed in those cases persuasive. See *Doctor John's v. Wahlen* (concluding that the Linz article failed to meet burden to cast doubt because municipality relied on studies not considered by article and because empirical evidence is not required in enactment of ordinances).

In addition, the Linz article's approach largely ignores the fact-finding function in which municipalities engage when enacting ordinances. The Linz article acknowledges that existing studies conflict as to whether negative secondary effects arise from adult businesses. Conflicting evidence does not require a municipality to find that negative secondary effects are unlikely to occur. Where a municipality is presented with conflicting evidence, municipal authorities may engage in fact-finding and ultimately may determine that a study finding such a link is more relevant or credible than a study that does not. A municipality may also decide to disregard some studies. The relevant question for courts reviewing these ordinances becomes whether the municipalities reasonably believed that secondary effects were likely to occur.⁶³

There have, however, been cases in which the Linz article, when submitted with other evidence, has been sufficient to cast doubt on the government's evidence.⁶⁴ For example, in *Abilene Retail*, in addition to the Linz article, the plaintiff submitted five studies indicating that sexually oriented businesses were not the cause of negative secondary effects and called Dr. Linz as an expert witness to critique every study relied on by the government.⁶⁵ This differs from the plaintiff in *Doctor John's* who just submitted the Linz article without specifically addressing each study relied on by the City of Roy.⁶⁶

In the cases where the Linz article was offered along with other types of evidence, it appears that the evidence that addressed the specific studies relied on by the governments involved played a greater role in the courts' decisions than the various plaintiffs had succeeded in casting direct doubt on the government's rationale or evidence. As noted above by the Tenth Circuit and Minnesota federal district court, studies such as the one offered by Dr. Linz would only be valid to cast direct doubt if the Supreme Court required governments to produce empirical data obtained by the methodological standards required by *Daubert*.⁶⁷ The Court has refused to impose such a requirement.

⁶³ *PAO Xiong*, 641 F. Supp. 2d at 828 (citation omitted).

⁶⁴ See *Abilene Retail # 30, Inc. v. Bd. of Comm'rs*, 492 F.3d 1164 (10th Cir. 2007); *22d Ave. Station, Inc. v. City of Minneapolis*, 429 F. Supp. 2d 1144 (D. Minn. 2006); *Giovani Carandola, Ltd. v. Fox*, 396 F. Supp. 2d 630 (M.D.N.C.2005), *aff'd in part, vacated in part, rev'd in part*, 470 F.3d 1074 (4th Cir. 2006).

⁶⁵ *Abilene Retail*, 492 F.3d at 1170.

⁶⁶ *Doctor John's, Inc. v. City of Roy*, No. 1:03-cv-00081, 2007 WL 1302757, at *8-9 (D. Utah May 2, 2007), *aff'd* 542 F.3d 787 (10th Cir. 2008).

⁶⁷ See *supra* notes 62-63 and accompanying text. See also *G.M. Enters., Inc. v. Town of St.*

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Rather, the plaintiff must show that the government was not *reasonable* in its reliance on the evidence in order to meet the direct doubt burden required under the *Alameda* test. This requires more than just evidence that suggests the government could have reached a *different* reasonable conclusion. Courts will defer to local governments' legislative judgments, so long as the judgments meet the Court's standard under *Renton* and as long as the local government reasonably believed the evidence was relevant to the issue of reducing negative secondary effects. The fact that another, contradictory conclusion may also be reasonable does not cast doubt on a municipality's conclusion. So long as the *Renton* standard is met, "*Alameda Books* does not require a court to re-weigh the evidence considered by a legislative body, nor does it empower a court to substitute its judgment in regards to whether a regulation will best serve a community."⁶⁸

III. CHALLENGES BASED ON JURISDICTION-SPECIFIC STUDIES

In a number of challenges to adult business regulations, the plaintiff has produced an expert report, often authored by Dr. Linz and his colleagues, demonstrating that the adult business—or businesses—in the jurisdiction are not associated with negative secondary effects.⁶⁹ On the whole, these challenges have not fared well. As stated recently by a Michigan federal district court in *ABCDE Operating, L.L.C. v. City of Detroit*:⁷⁰

[S]everal other courts have rejected Dr. Linz's studies, finding them insufficient to rebut evidence of secondary effects. See, e.g., *Imaginary Images, Inc. v. Evans*, 612 F.3d 736, 748 (4th Cir. 2010)

Joseph, 350 F.3d 631, 640 (7th Cir. 2003).

⁶⁸ *Doctor John's*, 2007 WL 1302757, at *10. Similarly, evidence that non-sexually oriented businesses also produce negative secondary effects does not diminish the reasonableness of a legislative decision to regulate only adult businesses. For example, in *Peek-A-Boo Lounge of Bradenton, Inc., v. Manatee Cnty.*, No. 8:05-CV-1707-T-27TBM, 2009 WL 4349319 (M.D. Fla. 2009), the plaintiff offered evidence that sexually oriented businesses have no greater correlation to secondary effects than other types of businesses. *Peek-A-Boo*, 2009 WL 4349319, at *6. However, the District Court held that this evidence did "little to cast doubt on secondary effects associated with sexually oriented businesses." *Id.* The court further went on to state that the government "may regulate secondary effects in sexually oriented businesses . . . notwithstanding the existence of secondary effects in other types of businesses." *Id.* (citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52–53 (1986)). Even when a plaintiff can cast direct doubt on one piece of evidence cited by the government, she meets her burden only when they cast doubt on all evidence cited by the government. *Id.* at *5 (citing *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d at 884 (11th Cir. 2007)). For example, in *Doctor John's*, the plaintiff presented evidence that directly questioned the legitimacy of four of the fourteen studies cited by the City of Roy in enacting its ordinance. Regardless of whether this evidence was sufficient to cast direct doubt on the studies (the court determined that it was not), the court held that the plaintiff failed to meet its burden because she offered no evidence to undermine the other ten studies cited by the City. *Doctor John's*, 2007 WL 1302757 at *9.

⁶⁹ Dr. Linz and his colleagues have produced such reports in litigation involving the cities of Greensboro, North Carolina, San Diego, California, and Toledo, Ohio among others.

⁷⁰ *ABCDE Operating, L.L.C. v. City of Detroit*, No. 10–13435, 2011 WL 3607072 (E.D. Mich. Aug. 16, 2011).

("So while the Linz study and others may well be of interest to legislatures or those formulating policy, it does not provide the kind of 'clear and convincing' evidence needed to rebut the government's showing and invalidate the regulation."); 84 *Video/Newsstand, Inc. v. Sartini*, 2007 U.S. Dist. LEXIS 80079, at *22 ("the court finds that Plaintiffs' evidence from Dr. Daniel Linz is not sufficient at this stage to cast direct doubt on Defendants' evidence of a substantial government interest, especially in light of the fact that several courts have rejected Dr. Linz's findings under similar circumstances."); *Little Mack Ent. II v. Twp. of Marengo*, 625 F.Supp.2d 570, 580 (W.D.Mich.2008) ("Contrary to Little Mack's arguments, the affidavit of Daniel Linz, Ph.D., which concludes that the ordinances were based on shoddy data and flawed reasoning, does not undermine the legislative basis for adopting the ordinances."); *Pao Xiong v. City of Moorhead*, 641 F.Supp.2d 822, 828-829 (D.Minn. 2009) ("concerns advocated by the Linz article is [sic] insufficient to meet the burden to cast doubt on a municipality's reasoning, even when supplemented by additional evidence"); *Doctor John's v. G. Blake Wahlen*, 542 F.3d 787 (10th Cir. 2008); *J.L. Spoons, Inv. v. Dragani*, 538 F.3d 379 (6th Cir.2008).⁷¹

In addition to the legal concerns that have led many courts to find that such studies fail to cast doubt on the association of adult businesses with secondary effects, there are sound methodological reasons why these studies should be rejected. While a comprehensive critique of these various jurisdiction-specific studies is beyond the scope of this article, not to mention the reader's attention span, we note two of the methodological concerns with these studies.

First, many of these studies base their measurement of crimes committed in the vicinity of adult businesses on data that is questionable because they use an inappropriate metric for the reporting of crimes. Criminologists use crime *incidents* (or "crimes known to the police") to measure crime risk. These are traditionally measured through Uniform Crime Reports ("UCRs").⁷² Given this well established convention, it is surprising that many of the jurisdiction-specific reports employ a different measure for crime, Calls for Service ("CFSs") to police, which are generated through calls to the "911" emergency number or to police departments directly. A justification for the use of CFSs instead of UCRs to measure crime was provided in the study of secondary effects in Toledo, Ohio, prepared by Dr. Linz and a colleague:

⁷¹ *Id.* at *4. See also *Entm't Prods., Inc. v. Shelby Cnty.*, No. 08-2047, 2011 WL 3903002 (W.D. Tenn. Sept. 6, 2011), decided after *ABCDE Operating* and reaching same result.

⁷² "The Uniform Crime Reporting . . . Program was conceived in 1929 by the International Association of Chiefs of Police to meet a need for reliable, uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics." Law enforcement agencies throughout the United States collect data on crimes reported to police and then provide that data to the FBI. *Uniform Crime Reports*, FED. BUREAU OF INVESTIGATION, <http://www.fbi.gov/about-us/cjis/ucr/ucr> (last visited Oct. 30, 2011).

We employ calls for service in this study for four reasons: 1) The use of these indicators of crime is compatible with criminology research; 2) Studies of secondary effects relied on by the City of Toledo have also employed this measure. It is possible, therefore, to directly compare the findings of the present study to these studies; 3) CFS are known to be consistent with victimization data; 4) The Justice Department endorses their use as indicators of criminal activity.⁷³

We disagree strongly with these rationales. The third and fourth rationales are unsubstantiated and, in our view, simply incorrect: CFSs are not consistent with victimization data and the U.S. Department of Justice has never endorsed the use of CFSs as a measure of “criminal activity.” As regards the first two, in fact, criminologists rarely, if ever, use CFSs to measure crime risk⁷⁴ and only a few of the secondary effect studies relied on by the City of Toledo used CFSs for any purpose whatsoever.⁷⁵

Second, when the conclusions derived from the data presented in many of these studies is examined critically in light of that data, the conclusions are found to be insupportable or even contradictory to the data. Readers who lack statistical backgrounds may wonder how two teams of experts can analyze the same data with the same methods, yet, arrive at radically different conclusions. Simply put, the stark differences between the original analyses in these reports and a subsequent reanalysis are due to differences in the underlying statistical assumptions and differences in the interpretation of analytic results. In our view, the statistical analyses in these studies often are based on highly questionable assumptions and this error is then compounded through a misinterpretation of the study’s results.

Every statistical analysis is predicated on a set of assumptions that, taken together, constitute a “model.” If one or more of the predicate assumptions is unwarranted, the model will yield analytic results that are biased in some way. The consequences of this bias can be benign. Results predicated on “wrong” assumptions can still be approximately

⁷³ DANIEL LINZ & MIKE YAO, EVALUATING POTENTIAL SECONDARY EFFECTS OF ADULT CABARETS AND VIDEO/BOOKSTORES IN TOLEDO, OHIO: A STUDY OF CALLS FOR SERVICE TO THE POLICE 16 (Feb. 15, 2004) (unpublished study) (on file with authors).

⁷⁴ A review undertaken by graduate students under the authors’ direction of writings published between 2000 and 2004 in four national criminology journals, *Criminology*, *Justice Quarterly*, the *Journal of Quantitative Criminology*, and the *Journal of Criminal Justice* comprised 705 bibliographic items, primarily articles. Most of the articles were either non-empirical (theoretical essays, reviews, etc.) or else, analyzed phenomena other than crime (police behavior, sentencing decisions, etc.). Of the 254 articles that analyzed a crime statistic, 134 (52.8%) analyzed UCRs; 119 (46.8%) analyzed victim or offender surveys. Only five articles (1.9%) analyzed CFSs. These data reflect the consensus view among criminologists that CFSs are not the best – or even a good – measure of crime. See RICHARD MCCLEARY & JAMES W. MEEKER, A METHODOLOGICAL CRITIQUE OF THE LINZ-YAO REPORT: REPORT TO THE CITY OF TOLEDO, OH 17 (May 15, 2004) (unpublished report) (on file with the authors).

⁷⁵ Two-thirds of the studies relied on by the City of Toledo used UCRs. See *id.* at 16.

"right." But the consequences of bias are not always benign. In many instances, the accrued bias violated assumptions can have disastrous consequences. Further, model assumptions notwithstanding, the results of every statistical analysis must be interpreted. Except for results derived from randomized controlled trials (experiments), analytic results cannot be expressed as a single number. Results derived from *quasi*-experimental designs, such as examining data before or after the opening (or closing) of an adult business or examining data from an area with an adult business compared to an area without an adult business, invariably consist of several numbers which must be integrated. This opens the door to subjectivity. Focusing exclusively on only one of several numerical results can lead to a misinterpretation of the larger set of results.

In short, we claim that methodologically appropriate studies of secondary effects that are interpreted in an appropriate manner will always demonstrate an association between adult entertainment businesses and negative secondary effects.

IV. CHALLENGES BASED ON THE ON-SITE/OFF-SITE DISTINCTION OR THE URBAN/RURAL DISTINCTION

A. *The On-Site/Off-Site Distinction*

While there are a number of different adult entertainment business types,⁷⁶ almost all such businesses can readily be classified as either a business where adult entertainment (whether in hard-copy format, electronic media or live performances) is viewed on the premises or where adult entertainment material is sold for viewing off the premises. *Encore Videos, Inc. v. City of San Antonio*,⁷⁷ exemplifies challenges to adult entertainment regulations brought by operators of off-site businesses claiming that the studies relied on by the enacting jurisdiction either dealt only with on-site businesses or failed to distinguish between the secondary effects associated with on-site businesses versus off-site businesses.

In *Encore Videos*, the San Antonio ordinance classified off-site book and video stores as adult entertainment businesses if their inventories included twenty percent adult material. Citing *Alameda*

⁷⁶ See, e.g., ERIC DAMIAN KELLY & CONNIE COOPER, EVERYTHING YOU ALWAYS WANTED TO KNOW ABOUT REGULATING SEX BUSINESSES 27-37 (2000), which lists the following types: Mixed-Retail Outlets, comprising mainstream retail stores with back rooms of sexually explicit material and retail percentage stores; Adults-Only or Sexually Oriented Retail Outlets, comprising adult media outlets and sex shops; Sexually Oriented Entertainment, comprising movie theatres, video-viewing booths, and live entertainment; and Touching and Encounter Businesses, comprising lingerie modeling studios, nude encounter studios, nude photography studios, massage parlors not operated by medical professionals or certified massage therapists and body-painting studios.

⁷⁷ *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003), *opinion clarified*, 352 F.3d 938 (5th Cir. 2003), *cert. denied*, 540 U.S. 982 (2003).

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Books, an off-site book store challenged the ordinance's rationale and underlying evidence, arguing that San Antonio had relied on studies that either excluded off-site adult businesses or, otherwise, had not distinguished between the effects of on-site and off-site adult businesses. The Fifth Circuit agreed; moreover, in the court's view, the city's rationale for ignoring the differences between on-site and off-site businesses was weak:

Off-site businesses differ from on-site ones, because it is only reasonable to assume that the former are less likely to create harmful secondary effects. If consumers of pornography cannot view the materials at the sexually oriented establishment, they are less likely to linger in the area and engage in public alcohol consumption and other undesirable activities.⁷⁸

The *Encore Videos* approach was subsequently adopted by the Seventh Circuit in *Annex Books v. City of Indianapolis*.⁷⁹ In that case, the City of Indianapolis relied on studies of secondary effects involving on-site adult businesses to support an ordinance regulating adult bookstores. The court held that if Indianapolis could not produce sufficient evidence for off-site adult businesses, then "its ordinance must meet the same fate as San Antonio's."⁸⁰

Other courts, however, have explicitly rejected this approach. As early as 1994, the approach had been rejected by the Eighth Circuit in *ILQ Investments v. City of Rochester*,⁸¹ but that ruling, of course, predated *Alameda Books*. In a ruling made after *Alameda Books*, the Tenth Circuit rejected the Fifth Circuit's approach in *Encore Videos* that the "on-site/off-site" distinction is relevant to the "casting doubt" first step of the *Alameda Books* analysis. In *Dr. John's v. Wahlen*,⁸² the Tenth

⁷⁸ *Id.* at 295. The court's view on this issue was, however, significantly colored by the fact that the ordinance targeted businesses with as little as twenty percent adult material, and thus could potentially ensnare "mainstream" businesses with adult sections. The court stated: "Given the expansive reach of the ordinance in the instant case, we must require at least some substantial evidence of the secondary effects of establishments that sell adult products solely for off-site consumption. Otherwise, even ordinary bookstores and video stores with adult sections could be subjected to regulation that restricts their First Amendment rights without evidence that they cause 'secondary effects.'" *Id.* (citation omitted); see also, *Giggles World Corp. v. Town of Wappinger*, 341 F.Supp.2d 427 (S.D.N.Y. 2004) (questioning, on motion for summary judgment, secondary effects basis for ordinance regulating businesses with only twenty percent adult material). But see *PAO Xiong v. City of Moorhead*, 641 F.Supp.2d 822 (D. Minn. 2009) (approving, on motion for summary judgment, the city's use of studies based on "on-site" adult businesses, coupled with citizen testimonials, to justify an ordinance restricting "off-site" adult businesses which sold more than twenty percent adult goods).

⁷⁹ *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460 (7th Cir. 2009).

⁸⁰ *Id.* at 467 (citing *Encore Videos*, 330 F.3d 288); see also, *New Albany DVD, L.L.C. v. City of New Albany*, 581 F.3d 556, 560 (7th Cir. 2009) (discounting city's proof as to the undesirable secondary effects of plaintiff's off-site business because the studies the city relied upon did not "fairly support[]" a causal connection between the adult business and the secondary effects the ordinance sought to address).

⁸¹ *ILQ Invs., Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994).

⁸² *Doctor John's v. Wahlen*, 542 F.3d 787 (10th Cir. 2008).

Circuit held that the distinction between an on-site and off-site adult business was not relevant when determining whether a local government produced evidence to meet its initial burden. The court did acknowledge that this distinction may become relevant once the burden shifted to the plaintiffs, but the relevance cannot be assumed. Thus, a city may enact regulations on an “off-site” business based on secondary effects that do not focus solely on such businesses. The burden would then shift to the plaintiff to cast doubt on the relevancy of such studies to “off-site businesses.”⁸³

The Ninth Circuit also upheld a restriction on “off-site” businesses after the *Encore Videos* ruling, but its decision in *World Wide Video of Washington, Inc. v. City of Spokane*⁸⁴ focused more on additional evidence upon which the city relied rather than on an outright rejection of the on-site/off-site distinction. In this case, the plaintiff’s expert demonstrated that the studies the city relied on did not deal exclusively with “take-out” (i.e., off-site) businesses and provided his own studies showing that such businesses did not cause negative secondary effects in Spokane. The Tenth Circuit ruled that the plaintiff had not met its burden of “casting doubt” on the city’s rationale or supporting evidence, despite the plaintiff’s expert’s findings, because, in addition to the studies from other cities, Spokane had relied on citizen testimony linking “off-site” businesses with pornographic litter and public lewdness, and this evidence, “standing alone, was sufficient to meet the ‘very little’ evidence standard of *Alameda Books*.”⁸⁵

In contrast, a 2009 Sixth Circuit decision, *Richland Bookmart, Inc. v. Knox County, Tenn.*,⁸⁶ implicitly rejected the *Encore Videos* approach, although it did not explicitly rule that the distinction between on-site and off-site businesses was irrelevant. In this case, the court reviewed an ordinance aimed at off-site businesses with at least thirty-five percent adult material, which led it to focus on a claimed distinction between businesses that carried a large percentage of adult materials and those businesses that barely met the thirty-five percent threshold for regulation. Ruling that the County had met its burden under *Alameda Books*, the court flatly rejected the plaintiffs’ argument that the studies relied upon by the County were irrelevant on the ground that off-site “combination” stores, defined as stores primarily offering “mainstream” merchandise which barely met the thirty-five percent percentage threshold, are substantially different from stores that have a greater

⁸³ *Id.* at 793; see also *Enlightened Reading, Inc. v. Jackson County*, No. 08-0209-CV-W-FJG, 2009 WL 792492 (W.D. Mo. Mar. 24, 2009).

⁸⁴ *World Wide Video of Wash., Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004), as amended on denial of reh’g and reh’g en banc (July 12, 2004).

⁸⁵ *Id.* at 1195; see also *H & A Land Corp. v. City of Kennedale*, 480 F.3d 336, 339–41 (5th Cir. 2007) (upholding the city’s regulation of “off-site” businesses, and distinguishing *Encore Videos*, where the city had relied, in part, on evidence from surveys of real estate appraisers that focused strictly on “off-site” businesses).

⁸⁶ *Richland Bookmart, Inc. v. Knox Cnty.*, 555 F.3d 512 (6th Cir. 2009).

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percentage of adult items.⁸⁷ The court reasoned:

Requiring local governments to produce evidence of secondary effects for all categories created by every articulable distinction is a misapprehension of the Supreme Court's holding that governments may rely on any evidence "reasonably believed to be relevant." While the 35% threshold may be arbitrarily chosen, and it very well may be that this threshold sweeps in some relatively benign establishments, it is not for us to decide that some higher, equally arbitrary percentage would lessen the burden on expression without compromising the efficacy of the Ordinance in controlling secondary effects.⁸⁸

The case stands for the proposition that local governments can reasonably rely on evidence of secondary effects associated with a variety of adult businesses and are not required to obtain evidence that any given category of adult business – defined by a plaintiff's "articulable distinction" of its business category from whatever categories were included in the city's studies – is associated with negative secondary effects.

B. The Urban/Rural Distinction

Another type of recent challenge, conceptually similar to the "on-site/off-site" distinction, focuses on the claim that the studies relied on by a local government are not germane to local conditions, most particularly, the rural nature of a jurisdiction. This claim was accepted by the Tenth Circuit in *Abilene Retail #30, Inc. v. Board of Commissioners of Dickinson County, Kansas*.⁸⁹ The court, finding that none of the studies of secondary effects relied upon by the Board examined businesses in an entirely rural area, concluded that the Board could not have "reasonably believed" that a single business in a rural area was associated with secondary effects and ruled that the district court had improperly granted an award of summary judgment to the County. The court stated:

All of the studies relied upon by the Board examine the secondary effects of sexually oriented businesses located in urban environments; none examine businesses situated in an entirely rural area. To hold that legislators may reasonably rely on those studies to regulate a single adult bookstore, located on a highway pullout far from any business or residential area within the County would be to

⁸⁷ See *id.* at 526.

⁸⁸ *Id.* (citations omitted).

⁸⁹ *Abilene Retail #30, Inc. v. Bd. of Comm'rs*, 492 F.3d 1164 (10th Cir. 2007), *cert. denied*, 552 U.S. 1296 (2008).

abdicate our “independent judgment” entirely. Such a holding would require complete deference to a local government’s reliance on prepackaged secondary effects studies from other jurisdictions to regulate any single sexually oriented business, of any type, located in any setting.⁹⁰

The panel was split, however, on precisely where in the *Alameda Books* analysis the Board was required to look for evidence of secondary effects other than the “pre-packaged” studies it had relied on. The majority of the panel argued that the Board’s reliance on such studies failed to meet even the initial burden in *Alameda Books*.⁹¹ In a concurring opinion, one member of the panel argued that the Board could have reasonably believed that such studies supported the notion that even a single business in a rural location could be associated with negative secondary effects, but that since the plaintiff adult business had presented evidence to refute that belief, the burden had shifted to the Board to find further evidence linking the single rural business with negative secondary effects.⁹²

V. THEORETICAL AND CASE STUDY SUPPORT FOR THE ASSOCIATION OF ADULT BUSINESSES WITH SECONDARY EFFECTS

Taken at face value, many of the claims made by plaintiffs and their experts in challenges to adult entertainment ordinances seem attractive, or even compelling, from a common sense perspective. The problem is that these claims either ignore theoretically relevant characteristics of adult businesses or are methodologically flawed. In particular, such claims ignore the routine activity theory of crime associated with adult businesses or use inappropriate data sources and methods to demonstrate that adult businesses are not associated with secondary effects or both.

A. *The Prevailing Criminological Theory of Secondary Effects*⁹³

The prevailing criminological theory of secondary effects is derived as a special case from the routine activity theory of crime.⁹⁴ Applied to secondary effects, the theory can be written as:

⁹⁰ *Id.* at 1175. *But see* *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2009) (ruling that city need not show that an individual adult business actually produces negative secondary effects in order to enforce ordinance because the absence of any evidence of adverse secondary effects associated with a given business today is no guarantee that such effects will not be present tomorrow.); *cert. denied*, 130 S.Ct. 507 (2009).

⁹¹ *Id.* at 1175–76.

⁹² *Id.* at 1181–85 (Ebel, J., concurring).

⁹³ This section is adapted from Richard McCleary, *Rural Hotspots: The Case of Adult Businesses*, 19 CRIM. JUST. POL’Y REV. 153 (2008).

⁹⁴ See generally Lawrence E. Cohen & Marcus Felson, *Social Change and Crime Rate Trends: A Routine Activity Approach*, 44 AM. SOC. REV. 588 (1979); Marcus Felson & Lawrence E. Cohen, *Human Ecology and Crime: A Routine Activities Approach*, 8 HUMAN ECOLOGY 389 (1980).

$$\text{Ambient Crime Risk} = \frac{N \text{ of Targets} \times \text{Expected Value}}{\text{Police Presence}} \times N \text{ of Predators}$$

In simple terms, the routine activities at an adult business site attract predators, generating a “hot spot of predatory crime.”⁹⁵ The relative attractiveness of a site is determined by the number of *targets* at the site, their *expected value*, and the level of *police presence* at the site. Sites with a relatively large number of high-value targets and a relatively low police presence attract a relatively large number of predators.

The hotspot theory assumes a pool of rational predators who move freely from site to site, choosing sites with high-value targets and low police presence. Because these predators lack legitimate means of livelihood and devote substantial time to illegitimate activities, they are “professional thieves” by Edwin Sutherland’s classic definition.⁹⁶ Otherwise, they are a heterogeneous group. Some are vice purveyors who dabble in crime; others are criminals who use the promise of vice to lure and lull their victims. Despite their heterogeneity, these predators share a rational decision-making calculus that draws them to adult business sites.

The crime-vice connection has been a popular plot device for at least 250 years. John Gay’s *The Beggar’s Opera*,⁹⁷ written in 1728, for example, centers on the relationship between MacHeath, a predatory criminal, and the vice ring composed of Peachum, Lucy, and Jenny. This popular view is reinforced by the empirical literature on criminal lifestyles and thought processes. The earliest and best-known study, Clifford Shaw’s *The Jack-Roller*, written in 1930, describes “Stanley,” a delinquent who lives with a prostitute and preys on her clients.⁹⁸

Criminological thinking concerning the connection between crime and vice has changed little in the eight decades since Shaw’s *Jack-Roller*. To document the rational choices of predatory criminals,

⁹⁵ Lawrence W. Sherman et. al, *Hot Spots of Predatory Crime: Routine Activities and the Criminology of Place*, 27 CRIMINOLOGY 27 (1989); see also Paul J. Brantingham & Patricia L. Brantingham, *Notes on the Geometry of Crime*, in ENVIRONMENTAL CRIMINOLOGY 27–54 (Paul J. Brantingham & Patricia L. Brantingham eds., 1981); Patricia L. Brantingham & Paul J. Brantingham, *Nodes, Paths and Edges: Considerations on the Complexity of Crime and the Physical Environment*, 13 J. ENVTL. PSYCHOL. 3 (1993).

⁹⁶ See EDWIN H. SUTHERLAND, *THE PROFESSIONAL THIEF* 1 (reprint 1989).

⁹⁷ JOHN GAY, *THE BEGGAR’S OPERA* (Bryan Loughrey & T.O. Treadwell eds., Penguin Books 1986) (1728).

⁹⁸ CLIFFORD R. SHAW, *THE JACK-ROLLER: A DELINQUENT BOY’S OWN STORY* (1966); see also JON SNODGRASS, *THE JACK-ROLLER AT SEVENTY* (Lexington Books 1982) (1930).

Richard Wright and Scott Decker interviewed eighty-six active armed robbers.⁹⁹ Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes: "From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance."¹⁰⁰ Moreover, the rational calculus described by these prostitute-robbers echoes the descriptions of other predators.¹⁰¹

Like tourist attractions¹⁰² and sporting events,¹⁰³ adult business sites attract targets from wide catchment areas. Compared to the targets attracted to these other hotspots, however, adult business patrons are disproportionately male, open to vice overtures, and carry cash. When victimized, moreover, adult business patrons are reluctant to involve the police. They are "perfect" victims, from the rational predator's perspective.

Given a choice among equally lucrative sites, of course, rational predators prefer sites with low levels of police presence. In the original statement of the routine activity theory, Lawrence Cohen and Marcus Felson included police in the pool of "capable guardians," along with the targets themselves and any potential witnesses.¹⁰⁴ The stigma associated with adult business sites limits the effectiveness of non-police guardians, however. With minor exceptions, the level of guardianship at adult business sites is proportional to the level of physical (e.g., motor or foot patrols) or virtual (e.g., security cameras) police presence.

Of course, the relative effectiveness of a fixed level of police presence can be affected by broadly defined environmental factors. Because conventional police patrolling is less effective in darkness, ambient crime risk rises after dark.¹⁰⁵ Architectural structures that obscure vision can have a similar effect but outdoor lighting can be used

⁹⁹ RICHARD T. WRIGHT & SCOTT H. DECKER, *ARMED ROBBERS IN ACTION: STICKUPS AND STREET CULTURE* (1997).

¹⁰⁰ *Id.* at 69.

¹⁰¹ See, e.g., TREVOR BENNETT & RICHARD WRIGHT, *BURGULARS ON BURGLARY: PREVENTION AND THE OFFENDER* (1984); MARK S. FLEISHER, *BEGGARS & THIEVES: LIVES OF URBAN STREET CRIMINALS* (1995); JACK KATZ, *SEDUCTIONS OF CRIME: MORAL AND SENSUAL ATTRACTIONS IN DOING EVIL* (1988); NEAL SHOVER, *GREAT PRETENDERS: PURSUITS AND CAREERS OF PERSISTENT THIEVES* (1996); Floyd Feeney, *Robbers as Decision-Makers*, in *THE REASONING CRIMINAL: RATIONAL CHOICE PERSPECTIVES ON OFFENDING* 53-71 (Derek B. Cornish & Ronald V. Clarke eds., 1986); Jack Katz, *The Motivation of the Persistent Robber*, in *CRIME AND JUSTICE: A REVIEW OF RESEARCH* (Michael Tonry ed., 1991).

¹⁰² See, e.g., Terry A. Danner, *Violent Times: A Case Study of the Ybor City Historic District*, 14 *Crim. Just. Pol'y Rev.* 3 (2003); Frédéric Dimanche & Allena Lepetic, *New Orleans Tourism and Crime: A Case Study*, 38 *J. TRAVEL RES.* 19 (1999).

¹⁰³ See, e.g., Jonathan J. Corcoran et al., *Predicting the Geo-Temporal Variations of Crime and Disorder*, 9 *INT'L J. FORECASTING* 623 (2003); Jeffrey Westcott, *Super Bowl XXXIX: The Successful Response of the FBI and Its Partners*, FBI L. ENFORCEMENT BULL., Jan. 2006, at 1.

¹⁰⁴ See Cohen & Felson, *supra* note 94; Felson & Cohen, *supra* note 94.

¹⁰⁵ Timothy Coupe & Laurence Blake, *Daylight and Darkness Targeting Strategies and the Risks of Being Seen at Residential Burglaries*, 44 *CRIMINOLOGY* 431, 437 (2006).

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to mitigate the risk.¹⁰⁶ Because rural areas have fewer police resources,¹⁰⁷ rational predators may view rural adult business sites as more attractive.¹⁰⁸

B. *The Role of Adult Business Types in Criminological Theory*

Secondary effects are realized in terms of “victimless” vice crimes (prostitution, drugs, etc.), predatory personal crimes (assault, robbery, etc.), predatory property crimes (theft, auto theft, etc.), “opportunistic” nuisance crimes (vandalism, trespass, etc.), and disruption of order (public drunkenness, disturbing the peace, etc.). Nevertheless, within these broad etiological categories, criminological theory allows for quantitative and qualitative differences among distinct adult business models.

These differences accrue through either of two mechanisms. First, the distinguishing characteristic of an adult business model can create idiosyncratic opportunity structures for a particular type of crime. Second, the distinguishing characteristic can reduce the effectiveness of common policing strategies. Compared to the complementary model, for example, adult businesses that serve alcohol present opportunities for non-instrumental personal crimes (assault, disorderly conduct, etc.). Proactive policing strategies are also less effective for adult businesses that serve alcohol.

The private viewing booths that distinguish on-site from off-site adult businesses lead to differences through both mechanisms. First, the booths generate idiosyncratic opportunities for “victimless” vice crimes. Second, the booths pose a special problem for policing. Other than victimless vice crimes, however, there are no differences between the on-site and off-site adult business models. To the extent that both models attract high-value targets from wide catchment areas, both are expected to attract predators to their neighborhoods, thereby generating ambient victimization risk. As will be seen in the case study discussion below, the data corroborate this theoretical expectation.

C. *The Role of Adult Business Location in Criminological Theory*

The Tenth Circuit’s *Abilene Retail*¹⁰⁹ decision effectively accepted the proposition that studies of secondary effects associated with adult businesses in urban areas could not be relied upon to support the

¹⁰⁶ DAVID P. FARRINGTON & BRANDON C. WELSH, EFFECTS OF IMPROVED STREET LIGHTING ON CRIME: A SYSTEMATIC REVIEW 2-3 (2002).

¹⁰⁷ See, e.g., QUINT C. THURMAN & EDMUND F. MCGARRELL, COMMUNITY POLICING IN A RURAL SETTING (1997); cf. RALPH A. WEISHEIT ET AL., CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA 154 (3d ed. 2006) (claiming rural prosecutors must work with limited resources).

¹⁰⁸ McCleary, *supra* note 93, at 157.

¹⁰⁹ *Abilene Retail #30, Inc. v. Bd. of Comm’rs*, 492 F.3d 1164 (10th Cir. 2007), *cert. denied*, 552 U.S. 1296 (2008).

regulation of adult businesses in a rural area. Because most criminological research has been conducted in non-rural areas, criminological theories do not necessarily generalize to rural crime. Because relatively little crime occurs in rural areas, of course, few criminologists are interested in urban-rural questions. Thus, the potential cost of the Tenth Circuit's decision was staggering. At minimum, local governments would be forced to undertake studies of adult businesses located in more rural areas, rather than relying on existing studies from less rural jurisdictions. In the absence of such studies, adult businesses could have an incentive to relocate to rural areas since local governments could not demonstrate that they had a factual basis for enacting regulatory ordinances. In either case, the ability of local governments to mitigate public safety hazards associated with adult businesses would be compromised.

Of course, if criminological theories can be generalized to rural areas, then the *Abilene Retail* decision may be called into question. Although the generalization may be difficult for some criminological theories, the relevant theory of "hotspots," discussed previously in the context of distinguishing between on-site and off-site adult businesses as regards their association with secondary effects,¹¹⁰ applies to any accessible area, rural or urban, and can explain why an adult business that opens in a sparsely populated rural community could be associated with an increase in ambient crime risk, in effect making a hotspot of the community.

Writing a decade after the advent of Uniform Crime Reports in 1930,¹¹¹ George Vold confirmed that a city's crime rate was proportional to its population.¹¹² The observed relationship had an obvious explanation: "[B]ehavior in the country in all probability comes under much greater informal control of the opinions and disapprovals of the neighbors than is the case in the relative anonymity of the city"¹¹³ The negative correlation confirmed not only grand sociological theory,¹¹⁴ but also the related criminological theory of social disorganization.

As proposed by Shaw and McKay¹¹⁵ in 1942, the theory of social disorganization predicts that neighborhoods with low residential stability will have high rates of delinquency and vice versa. To the extent that a small town has the characteristics of a stable neighborhood,

¹¹⁰ See *supra* notes 89–104 and accompanying text.

¹¹¹ For information about Uniform Crime Reports, see *supra* note 72.

¹¹² George B. Vold, *Crime in City and Country Areas*, ANNALS AM. ACAD. POL. SOC. SCI., Sept. 1941, at 38.

¹¹³ *Id.* at 38.

¹¹⁴ See, e.g., FERDINAND TÖNNIES, *COMMUNITY AND SOCIETY* (Dover 2002) (reprint of 1887 title "Gemeinschaft und Gesellschaft"); EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* (W.D. Halls trans., 1984) (1893).

¹¹⁵ CLIFFORD R. SHAW & HENRY D. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (1942).

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social disorganization theory would predict the low crime rates observed by Vold.¹¹⁶ When a small town is disrupted by an influx of newcomers, however, the same theory predicts an abrupt increase in the town's crime rate.

This increase in crime can occur in at least two ways. First, the newcomers may victimize the town's residents. Indeed, fear of victimization by newcomers is implicated in the rapid spread of gated communities.¹¹⁷ Second, the influx of newcomers may disrupt the town's routine activities in a way that attracts predatory criminals, creating a local "hot spot of predatory crime."¹¹⁸

The outline we previously presented of criminological theory regarding the creation of a local "hot spot of predatory crime" applies equally in the rural setting, with one significant difference. With respect to the quantity and quality (or value) of the targets at a site, urban and rural adult business sites are equally attractive to the rational offender; however, police presence is generally lower at rural sites. Some part of this urban-rural disparity in policing is due to obvious factors. Rural police agencies protect larger areas with fewer personnel, for example, and drive longer distances in response to calls. Though less obvious, "fuzzier" jurisdictional lines and more complex demands for service make policing more difficult and less effective in rural areas.¹¹⁹ Because police presence is relatively lower at rural sites, controlling for the quantity and quality of targets, rural sites are more attractive to the rational offender.

D. Case Studies Confirming the Prevailing Criminological Theory of Secondary Effects

The authors have previously published two case studies that confirm the prevailing criminological theory of secondary effects as applied, respectively, to an adult off-site business and an adult business located in a rural area.¹²⁰ The case study involving an adult off-site business was conducted in Sioux City, Iowa. The case study involving an adult business located in a rural area was conducted in Montrose, Illinois. Each case study is briefly described below.

1. Off-Site Business Case Study

Sioux City, Iowa is located on the Missouri River, which forms the

¹¹⁶ See McCleary, *supra* note 93.

¹¹⁷ SARAH D. BLANDY ET AL., GATED COMMUNITIES: A SYSTEMATIC REVIEW OF THE RESEARCH EVIDENCE (2003), available at http://york.academia.edu/RowlandAtkinson/Papers/272572/Gated_Communities_A_Systematic_Review_of_the_Research_Evidence.

¹¹⁸ Sherman et. al., *supra* note 95.

¹¹⁹ See *supra* note 107.

¹²⁰ See Richard McCleary & Alan C. Weinstein, *Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence*, 31 LAW POL. 217 (2009); McCleary, *supra* note 93.

border between Iowa and Nebraska. In 2010 it had a population of 82,684.¹²¹ Adult businesses are nothing new to Sioux City, Iowa. Two adult businesses had operated without incident in the city's older downtown area for decades. Although both businesses sold sexually explicit DVDs for off-site use, most of their revenue came from coin-operated viewing booths. In terms of "look and feel," the two businesses were indistinguishable from adult businesses in larger cities.

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

[T]he first impression of the store is a far cry from the first image that most people would likely have of an "adult book store" or "sex shop." There is nothing seedy about the neighborhood, store building, or store front. In fact, from a quick drive-by, one would likely assume that the business was a rather upscale retail store for women's clothing and accessories. There are no "adult" signs or banners proclaiming "peep shows," "live entertainment booths," "XXX movies," "live models," "adult massage," or any of the other tasteless come-ons all too familiar from adult entertainment stores that exist in virtually every American city of any size and which one may find scattered along interstates and highways even in rural America.¹²²

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

Regardless of its look and feel, Dr. John's was located in a prohibited zone. When Sioux City attempted to enforce its zoning code, Dr. John's sued, arguing that off-site adult businesses lacked the typical crime-related secondary effects associated with adult businesses. To counter this argument, Sioux City produced police reports of incidents occurring within 500 feet of Dr. John's during the four years between January 1, 2002, and December 31, 2005. This time period comprised 793 days before and 668 days after Dr. John's opened. For purposes of quasi-experimental control, reports of incidents occurring within 500 feet of a nearby motel were also retrieved.

The data showed that in the area within 500 feet of Dr. John's, the

¹²¹ Sioux City, Iowa, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/19/1973335.html> (last revised Oct. 18, 2011, 3:26 PM).

¹²² *Doctor John's, Inc. v. City of Sioux City*, 389 F.Supp.2d 1096, 1103 (N.D. Iowa 2005) (quoting from court's ruling on plaintiff's motion for preliminary injunction).

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annual crime rate rose from 7.8 to 22.4 incidents per year, an increase of approximately 190 percent. Crime in the 500 foot area surrounding the control area – the motel – rose as well but the increase was more modest: an increase from 20.3 to 25.1 incidents per year amounts to a twenty-five percent increase. Based on a crude comparison of these rates, Dr. John's appears to pose an ambient victimization risk. Of course, this assumes that other plausible alternative hypotheses can be ruled out. As more fully discussed in our "Off-Site" article,¹²³ statistical analysis demonstrated that the various plausible alternative hypotheses – for example, the "null hypothesis" that the before and after effect was simply due to chance – were unlikely to have produced the observed effect.

Due to the small number of incidents that occurred in the areas surrounding Dr. John's and the control site during 2002-2005, the statistical significance of the secondary effects shown in the data could be arguable. Critics might characterize the evidence as interesting but not compelling. That is the nature of case study evidence. By the *Renton* criteria, on the other hand, the data constitute a sufficient factual predicate for the regulation of off-site adult businesses. In light of the strong underlying theory described earlier, which predicts such results, few criminologists would find the case study results surprising or controversial.

2. Rural Case Study: Montrose, Illinois

An unincorporated village of fewer than 250, Montrose, Illinois is located on I-70 midway between St. Louis, Missouri, and Indianapolis, Indiana.¹²⁴ Interstate 70 separates Montrose's residential dwellings from its businesses: a convenience store-gas station, a motel, and for a short period, a tavern. Other than gas and lodging, cross-country travelers had no reason to exit I-70 at Montrose prior to February 2003. In that month, the Lion's Den, an adult business, opened on a service road within 750 feet of the I-70 off-ramp. A large, elevated sign let I-70 travelers know that X-rated videos, books, and novelties could be purchased "24/7." The store was successful by all accounts.

The residents of Montrose did not welcome the new business. Unlike the village's other businesses, the Lion's Den was located on the residential side of I-70. Complaining that the store disrupted their idyllic life-style, villagers picketed the site on several occasions. Traffic was a chronic complaint. The narrow gravel access road connecting the site to I-70 could not support the weight of big-rig trucks; it soon fell into disrepair. The Lion's Den offered to build a new, larger access road from I-70 to its site. But fearing an even larger

¹²³ McCleary & Weinstein, *supra* note 120.

¹²⁴ See Montrose (Illinois, USA), CITY POPULATION, <http://www.citypopulation.de/php/usa-census-illinois.php?cityid=1750283> (last updated Apr. 3, 2011).

volume of traffic, the villagers declined the offer.

Like many Illinois villages, Montrose had no adult business ordinances. However, the Lion's Den was located within 1,000 feet of a public park in violation of an Illinois statute.¹²⁵ When the State moved to enforce its statute, the Lion's Den sued, arguing that "off-site" adult businesses could not generate the public safety hazards associated with adult cabarets, video arcades, and other on-site adult entertainment businesses. The trial in *Illinois v. Lion's Den* lasted four days. The court upheld the statute and, in July 2005, the Montrose Lion's Den closed its doors.¹²⁶

At the trial, the State presented evidence of the Lion's Den's adverse impact on the surrounding area: sexually explicit litter and decreased use of the nearby park. While neither party presented local crime data, our examination of the available data bearing on the crime-related secondary effects of the adult business in Montrose shows that during the 1,642-day period beginning January 1, 2002, the Effingham County Sheriff's Office recorded eighty-three crime incidents in the Village. The most common incidents involved the theft or destruction of property. Incidents of disorder and indecency, traffic-related incidents, and alcohol-drug offenses were nearly as common. Incidents involving danger or harm to persons (robbery, assault, etc.) were rare.

When this 1,642 day period is separated into an 881-day segment in which the Lion's Den was open and a 761-day segment in which it was closed, crime rates are 22.39 and 13.92 total incidents per year for the "Open" and "Closed" segments respectively. From these raw rates, it appears that crime in Montrose rose when the Lion's Den opened and fell when the Lion's Den closed. As with the previous case-study, this assumes that plausible alternative hypotheses for the difference can be ruled out, which they were for this case study as well.¹²⁷

In short, following the opening of an adult business on an interstate highway off-ramp into a sparsely populated rural village, total crime in the village rose by approximately sixty percent. Two years later, when the business closed, total crime in the village dropped by approximately sixty percent. In light of the strong before and after quasi-experimental design, the only plausible explanation for this effect is that, like adult businesses in urban and suburban settings, adult businesses in sparsely populated rural areas generate ambient crime-related secondary effects.

This finding was not unexpected. Although criminological theories are based largely on data collected in urban and suburban areas, the routine activity theory of hotspots¹²⁸ generalizes to rural settings.

¹²⁵ 65 ILL. COMP. STAT. ANN. 5/11-5-1.5 (West 2009).

¹²⁶ *Illinois ex rel. Deters v. Lion's Den, Inc.*, No. 2004-CH-26 (June 10, 2005), available at http://www.adultbusinesslaw.com/downloads/27_Modified_P1_Order.pdf, aff'd 936 N.E.2d 1240 (Ill. App. Ct 2007).

¹²⁷ McCleary, *supra* note 93, at 158-60.

¹²⁸ See Sherman, *supra* note 95.

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Put simply, adult businesses attract patrons from wide catchment areas. Because these patrons are disproportionately male, open to vice overtures, and reluctant to report victimizations, their presence attracts offenders. The spatio-temporal conjunction of targets and offenders generates ambient victimization risk – a hotspot of predatory crime. This theoretical mechanism operates identically in rural, suburban, and urban areas. Moreover, because rural areas ordinarily have lower levels of visible police presence, rural hotspots may be riskier than their suburban and urban counterparts.¹²⁹

In contrast, “common sense” secondary effect theories rely on the premise that an “average” patron spends less time at an off-site adult business and, hence, faces a relatively smaller victimization risk at the business. This implies that off-site adult businesses have relatively smaller secondary effects. If the secondary effects of off-site adult businesses are no larger than the effects of, say, a convenience store, there may be no legitimate basis for regulating off-site adult businesses *qua* adult businesses. Plaintiffs have made this theoretical argument, of course, and in the absence of either theory or evidence to the contrary, courts have accepted it.¹³⁰

The argument and underlying theory assume that the “average” patron drives up to the store, runs in, makes a purchase, runs out, and drives off. Although this “average” behavior may be consistent with common sense, it is inconsistent with the data: an ethnographic study of an off-site adult business reports that patrons spend significant periods of time in the immediate vicinity of the site.¹³¹ Some wait outside until the business is empty. Others “case” the business on multiple occasions before deciding to enter. Some patrons park their cars a block or more away and walk to the store. These “average” behaviors attract criminal predators to the site, creating the ambient public safety hazard predicted by the criminological theory of secondary effects.

CONCLUSION

The ongoing efforts by the adult entertainment industry to discredit the secondary effects rationale local governments rely upon as the justification for their regulation of adult businesses have enjoyed only limited success. The fundamental reason for this is that, contrary to the industry’s claims, methodologically appropriate secondary effects studies confirm criminological theory’s prediction that adult businesses

¹²⁹ For a discussion of some of the regulatory issues that are posed by adult businesses locating in rural communities, see Matthew L. McGinnis, Note, *Sex, but Not the City: Adult-Entertainment Zoning, the First Amendment, and Residential and Rural Municipalities*, 46 B.C. L. REV. 625 (2005).

¹³⁰ See, e.g., *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288, 295 (5th Cir. 2003), *opinion clarified*, 352 F.3d 938 (5th Cir. 2003), *cert. denied*, 540 U.S. 982 (2003).

¹³¹ Kristen Hefley, *Stigma Management of Male and Female Customers to a Non-Urban Adult Novelty Store*, 28 DEVIANT BEHAV. 79 (2007).

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are associated with heightened incidences of crime regardless of jurisdiction, business model or location. Further, the studies that have been produced on behalf of the adult industry are frequently flawed either in their methods or in the analyses of their findings.

Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses

Crime & Delinquency

XX(X) 1-18

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DOI: 10.1177/001128712465933

<http://cad.sagepub.com>



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Abstract

Scholarly debate about whether the presence of sexually oriented businesses in a community is related to increased levels of crime has been present for several decades. This argument about the “secondary effects” of such businesses shows support for the link to increased crime as well as evidence of a lack of relationship. This article addresses this debate, presenting findings from three spatial analyses using varying-sized buffer zones of rates of violent, property, and public order offenses in the vicinity of sexually oriented businesses in Louisville, Kentucky. Results show that sexually oriented businesses are associated with much higher rates of all types of offenses in the immediate vicinity of the business and continue to have significant effects on crime levels as one moves further from the business. At the site of the sexually oriented business, community, social and economic characteristics are outweighed by the effect of the business; in farther-reaching buffer zones, community characteristics become more important, although the effects of the business remain significant.

Keywords

spatial analysis, sexually oriented businesses, crime rates, secondary effects

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Central to controlling crime in communities are understandings of not only who commits and is victimized by crime but also where crime occurs; social and structural conditions of communities, which may be associated with crime; and how patterns of land use may facilitate or inhibit criminal activity. If we can better understand community conditions, including what structures are present in a community, locations and movements of people in physical environments, temporal aspects of activities and movements of people, and the locations and uses of physical aspects of communities, it may be possible to design environments to prevent criminal activities or facilitate the detection and effective responses to crime.

Among the issues that criminologists focus attention on is whether and how instances of social deviance may or may not be related, and how non-criminal deviance may or may not be related to the presence of the more serious forms of behavior that are criminal. As a part of this, there are concerns in many communities about whether the presence (especially a highly visible, public presence) of sexual deviance may be related to instances of sexual offending. Relatedly, when individuals are aware of highly visible sexual aspects in their communities, especially locations and entities that are likely to be associated with deviance, they are also likely to have heightened concerns about negative consequences arising from the presence of such entities. One type of community presence that is likely to raise awareness and concerns is the sexually oriented business (SOB).

The presence of SOBs in a community spawns concerns and debates regarding whether such entities are socially harmful. Primary concerns about SOBs center on the issue of crime, as SOBs are presumed to be patronized by socially marginal, and perhaps criminal, individuals. Examinations of whether and how the presence of SOBs in a community is related to negative consequences have been conducted for several decades, with results both supporting and refuting the association of SOBs with crime.

Debate Over Criminogenic Effects of SOBs

Public policy concern regarding whether SOBs are associated with increased rates of crime is referred to as a concern over “secondary effects.” One perspective is that the presence of a SOB is related to, and very likely to be a facilitator or attractor of, crime and deviance. On the other side of the debate are those who argue that although there may be apparent face validity to the argument that SOBs attract or facilitate crime and deviance, there is little or no evidence to support such an argument.

SOBs Promote Crime and Deviance

There is a small body of academic literature that supports the contention that SOBs are associated with numerous negative, secondary effects on communities. In addition, studies completed by community planning agencies (done for purposes of assessing the need for and impact of zoning and legislative initiatives) regarding the effects of SOBs also suggest that the presence of such are associated with crime, deviance, and negative economic consequences. In summarizing the state of knowledge concerning secondary effects of SOBs, the American Center for Law and Justice in 1996 (cited in National Law Center for Children and Families, 2005) concluded that “SOBs support detrimental activities (i.e., personal and property crimes, prostitution, drugs, etc.) within the vicinity that are incompatible with activities occurring within residential area” (National Law Center for Children and Families, 2005, p. 1).

Contemporary examinations of whether SOBs are associated with negative secondary effects on communities—including crime in residential and commercial neighborhoods, reductions in business traffic for other commercial establishments, dampening effects on residential property values, and increased presence of criminal and noncriminal forms of deviance—consistently show numerous secondary effects associated with the presence of a SOB. These results have most frequently been found in numerous small and unpublished studies completed in communities of all sizes (National Law Center for Children and Families, 2005).

In the scholarly community, there are also significant negative secondary effects—especially criminal activities—shown to be associated with the presence of SOBs. McCleary (2007) analyzed crime reports in the vicinity of 20 SOBs in Los Angeles and concluded that “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” (p. 13). In most instances the increase in criminal activities decreases or disappears once beyond 1,500 feet from an SOB (National Law Center for Children and Families, 2005).

Secondary effects are not limited to urban SOBs (National Law Center for Children and Families, 2005). McCleary (2008) demonstrated that when an SOB opens off of a rural interstate exit ramp, crime in the area increased 60%. And, when the SOB closed 2 years later, the crime rate decreased 60%, essentially returning to the pre-SOB-presence level.

Other Negative, Secondary Effects Associated With SOBs

In addition to increased crime rates, so too are SOBs associated with negative economic consequences for communities. One consequence of the presence of an SOB in a community is a decrease in both commercial and residential property values (Cooper & Kelly, 2008; Department of Planning and Development, 2006; Duncan Associates, 2000). SOBs are also associated with high rates of turnover among commercial establishments in close proximity to the SOB (National Law Center for Children and Families, 2005). The rapid turnover of businesses also may contribute to the increased negative secondary effect of increased crime by in turn contributing to social disorganization in the immediate neighborhood. Such a situation may be exacerbated when coupled with the findings of Ford and Beveridge (2004) who show that crime—specifically illicit drug sales—is increased by the presence of “undesirable” businesses (including SOBs) and even more strongly influenced by a lack of “desirable” businesses. Such a situation is an indication of an economically disadvantaged and socially disorganized community.¹

SOBs Do Not Promote Crime and Deviance

Not all research supports the contention that SOBs are associated with negative secondary effects. Some researchers have concluded that the presence of adult businesses is not associated with increased rates of crime. Linz, Land, Williams, Paul, and Ezell (2004) examined the rate of all criminal offenses reported within 500- and 1,000-foot radii of erotic dance clubs in Charlotte, North Carolina, for 1998-2000. In examining 20 SOB locations and comparing each of these with one of three control locations, they report that there are actually fewer criminal incidents reported in the immediate vicinity of the SOBs. Linz et al. (2004) also reported that the greatest difference in reported level of crimes is for erotic dance clubs located in high-crime communities. Similarly, Linz and Paul (2002) studied police calls for service over a 4-year period within a 1,000-foot radius of eight strip clubs (serving alcohol) and demographically matched control areas in Fort Wayne, Indiana, and show few differences in calls for service between strip clubs and control areas. More recently, Linz, Paul, and Yao (2006) examined calls for police service to 1,000- and 2,000-foot radii around 19 SOBs offering peepshows in San Diego. Their results suggest no “reliable evidence of differences in crime levels” (Linz et al., 2006, p. 182). However, McCleary and Meeker (2006) reexamined the data and point out that for the 19 peepshow locations and corresponding control areas, there were 15.7% more calls for police

service in the 1,000-foot radius of the SOBs. As they argue, “any urban police department would judge a 15.7% difference in CFSs to be *substantively* significant, Linz et al. argued that the difference was not *statistically* significant” (McCleary & Meeker, 2006, p. 194, italics in original).

SOBs, Routine Activities, and Facilitation of Crime

SOBs and the patterns of patron traffic in them reflect the characteristics of routine activity theory (RAT), which serves to promote the opportunities for criminal activities at such locations. At the core of RAT is the idea that when motivated offenders, suitable targets, and a lack of effective guardianship converge in time and space, criminal activities are likely to occur (Cohen & Felson, 1979). SOBs provide a setting where these three characteristics are present.

Perhaps the most obvious and strongest presence of the three RAT concepts at SOBs is that of suitable targets. Patrons of SOBs are typically men, alone and often under the influence of alcohol and/or drugs (DeMichele & Tewksbury, 2004; Douglas & Tewksbury, 2008; Erickson & Tewksbury, 2000; Tewksbury, 1990). Consequently, the typical patrons of SOBs can easily be seen as highly suitable for victimization. These are not individuals who are scanning their environment or attending to copresent others; hence, they are focused on one set of activities and largely unmindful and unaware to other actions in their midst.

In addition, patrons of SOBs typically desire to remain anonymous and to not have their presence or patronage recognized or acknowledged (Donnelly, 1981; Ryder, 2004; Tewksbury, 1990). In his discussion of the character of adult entertainment districts, Ryder (2004) emphasized that “Anonymity is an important feature of many districts. The unsavory reputation deters the casual visitor or those not interested, ensuring that customers will remain relatively unobserved” (p. 1665). The desire for anonymity is seen in the fact that fully 75% of male patrons of adult bookstores enter such establishments alone (McCleary & Tewksbury, 2010).

In sum, the suitability of SOB patrons as potential crime victims is due to the fact that SOB patrons “are disproportionately male, open to vice overtures, and carry cash. Most important of all, when victimized, they are reluctant to involve the police. From the offender’s perspective, they are ‘perfect’ victims” (McCleary, 2008, p. 156).

Crime can be expected at and in the vicinity of SOBs due to the presence of motivated offenders as well. Motivated offenders may be drawn to the

SOB because of the presence of suitable victims, and they too are often under the influence of alcohol and/or drugs as also are SOB employees and other patrons (who could serve as capable guardians; DeMichele & Tewksbury, 2004; Douglas & Tewksbury, 2008; Erickson & Tewksbury, 2000; Tewksbury, 1990).

Guardianship is also lacking at SOBs as such rarely have on-site security. Even when bouncers are present and responsible for social control and rule enforcement, there are strong disincentives for aggressively patrolling and intervening in activities that may be leading to criminal events—Strict control is bad for business (Forsyth & Deshotels, 1997). In addition, SOB patrons typically arrive and leave alone (Donnelly, 1981; Douglas & Tewksbury, 2008; Erickson & Tewksbury, 2000), leaving them without guardians in their presence. Both property and violent offenses may be facilitated as well (via the absence of capable guardians) because some customers park away from the business to avoid having their vehicle identified causing them to have to walk alone to their vehicles late at night (Donnelly, 1981).

The Present Study

The importance of assessing the impact of the presence of SOBs on rates of crime in a community using sophisticated methodology has been well established. Governments are permitted to regulate SOBs so long as any regulations are focused on attempting to control any adverse secondary effects of such businesses (Andrew, 2002). To defend any regulatory attempt, a government must produce evidence to show that the businesses are associated with secondary effects such as ambient noise, litter, and, in particular, crime. As the secondary effects debate has serious implications for legal attempts to regulate and remove SOBs from communities, there is a clearly established need for sound research on the topic. In fact, in the 2002 Supreme Court ruling in *City of Los Angeles v. Alameda Books, Inc., et al.* Justice Souter (in a dissenting opinion) “asked the city to demonstrate, not merely by appeal to common sense but also with empirical data, that adult businesses are associated with crime and that its ordinance will successfully lower crime” (Linz et al., 2004, p. 73).

The present study seeks to contribute to this call, and to examine whether and to what degree the presence of SOBs are associated with increased rates of crime. Although a number of local government planning agencies have argued that SOBs do contribute to an increase in crime (as well as other negative effects), there is a limited body of scholarly literature on this topic. In addition, the present study adds to the existing literature by advancing the

study of secondary effects through a series of three different analysis techniques, each one more statistically conservative and precise than the prior leading to more robust and defensible results concerning the impact of SOBs on their surroundings.

Method

Analysis Strategy

This study uses three different analysis techniques in its approach to answering the question; do SOBs increase crime in their surrounding communities? In the first set of analyses, we examine the density of crime found in 500- and 1,000-foot buffers (circles) surrounding the 30 SOBs in the study area of Jefferson County (Kentucky). SOB crime densities are compared with that of the overall study area as well as those found surrounding 400 randomly selected intersections. In making the additional comparison with intersections, we mitigate the criticism that the overall study area presents a diffused rate because it includes many places at which crime is unlikely to occur (e.g., airport runways, tracts of undeveloped land, rivers, etc.; McCord & Ratcliffe, 2009). Street intersections, by definition, are located in areas of higher density, and this analysis results in a more conservative appraisal of the crime impact of SOB on communities. Location quotients (LQs), a method frequently used in regional studies (see explanation below), is utilized in all crime density comparisons.

In the second analysis technique, we examine crime density in a set of 6 concentric 250-foot buffers that extend out from the SOBs to a distance of 1,500 feet. This analysis provides preliminary results as to how far away from the SOBs crime impacts may be observed.

In the final set of analyses, we use regression models that statistically control for important sociodemographic factors associated with social disorganization and low socioeconomic status to determine whether the SOBs contribute to increased crime levels in their immediate surrounds, net the impact of neighborhood social structure. SOBs, as “undesirable” land uses, are often located in neighborhoods of social disorganization and social economic status where the community lacks the political power to resist their placement (Nolan & Salkin, 2006; Pacione, 2005). Social disorganization and low social economic status is also associated with higher crime levels in much crime research (Bursik & Grasmick, 1993). By including socioeconomic variables in the regression models, we hope to produce more robust findings concerning the impact of SOBs on neighborhoods.

Data

The study area is Jefferson County, Kentucky. Thirty SOB's were identified via telephone books as being located within the county. Site visits, telephone calls, and online websites confirmed the SOB addresses and their operation during the study period (October 2009 through September 2010). Of the 30 SOB's, 21 are strip clubs with live entertainment (all of which sell alcoholic beverages). The remaining 9 SOB's are adult book/toy stores with all but 2 having private video viewing booths or an adult theater.

In 2003, Jefferson County and its largest city, Louisville, merged and formed a single governmental agency, Louisville Metro (2010 population = 740,000). Several small communities within the county opted out of the agreement and continue to provide their own local governmental services, including police services. The Louisville Metro Police Department (LMPD) was formed at the time of the merger and polices approximately 90% of the county. Crime data for the 1-year period were provided by the Louisville Metropolitan Police Department for the area under its jurisdiction. Twenty-four of the 30 SOB's are located within the LMPD policing area. The remaining 6 SOB's are all located on a 1.5-mile stretch of road in a small opted-out municipality, but directly across the street from the LMPD area of responsibility. The area is largely small industry on the opted-out municipality side of the street and small commercial establishments with residential areas behind on the Louisville Metro side of the street. Four SOB's are also located on the LMPD side of this 1.5-mile stretch of roadway. The small city that opted out from the merger and contained the above-mentioned 6 SOB's was uncooperative with our repeated attempts to obtain crime data. Because of the proximity of these 6 SOB's and their likely impact on crime in the LMPD area directly across the street (a distance of 30 feet), they remain in the analysis, but their impact is only measured in truncated buffers that overlay the LMPD area, as described below. Crime incidents were separated into the categories of violent crime (homicides, assaults, and robbery), property crime (burglaries, thefts, and vehicle theft), and disorder crime (sales/possession of illicit drugs, prostitution, alcohol violations, criminal mischief, and littering).

Computerized street files, census block groups, and maps of Jefferson County and the LMPD jurisdiction were provided by the Louisville/Jefferson County Information Consortium (LOJIC). Census data at the block group level were obtained from the U.S. Census Bureau and consist of 5-year estimates (2005-2009); the most recent data available at the time this study was being completed.

Analysis

Using Geographic Information System (GIS) mapping software, the SOBs and crime incidents were geocoded (electronically applied) to the computerized street map. All SOBs were successfully geocoded and 96% of all crime incidents were geocoded. The 4% non-geocoded crime incidents were due to either missing or incorrect addresses in the database supplied by the LMPD. The resulting 96% geocoding "hit rate" exceeds the conventionally accepted hit rate of 90% for accurate mapping suggested by Bichler and Balchak (2007) and the empirically derived minimum of 85% recommended by Ratcliffe (2004). For the first set of analyses, two sets of buffers were drawn around the SOBs. The first set extended out from the SOBs for a distance of 0 to 500 feet, and the second from 0 to 1,000 feet. Buffers of these sizes were selected because they are the standard used by planning agencies, discussed in court cases concerning SOB secondary effects, and reported on in prior research. Overlapping buffers (due to the presence of other SOBs close-by) were dissolved into larger buffers to avoid counting the same crime incidents occurring in them more than once. Using the GIS software, the total area and count of crime incidents falling into the buffers were determined, and the density for each crime category was calculated. Buffers extending outside of the LMPD area were truncated at jurisdictional lines.

For the second set of analyses, a concentric series of six 250-foot wide buffers were drawn around each of the 30 SOBs. Each inner buffer extended from 0 to 250 feet, surrounded by one at 250 to 500 feet, on through to the last one at 1,250 to 1,500 feet out from the SOBs. The width of these buffers is approximately equal to one-half the average city street length in the study area. Again, buffers extending out of the LMPD area were truncated at jurisdictional lines.

We then used the random selection procedure in SPSS to draw a sample of 400 intersections from the 18,058 intersecting streets in the LMPD area.² Buffers of 500 and 1,000 feet wide were drawn around each of the street intersections, and the density for each crime category was determined as above.³

SOB and intersection buffers were then assigned the appropriate value of the sociodemographic factors of the census block groups in which their center point was located. These factors consisted of median income and the percentage single parents with children younger than 18 years, rental households, and Blacks in the population. The data were combined into two separate data files such that one contained the 500-foot buffers of both SOBs and intersections along with their sociodemographic factor values, and the other contained the

same for the 1,000-foot buffers. A dichotomous 0-1 indicator variable for the SOB buffers was developed (1 = *SOB buffer*) and included in each data set.

The combined SOB and intersection buffer data sets were examined for spatial autocorrelation. Spatial autocorrelation, the clustering of like dependent variable values among neighboring units of analysis, has been shown to inflate error terms in regression models resulting in biased parameter estimates, false indications of significance, and misleading suggestions of model fit (Chainey & Ratcliffe, 2005). Moran's I tests showed low but significant levels of positive spatial autocorrelation in the 500-foot buffer data for all three dependent variables (violent crime = 0.1245, $p < .01$, property crime = 0.1336, $p < .01$, disorder crime = 0.1336, $p < .01$). Spatial lags were developed using Geoda software and included in the 500-foot buffer models to control for spatial autocorrelation. Significant spatial autocorrelation was not present in the 1,000-foot buffer data; thus, a spatial lag was not included.

Results

As mentioned previously, three separate sets of analyses are performed to evaluate the impact, if any, of SOBs on their surrounds. Crime density results for the first two analyses are reported as LQs, a ratio value used extensively in the regional sciences (Miller, Gibson, & Wright, 1991). As crime is relatively rare and working with extremely small crime density numbers can be burdensome, LQs help make comparisons clearer when used to compare characteristics of smaller subareas to the larger, surrounding area. LQs were computed by dividing the density of crime around the SOBs (total number of crimes in SOB buffers/total area of all SOB buffers) by the crime density of the entire study area (total crimes LMPD jurisdiction/total area of LMPD jurisdiction). An LQ value of 2 would indicate that the density of crime in a set of SOB buffers (subareas) is twice that of Jefferson County, while a value of 0.75 would indicate the density in the SOB buffers is 25% less than the county rate.

Table 1 presents the LQ values for each category of crime (violent, property, disorder) and each set of buffers at 500 and 1,000 feet. As shown by the LQ values in the top portion of the table, the density of all three crime categories in the buffers surrounding the SOBs are many times higher than that of the larger study area (Jefferson County). For example, violent crime is 12.3 times higher in the 500-foot buffers surrounding the SOBs and 8.3 times higher in the 1,000-foot buffer than the overall county density. This pattern of higher density in the 500-foot buffers, over the still substantially high densities in the 1,000-foot buffers, holds true for both property and disorder crimes.

Table 1. LQ Values of Crime Density by Category in Selected Buffers Around 30 SOBs

	Violent crime	Property crime	Disorder crime
LQ values vs. Jefferson County			
500-foot buffers	12.3	10.1	10.7
1,000-foot buffers	8.3	7.1	7.1
LQ values vs. 400 random intersections			
500-foot buffers	4.8	4.2	4.2
1,000-foot buffers	3.3	3.1	2.9

Note: SOBs = sexually oriented businesses; LQ = location quotient.

The lower portion of Table 1 shows the LQ values in comparing the crime density around the SOBs to the 400 random intersections. Although this portion of the analysis is far more conservative in that the SOB density is compared only with the more built up areas of the county, the SOB LQ values remain high. As shown, crime densities in the SOB 500-foot buffers are all at least 4 times higher than the random intersections for all crime categories, while the densities in the 1,000-foot buffers are about 3 times higher for all crime categories.

Table 2 presents the results of the concentric 250-foot buffer analysis. As shown for all crime categories, the highest LQ values are the buffers immediately surrounding the SOBs, which then steadily decrease in the next two buffers out to a distance of 750 feet. Beginning with the 1,000-foot buffers and on out to the last buffers at 1,500 feet, there is no discernable pattern in the analysis. The results of these models suggest that the criminogenic impact of the SOBs is observable out to a distance of at least 750 feet. The monotonic decrease in the first three sets of buffers further supports the idea that it is the SOBs that are promoting high crime levels and not some other unmeasured neighborhood characteristic (Rengert, Ratcliffe, & Chakravorty, 2005).

The final set of analyses utilizes ordinary regression models to evaluate the impact of the SOBs on crime in the 500- and 1,000-foot buffers while controlling for important socioeconomic indicators. Recall that in these analyses, the SOB and 400 random intersections buffers are combined into a single model with a 0-1 dichotomous variable identifying the SOB buffers (1 = SOBs). Dependent variables for these models are the crime densities (crime incidents per 10,000 square feet) naturally logged to reduce skewness. Tests for multicollinearity were performed with all tolerance and variance

Table 2. Location Quotient Values of Crime Density by Category in Concentric 250-Foot Buffers Around 30 SOBs

	Violent crime	Property crime	Disorder crime
0-250 feet	23.7	18.3	24.4
250-500 feet	8.1	7.1	5.6
500-750 feet	5.2	5.6	4.8
750-1,000 feet	7.8	6.2	6.2
1,000-1,250 feet	5.8	4.4	4.9
1,250-1,500 feet	7.5	5.8	4.8

Note: SOBs = sexually oriented businesses.

Table 3. Standard Multiple Regression Evaluating Crime Density by Category in 500-Foot Buffers Surrounding 30 SOBs and 400 Random Intersections

	Violent crime		Property crime		Disorder crime	
	B	β	B	β	B	β
SOB indicator	.043***	.227	.087***	.215	.075***	.217
Median income	-1.381E-8	-.011	-2.631E-7	-.093	6.693E-8	.028
% renters	.000**	.176	.001**	.173	.000**	.164
% single parents	.000	.091	.000	-.025	.000*	.109
% Black	1.609E-5	.011	-3.482E-5	-.011	.000	.063
Spatial lag	.564**	.256	.609***	.325	.637***	.358
n	416		416		416	
Adjusted R ²	.277		.312		.382	

Note: SOBs = sexually oriented businesses. Dependent variables are crime densities (incidents per 10,000 square feet) for each crime category, naturally logged. Overlapping buffers due to spatial clustering of SOBs were dissolved into larger buffers resulting in 416, rather than 430 buffers.

* $p < .05$. ** $p < .01$. *** $p < .001$.

inflation factor (VIF) values found to be within acceptable ranges; no tolerance value was below .410 and no VIF above 2.5.

Table 3 shows the results of the 500-foot buffer regression analyses. As shown, the SOB indicator variable is positive and significant for each of the three categories of crime. This finding indicates that the presence of the SOBs are related to higher densities of all three categories of crime in the 500-foot buffers that surround them, net the impact of median income and the percentage of renters, single parents, and Blacks in the neighborhood (census block groups). Note also that the beta values for all three SOB indicator variables are higher than any of the socioeconomic predictor variables.

Table 4 presents the results of the 1,000-foot buffer regression analyses. Once again the SOB indicator variables are positive and significant for all

Table 4. Standard Multiple Regression Evaluating Crime Density by Category in 1,000-Foot Buffers Surrounding 30 SOBs and 400 Random Intersections

	Violent crime		Property crime		Disorder crime	
	B	β	B	β	B	β
SOB indicator	.020***	.119	.056***	.137	.025*	.070
Median income	-3.718E-9	-.003	-2.055E-7	-.076	1.208E-7	.053
% renters	.000***	.280	.001***	.312	.001***	.275
% single parents	.000	.055	.000***	-.119	.000*	.109
% Black	7.939E-5	.066	.000	.065	.000	.071
Spatial lag	.679***	.399	.694***	.419	.748***	.454
n	414		414		414	
Adjusted R ²	.474		.489		.516	

Note: SOBs = sexually oriented businesses. Dependent variables are crime densities (incidents per 10,000 square feet) for each crime category, naturally logged. Overlapping buffers due to spatial clustering of SOBs were dissolved into larger buffers resulting in 414, rather than 430 buffers.

* $p < .05$. ** $p < .01$. *** $p < .001$.

crime categories, indicating the presence of SOBs in these buffers is related to higher crime levels, net the impact of the sociodemographic factors. The beta values for the SOB indicator variables in these models are no longer higher than each of the individual sociodemographic factors as we found in the earlier models, suggesting a still significant but decreasing importance in explaining crime in these larger buffers.

Discussion

This study presents evidence that the presence of SOBs is clearly related to crime in urban communities. The analysis shows crime, including violent, property, and public order offenses, is related to SOBs and in an outwardly decreasing manner. As one moves further away from the physical structure of a SOB, crime rates decrease but continue to be significantly influenced by the SOB. In the buffer of 500 feet, no other variable is more influential on crime rates than the presence of the SOB. In the 1,000-foot buffer, the SOB still has a statistically significant influence on crime but less so than some of the existing neighborhood sociodemographic factors.

The decreasing rate of crime in the areas more removed from the physical structure should be expected, if the SOB is in fact patronized by suitable targets. As one moves away from the structure, fewer suitable targets are present—These individuals are most likely to quickly and perhaps surreptitiously enter and exit the business, interacting with few others and not

venturing beyond the necessary distance to leave the location in their vehicles. Victimization of such individuals is most likely to occur at or very close to the actual building of the SOB.

This study presents clear implications for social policy. At the foundation, both zoning regulators and law enforcement officials need to be aware of the criminogenic impact of SOBs, and adjust their activities and decisions accordingly. SOBs located in or near residential neighborhoods are likely to draw crime (as well as criminally motivated offenders) to the neighborhood, perhaps facilitating criminal offenses by such offenders as they travel to the SOB. Crimes of opportunity, including theft property vandalism and a range of violent offenses, may be perpetrated as motivated offenders travel to and from the SOB location. Although perhaps primarily seeking suitable targets in the immediate vicinity of the SOB, varying paths of travel to the target location may bring such offenders into contact with other opportunities for crimes. As such traveling offenders converge on the SOB, more of them will travel through the areas closest to the SOB, with dispersion through differing outlying areas as such offenders come from and return to differing outlying points of origin. Consequently, law enforcement needs to devote increased resources (patrols, surveillance, and assistance in designing the environment in ways to prevent/reduce crime) to both the immediate vicinity of such businesses and locations near to, and along paths of travel to/from such locations. Although an increased level of visible law enforcement at and near SOBs may have a dampening effect on some patrons' likelihood of visiting such establishments, it is also likely to discourage motivated offenders from being present and acting on their motivations. With both situations, reductions in motivated offenders and possible reductions in numbers of suitable targets, crime would be decreased. Neighborhoods hosting SOBs are clearly attractive to the criminally inclined. Providing a visible law enforcement presence in the immediate vicinity of such establishments is an obvious means for counteracting the effects of such businesses, and should be done.

As with all research, the present study has its limitations. There are two limitations that need to be considered when assessing the present study. The first is in its cross-sectional design, thus causality cannot be confirmed. There is no evidence in our data of temporal ordering of whether the SOBs arrive and subsequently crime follows, or whether SOBs locate in areas that have already high rates of crime. However, it is reasonable to assume that SOBs promote crime due to the opportunities they provide, but it is also possible, even likely in view of economic and social considerations, that the presence of these land uses are only tolerated in neighborhoods of social disorganization and lower social economic status that are already prone to higher crime

levels. The inclusion of sociodemographic variables in the regression models helped control for the impact of existing neighborhood social and crime problems, thus adding to the overall strength of the findings.

A second limitation concerns the fact that it was not possible to separate the impact on ambient crime levels by the two different types of SOBs in the study sample: strip clubs and adult book/novelty stores (most of which had video booths). The spatial clustering of these businesses, common in the study area as well as many other jurisdictions, made it impossible for their impact to be evaluated separately due to overlapping buffers. RAT however suggests all SOB types should promote crime due to their commonality in attracting suitable targets ("perfect victims") and motivated offenders in areas of reduced guardianship. At least one study shows this to be the case. In their study, McCleary and Weinstein (2009) found that crime rates nearly doubled over a multiyear period within 500 feet of an adult book store (no video booths) compared with only a 25% increase in crime around a nearby motel.

This research has shown that SOBs produce increased crime levels in their surrounding communities up to a distance of at least 1,000 feet. In doing so, this study adds important empirical evidence to the debate concerning the harmful effects of such businesses and the value of local zoning requirements and other regulations trying to control these negative secondary effects. Clearly, SOBs are associated with increased rates of crime. All types of crime—violent, property and public order—are more common at and close to the location of SOBs. As one moves away from the physical structure of such businesses, crime rates decrease but remain influenced by the SOB for significant distances. In short, SOBs attract criminally motivated offenders, suitable targets, and when coupled with a lack of capable guardians, result in increased rates of crime.

Declaration of Conflicting Interests

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The authors received no financial support for the research, authorship, and/or publication of this article.

Notes

1. Notably, several researchers (Alwitt & Donley, 1997; Bingham & Zhang, 1997) have shown that socially economically disadvantaged urban communities typically

- have significantly fewer grocery stores, drug stores, banks, and general merchandise stores, but more liquor stores.
2. An online sample size calculator (www.surveysystem.com/sscale.htm) determined a sample size of 376 intersections were necessary for a confidence level of 95% at a confidence interval of 5%. The sample size was rounded to 400 cases.
 3. Buffers that extended outside of the LMPD area were moved to the closest intersection that would allow their entire area to fall within the study area. The number of buffers moved differed for each set of intersection buffers.

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SUMMARY OF LAND USE STUDIES RELATING TO SECONDARY EFFECTS OF "ADULT" BUSINESSES

1. LAND USE STUDY: Amarillo, Texas
DATE: September 12, 1977

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

FINDINGS: The police department provided an analysis showing that areas of concentrated "adult only" businesses had 22 times the street crime as the city average. The planning department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by: (1) noise, lighting and traffic during late night hours; (2) increased opportunity for street crimes; and (3) the tendency of citizens to avoid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.).

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

2. LAND USE STUDY: Austin, Texas
DATED: May 19, 1986

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

The report focused on sexually related crimes in four study areas (with sexually

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

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

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

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

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

3. LAND USE STUDY: Beaumont, Texas DATE: September 14, 1982

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

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

RECOMMENDATIONS: (1) Add eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian or spouse; (2) require specific permits for areas zoned as General Commercial-Multiple Family Dwelling Districts; and (3) reduce the required distance of sexually oriented businesses

from residential areas, school, parks, and recreational facilities from 1,000 to 750 feet.

4. LAND USE STUDY: Cleveland, Ohio
DATE: August 24, 1977

OVERVIEW: This police department report is taken from information given by Captain Delau participating in a panel discussion at the National Conference on the Blight of Obscenity held in Cleveland July 28-29, 1977. The topic was "The Impact of Obscenity on the Total Community." Crime statistics are included for 1976 robberies and rapes. Areas evaluated were census tracts (204 in the whole city, 15 study tracts with sexually oriented businesses). At the time of the study, Cleveland had 26 pornography outlets (8 movie houses and 18 bookstores with peep shows). Their location was not regulated by city zoning laws.

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

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

5. LAND USE STUDY: Garden Grove, California
DATE: October 23, 1991

OVERVIEW: This report by independent consultants summarizes statistical analyses to determine a basis for adult business regulations because of their negative impact on the community in terms of crime, decreased property values and diminished quality of life. Statistics were measured from 1981-90 and included crime data, and surveys of real estate professionals and city residents. Garden Grove Boulevard, with seven adult businesses, was selected as the study area. The study incorporated many control factors to insure accurate results. The report includes a brief legal history of adult

business regulation and an extensive appendix with samples, materials and a proposed statute.

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

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

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

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

6. **LAND USE STUDY:** Houston, Texas
DATE: November 3, 1983

OVERVIEW: Report by the Committee on the Proposed Regulation of Sexually Oriented Businesses determines the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police and psychologists. The committee and legal department then

reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

TESTIMONY: The testimony was summarized into six broad premises: (1) the rights of individuals were affirmed; (2) sexually oriented businesses could exist within regulations that minimize their adverse effects; (3) the most important negative effects were on neighborhood protection, community enhancement, and property values; (4) problems increased when these businesses were concentrated; (5) such businesses contributed to criminal activities; and (6) enforcement of existing statutes were difficult.

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

LAND USE STUDY: Houston, TX

DATED: January 7, 1997

OVERVIEW: This report by the Sexually Oriented Business Revision Committee to the City Council concerns a proposed amendment and addition to the present ordinance. The report summarizes prior efforts to regulate sexually oriented businesses, testimony by the Vice Division of the Houston Police Department, reports and requests, citizen correspondence, industry memos, legal department research, the public testimony taken by the Committee. The purpose of this report was to review the existing city ordinance and the city's ability to enforce it, and to assess and analyze the ordinance with respect to its strengths and weaknesses in terms of how effectively the ordinance protects the public and the businesses subject to regulation.

FINDINGS/CONCLUSIONS: (1) Because of criminal activities associated with sexually oriented businesses, requiring the licensing of entertainers and managers can establish a foundation for documenting those with prior convictions for prostitution, public lewdness, etc. and can help eliminate underage entertainers (under 18); (2) a serious predicament in obtaining convictions for public lewdness, prostitution, indecent exposure, and other criminal activities exists because police officers do not engage in inappropriate behavior and the entertainer thus avoids lewd behavior that might normally occur; (3) "glory holes" are used to promote anonymous sex and facilitate the spread of sexually transmitted diseases; (4) sexually oriented businesses that did not have clear lines of vision encouraged lewd behavior or sexual contact; (5) multi-family tracts were being counted as one tract in the residential quota, although many families were living

independently upon one tract; (6) inadequate lighting prevents managers and police officers from monitoring illegal activities, and one possible approach is to make lighting requirements similar to the minimum requirements of the Uniform Building Code for "exit" signs; (7) businesses with locked rooms were often used as fronts for prostitution; (8) public parks and possibly private parks should be included in distancing restrictions; (9) notification of a pending sexually oriented business permit should be given to surrounding neighbors of proposed sites; and (10) continuation of the amortization provisions of the previous ordinances would be preferable to grandfathering nonconforming sexually oriented businesses since grandfathering such businesses allows those uses to continue in perpetuity, creates a monopolistic position for such uses and prevents the municipality from exercising its power to protect its residents.

ORDINANCE: (1) Include "arcade devices" (enclosed booths) intended for viewing by less than one hundred persons in the prohibition for enclosed booths; (2) prohibit wall penetrations ("glory holes"); (3) increase distance requirements from 750 feet to 1,500 feet for churches, schools and day care centers, and increase the radius for counting residential tracts from 1,000 feet to 1,500 feet, without unduly restricting availability of locations; (4) for each acre of multi-family tract, utilize a ratio of eight single family tracts; (5) extend signage and exterior appearance restrictions to businesses located in multi-tenant centers; (6) require lighting of intensity to illuminate customer areas to not less than one foot candle as measured at four feet above floor level; (7) include public parks and if possible, private parks as protected land uses; (8) upon filing of a permit application, applicants must place signs at the premises and publish notices in the newspaper; (9) require permits for all entertainers and managers; (10) prohibit entertainers from touching customers; and (11) continue amortization of existing businesses with extensions of time for affected businesses to comply (prior average extensions were for about 2 to 3 years).

7. LAND USE STUDY: Indianapolis, Indiana
DATED: February 1984

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

CRIME: From 1978-82, crime increases in the study areas were 23% higher than the control areas (46% higher than the city as a whole). Sex related crimes in the study areas increased more than 20% over the control areas. Residential locations in the study

areas had a 56% greater crime increase than commercial study areas. Sex related crimes were four times more common in residential study areas than commercial study areas with sexually oriented businesses.

REAL ESTATE: Homes in the study areas appreciated at only $\frac{1}{2}$ the rate of homes in the control areas, and $\frac{1}{3}$ the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50% decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually oriented business within one block of residences and businesses decreased their value and half of the respondents said the immediate depreciation exceeded 10%. Appraisers also noted that value depreciation on residential areas near sexually oriented businesses is greater than commercial locations. The report concludes: "the best professional judgment available indicates overwhelmingly that adult entertainment businesses - even a relatively passive use such as an adult bookstore - have a serious negative effect on their immediate environs."

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

8. **LAND USE STUDY:** Los Angeles, California
DATE: June 1977

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

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

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

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

9. **LAND USE STUDY: Minneapolis, Minnesota**
DATE: October 1980

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

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

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

10. **LAND USE STUDY:** New York, New York
DATE: November 1994

OVERVIEW: This study by the Department of City Planning evaluates the nature and extent of adverse impacts associated with adult entertainment uses in communities in New York City, in response to the proliferation of such uses (35% increase in past 10 years) and the fact that current zoning regulations did not distinguish between adult entertainment uses and other commercial uses without an "adult character." The study reviewed studies in other localities, including Islip, Los Angeles, Indianapolis, Whittier, Austin, Phoenix, and the State of Minnesota, as well as prior studies conducted in New York City. Surveys in six study areas within the city (with lesser concentrations of adult uses than Times Square) were conducted of representatives from community boards, local organizations and local businesses, as well as real estate brokers, police and sanitation officers, and representatives of the adult entertainment industry to gather information on land use, street and signage conditions, and other impacts of adult entertainment uses. An analysis of assessed values and crime data was also made.

FINDINGS: More than 75% of adult uses are located in zoning districts that permit residential uses. Adult uses tend to concentrate, as 75% of the adult uses are located in ten of the city's 59 Community Districts. Adult uses tend to cluster in central locations or along major vehicular routes. Adult use accessory business signs are characterically at odds with neighborhood character - such signs generally occupy a greater percentage of storefront surface area, are more often illuminated and more often portray graphic, sexually-oriented images than the signs of other nearby commercial uses. 80% of surveyed real estate brokers reported that an adult entertainment use would have a negative impact upon the market value of property within 500 feet, and a majority indicated the same would occur within 500 to 1,000 feet. 80% of surveyed community organizations responded that adult entertainment uses negatively impact the community in some way, and almost 50% of surveyed businesses responded that they believed their businesses would be negatively affected if more adult uses were to locate nearby. Community residents expressed the strongest negative reactions to adult uses, and expressed fear of the consequences of the proliferation and concentration of adult uses in neighborhood-oriented shopping areas and of a deterioration in the quality of urban life.

even in study areas where it could not be readily determined that negative impacts were being felt. Attitudinal data of the surveys are significant even where the negative impacts are currently difficult to measure, since negative perceptions associated with an area can lead to disinvestment in residential neighborhoods and economic decline because of a tendency to avoid such shopping areas. The analysis of criminal complaint data and property assessed valuation data was less conclusive than the surveys.

RECOMMENDATIONS: The study concludes that it is appropriate to regulate adult entertainment establishments differently from other commercial establishments. Because of the negative impacts of adult uses in concentration, restrictions on the location of adult uses in proximity to residential areas, to houses of worship, to schools and to each other should be considered in developing adult use regulations.

11. LAND USE STUDY: Newport News, Virginia
DATED: March 1996
12. LAND USE STUDY: Oklahoma City, Oklahoma
DATED: March 3, 1986

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

FINDINGS: 32% of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20%. Overwhelmingly, respondents said an "adult" bookstore would negatively effect other businesses within one block (76%). The level of depreciation is greater for residences than businesses. The negative effects on property values drop sharply when the sexually oriented business is at least three blocks away. In the subjective portion, 85% of the respondents noted a negative impact on sexually oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

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

13. LAND USE STUDY: Phoenix, Arizona
DATE: May 25, 1979

OVERVIEW: The study examines crime statistics for 1978 comparing areas which have sexually oriented businesses with those that do not. The results show a marked increase in sex offenses in neighborhoods with sexually oriented businesses, with modest increases in property and violent crimes as well.

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

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

Average results from all three study/control areas, sex offenses were 506% greater in neighborhoods where sexually oriented businesses were located. (In one study area, sex crimes were more than 1,000% above the corresponding control area.) Property crimes were 43% greater. Violent crimes were only slightly higher (4%). Even excluding indecent exposure arrests (the most common sex offense), other sex crimes (rape, lewd and lascivious behavior, child molestation) in the study areas were 132% greater than control areas.

REQUIREMENTS: The Phoenix ordinance requires sexually oriented businesses to be located at least 1,000 feet from another sexually oriented business and 500 feet from a school or residential zone. Approval by the city council and area residents can waive the 500 foot requirement. A petition which is signed by 51% of the residents in the 500 foot radius who do not object must be filed and verified by the planning director.

14. LAND USE STUDY: Seattle, Washington
DATED: March 24, 1989

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

FINDINGS: The increased number of cabarets resulted in citizen complaints,

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

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

15. **LAND USE STUDY:** Times Square (New York City), New York
DATE: April 1994

OVERVIEW: This study commissioned by the Times Square Business Improvement District (“TSBID”) evaluates the effect of adult use businesses on the city’s TSBID, and more specifically, on the areas within the TSBID where such businesses are densely concentrated. The study combined analysis of available data on property values and incidence of crime with a demographic and commercial profile of the area to determine the relationship between the concentration of adult use businesses and negative impacts on businesses and community life. The study also included 54 interviews conducted with a broad range of diverse business and real estate enterprises, including major corporations, smaller retail stores, restaurants, theatres and hotels, as well as Community Boards, block associations, activists and advocates, churches, schools and social service agencies.

REAL ESTATE: This part of the study compared the assessed property values over time, and the rate of change, of four study blocks and contrasting control blocks where no adult use businesses existed. This analysis also compared the study and control blocks’ assessed valuation to that of the TSBID, Manhattan, and the city as a whole. The rate of increase of the total actual assessed values of the study blocks between 1985 and 1993 was less than the rate of increase for the control blocks during the same period. An assessment of the study blocks also revealed that the rates of increases in assessed value for properties with adult establishments was greater than the increase for properties on the same blockfront without adult establishments (possibly because of greater rents paid by some adult establishments). A high official in the Department of Finance indicated that the presence of adult use businesses adversely affects neighboring properties since such presence is factored into the locational aspect of the appraisal formula.

CRIME: This part of the study compared the number of criminal complaints over

a three month period for the study blocks and the control blocks. There were about twice as many criminal complaints for the study blocks as the control blocks. There was a reduction in criminal complaints the further away from the study block area of dense concentration of adult use businesses. The heaviest incidence of prostitution arrests also occurred in the study block area of dense concentration of adult use businesses. The study also noted that police statistics showed a decrease in crime in Times Square for the past five year period, which paralleled the decrease in the number of adult use businesses.

INTERVIEWS: Property and business owners expressed the view that adult use businesses have a negative effect on the market or rental values of businesses located in their vicinity, and emphasized the negative effects of a concentration of such businesses in affecting the overall image of the area. Restaurant owners expressed that the presence of adult use businesses was not good for their businesses, created a perception that the area was unsavory, made it difficult to book corporate parties, and negatively affected their businesses because of the flamboyant advertising. Community residents and organizations expressed their belief that adult use businesses attract loiterers, drug dealers, and prostitutes, and result in increased instances of criminal activity.

16. SURVEY, FINDINGS AND RECOMMENDATIONS OF SEXUALLY
ORIENTED BUSINESSES: Toledo, Ohio
DATE: August 26, 2002

OVERVIEW: The City of Toledo ("Toledo") determined it needed to address adult entertainment uses as a result of litigation over its zoning ordinance. Additionally, the City was experiencing an increased number of taverns that were featuring adult entertainment in violation of the City's zoning ordinance. At the time of the study, the City was only regulating adult entertainment through zoning, it did not have a licensing mechanism. The City defined "adult entertainment" as massage parlors operated by anyone not licensed as a medical doctor, chiropractor, osteopath, nurse, physical therapist or a person practicing massage of the face and hands in a beauty parlor or barber shop licensed by the City; adult bookstores, adult motion picture theaters, adult mini-motion picture theaters or adult entertainment cabarets. When the study was conducted the City had six adult cabarets, one adult theater that rented videos, eight adult bookstores, two retail shops, four massage parlors, a bathhouse and a lingerie modeling establishment.

CRIME: The consultants reviewed police calls to adult entertainment establishments and provided an analysis on crime. Five adult businesses were clustered in one area of the City and accounted for 39 percent of the crime for that area, but only accounted for 20 percent of the total businesses in the area. Additionally, the consultants noted significant differences in the number of police calls to different types of adult businesses. While adult cabarets comprised only 20 percent of the businesses included in the crime study, they were involved in 44 percent of the total police calls. The consultants concluded that adult entertainment establishments which feature live

entertainment are likely to have the greatest adverse impact with respect to the number of incidents which require a police response.

PROPERTY VALUES: To address concerns of the effect of adult businesses on property values, the consultants relied on studies conducted in other cities. A study from Rochester, New York showed that: (1) bars with nude servers and live entertainment have a negative impact on property values; (2) sexually oriented businesses have a measurable negative impact on property values; (3) there is more of a negative impact on residential property than on commercial uses; (4) the greatest impact on property values is on those residences located on the same block as the adult use; (5) the negative impact decreases with distance, and stops between 1,000 and 1,500 feet. Another study conducted in Indianapolis, Indiana examined the relationship between crime rates and real estate appreciation and showed that: (1) crime rates in areas with adult businesses were 23 percent higher than in control areas and 46 percent higher than in the police jurisdiction as a whole; (2) the sex-related crime rate in areas with adult businesses was 80 percent higher than the rate in the control areas; (3) the appreciation of residential real estate in areas with adult businesses was only one-half that of the control areas; and (4) twice as many homes were placed on the market at a significantly lower rate in the areas with adult businesses than in the control areas.

RECOMMENDATIONS: Adopt definitions for different types of adult businesses and use those definitions as the basis for applying distance and location requirements. Permit book, video or other media stores where sexually oriented media accounts for less than 10 percent of the total inventory, or in which that type of media accounts for more than 10 percent, but less than 40 percent of the inventory and occupies less than 40 percent of the floor area, to be treated as regular retail stores. Modify the separation requirement between adult businesses to allow co-location or neighboring location of a business with on-premises entertainment and a purely retail shop. Increase the separation distance between businesses offering on-premises entertainment to 1,500 feet. Impose a 500 foot separation requirement between sexually oriented businesses and sensitive uses such as residences, schools, and churches. Adopt a licensing ordinance for adult businesses and their employees which contains objective criteria for granting or denying a license, a limited review period for a license application, and a direct appeal to the courts.

Establish licensing criteria specifically for adult cabarets which: (1) eliminates lap dances; (2) requires dancers to perform on a stage which is separated from the audience by a vertical rise of at least 30 inches and by a barrier that either keeps dancers or customers 30 inches or more from the edge of the stage; (3) prohibits touching between dancers and customers; and (4) if lap dancing is permitted, it should be conducted only in public areas. Require all operators and employees performing massages to be licensed by the state. Require all sexually oriented theaters to have low-level lighting maintained at all times customers are present, that management monitor activities in the theater at all times by using windows, mirrors or cameras. Establish criteria for video arcades that

includes: (1) removal of doors from the booths; (2) elimination of glory holes between booths; (3) permitting only one person per booth; (4) modification of L-shaped booths to make the entire booth visible from the aisle; (5) installation of video monitoring equipment; (6) minimum lighting standards for hallways; and (7) implementation of sanitation standards.

17. LAND USE STUDY: Tucson, Arizona
DATED: May 1, 1990

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

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

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

RECOMMENDATIONS: (1) The bottom of the door in peep booths must be at least 30 inches from the floor so that an occupant can be seen from waist down when seated; (2) the booth cannot be modified nor can a chair be used to circumvent the visibility of the client; (3) employee licensing that includes a Police Department background check; and (4) in the event of a denied or revoked license, the requirement of a hearing before any action is taken.

18. **LAND USE STUDY: Whittier, California**
DATE: January 9, 1978

OVERVIEW: After experiencing a rapid growth of sexually oriented businesses since 1959, the Whittier City Council commissioned a study of the effects of businesses on the adjacent residential and commercial area. At the time of the study, Whittier had 13 such businesses: six model studios, four massage parlors, two bookstores, and one theater. Utilizing statistics, testimonies, and agency reports, the study compared two residential areas and four business areas over a span of ten years (1968-1977). One residential area was near the largest concentration of sexually oriented businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes and number of homes. For businesses, Area 1 had six sexually oriented businesses, Area 2 had one, Area 3 had three, and Area 4 had none. 1973 was selected as the year to compare before/after effect of these businesses. Two chief concerns cited in the report are residential/business occupancy turnover and increased crime.

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

CRIME: The city council looked at the two residential areas for the time periods of 1970-73 (before sexually oriented businesses) and 1974-77 (after such businesses). In

the sexually oriented business area, criminal activity increased 102% (the entire city had only an 8.3% increase). Certain crimes skyrocketed (malicious mischief up 700%; all assaults up 387%; prostitution up 300%). All types of theft (petty, grant, and auto), increased more than 120% each. Ten types of crime were reported of the first time ever in the 1974-77 period.

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

DEPARTMENT OF PLANNING AND DEVELOPMENT
DIRECTOR'S REPORT

ADULT CABARETS IN SEATTLE

March 28, 2006

INTRODUCTION

In May, 2005, the City Council approved a work plan for the Department of Planning and Development (DPD) to prepare, with the assistance of the City's Law Department, a legislative proposal defining and regulating adult cabaret uses in appropriate zones in Seattle. DPD proposes that these uses be allowed within the area bounded by:

South Walker Street on the north;
3rd and 4th Avenues South on the west;
Interstate 5 on the east; and
Duwamish Avenue South on the south.

(See Map Attachment 1).

DPD proposes to define adult cabarets, allowing them subject to certain development standards, including maximum size and limits on on-premise signs.

The purpose of this report is to:

- 1) identify the land use impacts of adult cabarets; and
- 2) recommend appropriate locations for adult cabarets; and
- 3) recommend applicable development standards.

There are many perceptions about the impacts adult entertainment uses have on a neighborhood or community. This report, however, focuses on impacts that can be addressed through land use regulation. It does not intend to regulate the activity within adult entertainment establishments. After researching current literature, case law, and studies prepared by other jurisdictions, DPD concludes that in addition to generating conventional land use impacts, adult entertainment establishments have the potential for negatively impacting public safety and welfare, and property values.

CONTEXT AND BACKGROUND

Zoning regulation of adult entertainment uses has consistently challenged many communities across the country generally due to the perception that these uses degrade property values and are a threat to public safety. Historically in Seattle these uses were located in the downtown area, the majority of which were located along First Avenue. Many citizens continue to identify adult entertainment with this area. However, it was not until adult entertainment

businesses began locating in neighborhoods outside downtown that the City began to specifically identify and regulate them through zoning.

Adult motion picture theaters in Seattle were the first regulated, in 1976. In 1979, adult panorams were identified separately and were only allowed in certain downtown zones (Downtown Office Core1 and 2 (DOC1 & DOC2), and the Downtown Retail Core (DRC) zones).

Over the years several "strip clubs", or adult cabaret establishments, located outside of the downtown area in Seattle's neighborhood business districts. Citizen concerns about these uses prompted the City Council to pass an ordinance requiring adult cabarets to be licensed (Ordinance 114225). The Council also placed a moratorium on the establishment of any new topless dancing establishments in these neighborhoods (Ordinance 114254). Both ordinances were passed in November 1988.

DPD (formerly the Department of Construction and Land Use) was directed to make recommendations for amendments to the Land Use Code that would minimize the adverse impacts of adult cabarets. The City Council Public Safety Committee conducted a public hearing on proposed adult cabaret regulations in April, 1989. The concerns expressed at that public hearing prompted the Council to extend the moratorium on adult cabarets (Ordinance 114531). This moratorium continued through its last extension in May, 2005. In late 2005, the City's moratorium was overturned by the courts. DPD was once again asked to report back to the Council and propose appropriate locations in which to allow adult cabarets and how to regulate them.

Adult Cabarets

"Adult cabaret" refers to establishments where nude and/or semi-nude dancers perform for adult members of the public. Food and/or beverage may or may not be served. Liquor is generally not sold on the premises due to provisions of state liquor laws.

Adult Cabarets, also known as strip clubs, topless dance halls, bars, and/or nightclubs have been regulated as "performing arts theaters" since the 1986 adoption of the Neighborhood Commercial chapter of the Land Use Code. Before 1986, topless dancing establishments were classified as any one of several different uses. Depending on the type of operation, they may have been classified as restaurants, taverns, dance halls, theaters or indoor places of public assembly. Today, as in the past, topless dancing establishments are prohibited in residential zones, and permitted in all commercial (except NC1), industrial (except for the Duwamish Manufacturing and Industrial Center) and downtown zones.

Of the adult cabarets now in business, one is located in the Downtown Mixed Commercial zone (DMC 125). Some form of adult entertainment use has existed at this location intermittently for many years. This business is also licensed as a panoram location. Two adult cabarets are located in a Neighborhood Commercial 2 (NC2) zone, one of which has been at the same location for over 30 years. The only other adult cabaret is located in a C1 zone.

Regulation of Adult Uses

Over the years, the establishment of adult uses in Seattle's neighborhood commercial areas has generated a number of citizen complaints. Community groups, business associations, and hundreds of individuals have testified at public hearings or through letters and emails, expressing their concerns about: litter; noise; traffic; the decline in property values; increases in insurance rates; and fears about burglary, vandalism, rape, assaults, drugs, and prostitution. Many comments have been received on the overall detrimental influence of adult uses on the community.

Local governments must always be cautious in regulating adult uses. Arts and entertainment uses, regardless of whether they are intended for adult audiences only, involve protected forms of expression under the First Amendment to the United States Constitution. This constitutional amendment is often cited in case law involving regulation of adult entertainment businesses. The First Amendment has been the standard against which regulations affecting adult entertainment uses must be measured.

Licensing is one traditional method used by local governments to regulate adult entertainment uses. This approach often requires owners, operators, and/or employees to provide detailed business information. Licensing regulations often specify facility and operational standards. Seattle Municipal Code chapter 6.270 is an example of such a license regulation. This business regulation requires topless dancing establishments to be licensed with the City. Licensing is an effective method for addressing performance-oriented standards. As a general rule, zoning and land use regulation is more effective at addressing locational issues and land use impacts.

In the 1976 landmark decision of *Young v. American Mini Theaters, Inc.* (ref. #1), the U.S. Supreme Court declared that adult entertainment uses can be subject to carefully tailored local regulations. In order for a land use regulation of adult entertainment uses to be valid, the local jurisdiction must provide adequate opportunities for this type of expression. In other words, zoning cannot be used directly or effectively to ban adult cabarets, or other forms of adult entertainment.

In summary, the Court determined that regulations can be imposed to minimize adverse land use impacts of adult entertainment establishments. This can be accomplished by specifying the zones where adult entertainment uses are most

compatible with the surrounding neighborhood. Another land use regulation is to require that minimum distances be maintained between adult entertainment uses and/or other uses that may be more sensitive to the impacts of adult uses. In the U.S. Supreme Court case, *City of Renton v. Playtime Theaters, Inc.* (ref. #2), it was held that a city is entitled to rely on the experience of other cities in enacting regulatory legislation. Both the Young and Renton decisions have been used in many cities to support local zoning regulation of adult entertainment uses.

Seattle, like many other jurisdictions, relied on the Young decision to restrict adult motion picture theaters to downtown. Citing Young again in 1979, the City limited the areas where adult panorams could be located. In 1985, Seattle's new Downtown Plan established a policy to encourage downtown residential development. The downtown chapter of the Land Use Code reflected this policy by authorizing adult motion picture theaters and adult panorams only in three non-residential downtown zones: Downtown Office Core 1 (DOC1), Downtown Office Core 2 (DOC2) and the Downtown Retail Core (DRC). To date, adult motion picture theaters and adult panorams are the only two forms of adult entertainment uses identified specifically in Seattle's land use regulations.

LAND USE IMPACTS

Overview

Land use regulation is based on the concept of compatibility. Generally, the City's commercial, industrial, and downtown policies encourage a variety of businesses that are compatible with each other and the residential areas they serve. Some uses, however, have impacts which are not compatible with other uses or create unavoidable impacts on surrounding properties.

Uses such as animal shelters, towing services, or construction yards are examples of commercial uses that have objectionable impacts and are not compatible with residential areas or other neighborhood serving businesses in a pedestrian environment. They are specifically identified in the Land Use Code and allowed only where the impacts they generate are minimized.

Adult motion picture theaters were determined not to be compatible near residential neighborhoods oriented towards families with children. This conclusion was found in a study entitled "Zoning Controls for Adults-Only Theaters" prepared by the City Planning Commission in 1976 (Ref # 3). In order to determine in what zones adult entertainment uses should be permitted, it is necessary to survey their impacts and determine with what other uses they are compatible.

During the City Council's public hearing on licensing of adult uses, many citizens spoke of their concerns about these businesses in their neighborhoods. Problems with litter, noise, parking and traffic; inappropriate signage; fears about

deteriorating property values, attraction of undesirable transients, and increases in crime; potential hazards for children and personal safety; were cited. Citizens generally protested that adult entertainment uses interfere with their ability to raise their children in a healthy, family environment.

The decision by the City in 1976 to allow adult motion picture theaters only in the downtown area was based on findings that these same impacts were detrimental to residential areas. This decision was upheld by the Washington State Supreme Court in the Northend Cinema case (Ref #4). In another case, Village of Belle Terre v. Borass (Ref #5), the U.S. Supreme Court recognized that local governments have the right to use zoning based on impacts on family values to protect the public welfare.

Many studies prepared by other communities have documented that litter, noise, traffic impacts, public safety impacts (e.g. burglaries, vandalism, assaults, prostitution), and deteriorating property values often occur in association with adult entertainment uses.

Conventional Impacts

Under-represented in many planning studies prepared by other communities are the conventional land use impacts that are often generated by adult entertainment uses. Noise, litter, parking and traffic are impacts commonly associated with adult entertainment businesses.

Because adult entertainment businesses are generally visited late into the night, they are often the sources of complaints about noise. The noise may come from the starting or idling of cars on or near the premises, and from car sound systems. It may be generated by the business's own sound system, or by disorderly patrons. There may also be secondary noise effects. Noise may be created by police and emergency vehicles called in and around adult entertainment establishments in response to disturbances.

Litter is another common problem cited. Since alcoholic beverages are generally not available at adult entertainment businesses in Seattle, neighbors report that beer bottles/cans and other liquor containers are frequently tossed into nearby yards. Food wrappers, condoms and other refuse were among other items neighbors complained were discarded in and around the vicinity of existing adult establishments.

Generally, adult cabarets are auto-oriented. The observation is made in recognition that these businesses are frequented by patrons who wish some degree of anonymity and ease of access and egress that limits visual contact with surrounding uses and pedestrians. Consequently, these are uses that are not necessarily consistent with pedestrian areas and generate a potentially substantial amount of traffic. In addition, normal traffic flow may be disrupted by

police and emergency vehicles that may be called to the scene of a disturbance. On-street parking may be usurped, especially near existing adult cabarets, where little off-street parking is provided.

Secondary Impacts

In a report published by the American Planning Association, *Everything You Always Wanted to Know about Regulating Sex Businesses*, (Kelly and Cooper, Planning Advisory Service Report No. 495-96, Chicago 2000), many major studies were reviewed and the following findings were synthesized from them (Ref. #6).

1. Real estate professionals believe that there is a significant negative impact of adult entertainment businesses and other adult-related entertainment businesses (such as bars with live entertainment) on both residential and business properties. The impacts are less if there is a separation between the studied use and the other use. Beyond 1,000 feet there may be some impact but beyond 1,500 feet there is no basis for believing that there will be any impact on property values. (Rochester, Indianapolis, New York City; some supporting data from Denver).
2. The greatest impacts on property values are on other properties on the same block. (Denver, Rochester).
3. The impacts on property values affect residential properties more than nonresidential properties. (Rochester, Indianapolis).
4. The studies showing the most significant impacts of adult entertainment businesses on neighborhoods involved significant numbers of businesses with live entertainment and/or direct interaction between patrons and entertainers or other employees. (Newport News, St. Paul, Whittier).
5. There is a lower correlation of crime incidents with retail adult entertainment businesses than with those that involve on-premises entertainment of any kind. (Denver).
6. Although there is some evidence of an increase in crime, particularly around concentrations of adult entertainment businesses (Phoenix, Denver, Indianapolis, Whittier, St. Paul), the increase is not necessarily in violent crimes (Phoenix, Denver).
7. At least two cities that studied the issue clearly had prostitution flourishing in some adult businesses (Denver, Whittier).

Property Values

Decline of adjacent property values is another documented land use impact resulting from adult entertainment uses. A study of appraisers, residents and business owners provides some key information regarding this issue.

Indianapolis, Indiana

In 1984, an analysis of adult entertainment businesses undertaken by the City of Indianapolis was conducted by that city's Department of Metropolitan Development (Ref. #7). With the assistance of the Indiana University School of Business, they conducted a national survey of members of the Appraisal Institute(MAI), and the American Institute of Real Estate Appraisers. This survey was intended to determine the market effect of adult entertainment businesses on nearby land values. It was concluded that "adult entertainment businesses - even a relatively passive one such as an adult bookstore - have serious negative effects on their immediate environment." Next-door properties were most affected, decreasing substantially in order of adjacency. Negative impact on property values was substantiated for properties within three blocks of an adult entertainment use. While respondents felt that both residential and commercial properties were affected, residential properties were more severely impacted.

Fort Worth, Texas

A recent survey of appraisers in the Fort Worth-Dallas Metroplex carefully documented the opinions of these real estate professionals about the effects of sexually oriented businesses on the values of surrounding properties (Ref. #8). In a survey submitted to 186 appraisers who carry the professional MAI certification (Member of the Appraisal Institute) and SRA (Senior Residential Appraiser), with 41 responses, the following conclusions were drawn:

- Appraisers were nearly unanimous in responding that adult-oriented businesses of any kind (stores, arcades, or cabarets) would decrease single-family home property values. Other uses deemed similarly detrimental to property values included homeless shelters, bars, and pawnshops.
- More than 70% of the appraisers judged the influence of adult-oriented businesses on property values to extend beyond 3000 feet (or approximately 6 blocks). While a few suggested the influence was not felt quite so far, even the lowest estimates put the distance at 1000 feet. The average distance was between 2700 and 2800 feet. Only homeless shelters were considered to influence property values that far away. Pawnshops, bars, and gas stations were next (2300 to 2500 feet).
- The appraisers considered the property values of community shopping centers to be equally detrimentally affected by the proximity of adult-oriented businesses. More than 75% considered adult uses to decrease commercial property values. The only use considered to be comparable in its decreasing of property values was homeless shelters. Pawnshops and bars were next in their impact on lowering appraised values for community shopping centers but to a much lower degree (53% and 32%, respectively).

- Approximately 50% of the appraisers felt adult-oriented businesses impact shopping centers' appraised values beyond 3000 feet. As compared to single-family homes, the distance at which appraised values would no longer be affected by an adult use was somewhat less. Other respondents felt that it only took from 2200 to 2300 feet before an adult use had no impact on the appraised value of a shopping center. Only homeless shelters were suggested to have a further reach (2400 feet). Again, pawnshops and bars were next in their influence on property values within 2000 and 1900 feet, respectively.
- The vast majority of appraisers agreed that a concentration or cluster of detrimental uses had a greater negative impact than isolated uses.
- Three negative uses grouped together was considered by most appraisers to be the level at which the impact was greater. The grouping was considered to occur if uses were within approximately 1000 feet of each other. They felt the concentration ceased to have an impact at an average distance of 3800 feet (as compared to approximately 2300 to 2800 feet single uses).
- Slightly more than 20% of appraisers felt that the answers to the survey questions might be influenced by their "personal, moral, or ethical beliefs." This means the findings may be slightly skewed negatively towards adult-oriented businesses.

Because the response rate was lower than in some surveys, the margin of error was 13.7 percent; but, in response to many of the questions, more than 80 percent (and in some cases more than 90 percent) agreed on the nature and extent of the adverse secondary effects of sexually oriented businesses on other properties; thus, even applying the worst-case margin of error to the findings, a significant majority of the appraisers believed that these effects would occur.

Rochester, New York

The City of Rochester, New York, conducted a survey of 39 property appraisers to determine their perceptions of impacts of sexually oriented businesses on residential and commercial property values. This was important since most ordinances deal with sexually oriented businesses by requiring them to be separated by some specified distance (typically between 500 and 1500 feet) from certain categories of land-use. The Rochester survey attempted to find a relationship between distance and impacts on property.

Based on the results of the survey, appraisers in the Rochester, Monroe County area have the following views on the impact of sexually oriented businesses:

- Bars with nude servers or live entertainers clearly have the greatest negative impact on surrounding property values;
- Sexually oriented businesses have a measurable negative impact on the value of some neighboring property;

- There is significantly more negative impact on the value of neighboring residential property than on commercial property;
- The greatest impact on property values is on properties located on the same block;
- The impact on property value is less significant if located along the same street than if located on the same block; however, it is of greater significance than any particular distance separation;
- Based on a combination of responses, if two properties are equi-distant from the same *studied business*, with one located on the same street as the *studied business* and the other on another street, the property located on the same street as the *studied business* will suffer greater impacts;
- The negative impact decreases with distance and stops somewhere between 1,000 and 1,500 feet (Ref. #8).

Public Safety

In the law and planning literature on adult entertainment uses, public safety hazards are the most often cited adverse land use impacts for surrounding neighborhoods. Some evidence indicates that crime rates increase with the presence of adult entertainment uses. The major crimes frequently mentioned include: burglaries, assaults, indecent exposure, and prostitution. This criminal activity is often associated with areas in which a concentration of adult entertainment is allowed to prosper.

New York City police found that serious crime complaints ran almost 70% higher on police posts that contained adult uses (Ref #9). The cities of Cleveland, Ohio (Ref #11); Indianapolis, Indiana (Ref #7); Los Angeles, California (Ref #12); and Austin, Texas (Ref #13); among others have documented that crime rates were anywhere from 15% to 77% higher in areas containing adult businesses than those areas containing no adult businesses. A study in Phoenix, Arizona (Ref #14) concluded 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.

Most cities prefer to disperse adult entertainment uses, where adult entertainment uses are allowed throughout a community. There are usually special conditions which require these businesses to maintain a certain distance from each other and from public schools and residential zones. Law enforcement strategies are usually less effective when a dispersed approach is used.

A concentrated approach is one that allows adult entertainment uses in one small compact area. This concentrated approach is often used to contain adult entertainment businesses that are historically concentrated in an area. In such cases studies have shown a higher incidence of crime than other business districts in a city (Ref #14). While reports of crime may be comparatively high, it should be noted that in these concentrated or historical "skid road" areas, there

are generally many other potentially problematic uses, such as taverns, lounges, and nightclubs, also concentrated in the zone.

Adult entertainment uses are, generally, auto-oriented or destination-type uses attracting a regional clientele. Trade characteristics studies in Bothell, Washington (Ref #16) and Austin, Texas (Ref #13) confirmed that at least one half of all customers frequenting adult businesses came from outside the city limits (one investigation in Bothell found that of 321 vehicles checked, only 8 were registered in their city). In Austin, less than 5% were located within a one-mile radius of the establishment.

While there are many businesses that may attract a regional clientele, the fact that adult entertainment uses may have an increased potential for criminal activity makes them more of a public safety risk to a neighborhood. People who patronize these establishments may have no sense of identity with or regard for the neighborhood in which these businesses may be located. They may also be less inhibited in their personal behavior than if they were in their own community.

No known analyses or comparative studies have been conducted in Seattle to verify a correlation between adult entertainment uses and criminal activity. It is assumed that adult entertainment uses in Seattle are not unlike those in other cities. It is also not assumed that all adult uses generate or are involved in criminal conduct. But as evidenced in the foregoing discussion, there is enough documentation to demonstrate a link between adult entertainment uses and the potential for increased criminal activity.

The secondary effects of police response to a business have already been noted. The noise from sirens, flashing lights, and traffic hazards created by police and emergency vehicles are disturbances not conducive to healthy business or residential environments. The increased potential for crime, together with these effects, result in impacts that are likely to be more substantial than those of other neighborhood commercial uses, intended to serve the needs of surrounding residents.

ANALYSIS AND RECOMMENDATION

The recommendation to restrict adult cabaret uses to industrial zones is based on the following analysis. Compared with the potential land use impacts of adult cabarets in different areas of the City, adult cabaret uses would be least intrusive and have substantially fewer impacts in industrial areas. The location of an adult cabaret use shares greater compatibility with surrounding uses in industrial areas, and would not have the same negative influence on property values, or contribute to an escalation of criminal activities in and around residential neighborhoods, and would result in the least negative impacts to pedestrians, particularly to children.

Approximately 12% of Seattle's land area is industrially zoned. Of Seattle's industrially-zoned land, more than 90% is contained within the City's two manufacturing and industrial centers (MIC): Ballard/Interbay (17%) and Duwamish (77%). An additional 295 acres is zoned industrial outside of the two centers. Nearly 75% of the City's industrially-zoned land is used for industrial purposes (as measured by the King County assessors office, these include industrial uses, warehousing, transportation/utilities/communications, and institutional/public facilities). About 25% of the land is used for non-industrial purposes, including commercial uses, 'other' uses (parking, etc), and open space. Most entertainment uses are permitted in industrial zones. Prior to the moratorium, adult cabarets were permitted in industrial zones, however none have historically chosen to locate in these zones.

The Ballard/Interbay MIC generally abuts commercial and residential neighborhoods around the Magnolia, Queen Anne and Ballard neighborhoods. While much of the Duwamish area is dominated by Port-related industry, transportation and distribution activities, and borders the Pioneer Square and Chinatown/International District neighborhoods. The area also contains the City's major league sports stadia on the north, and is bordered by significant topography and the Interstate 5 freeway on the east. Recognizing that some industrial areas of the city may not be suitable for adult entertainment uses, the DPD was asked to examine the impacts of locating adult entertainment uses in a specific portion of the Duwamish industrial area (See Map, Attachment 1). Since there are no shoreline designations in this area, preferred water-dependent or water-related uses are not affected. The remainder of the discussion in this section pertains to this identified sub-area.

Warehousing, transportation, and distribution uses are critical activities in this area. Parcels are generally large, often created by consolidation of half to full blocks. The average lot size is 1.5 acres for unimproved sites and 1.1 acres when improved. The platting pattern and the freight network make the area especially suited for these activities and give it its working industrial identity.

Three major rail corridors subdivide the area and limit local east-west traffic. Buildings are often large, and characteristic of industrial uses, having few openings. Open sites are often devoted to parking or storage. Commercial activity is concentrated along two major arterials, Fourth Avenue South and Airport Way South.

Residential development is currently prohibited in industrial zones with two exceptions: artist's studio/ dwellings in existing structures and caretaker's quarters. There are no playgrounds, public or private schools, or other institutions, although some vocational training may take place in this area. The nearest school is located east of Interstate 5, approximately 1/2 mile from the study area. The nearest residential zones, on Beacon Hill located east of Interstate 5, which provides an effective barrier, and Georgetown to the South.

The Seattle Comprehensive Plan recognizes the importance of industrial businesses to the City's economy, consistent with state and regional growth management objectives, and supports protecting the limited supply of large parcels of land zoned for industrial use in the City from factors that would negatively affect investment in the area. The City's industrial lands policy has historically been to provide a stable industrial environment and to protect viable industries, and family wage jobs, from competing uses.

While not a residential neighborhood, and not associated with family activity that generally is central to the opposition to adult businesses elsewhere in the city, the Duwamish area possesses some vulnerability to the potentially negative impacts of adult entertainment businesses. Industrial area employers have reported that it can be difficult to recruit employees because of perceived public safety risks that accompany isolated areas. Pedestrian infrastructure is limited and there is often inadequate parking. The public transportation system is limited and does not often address the needs of shift work schedules. Outlying suburban locations often provide more incentives at lower costs. These factors often discourage investment in the area.

Industrial uses are also dependent on certain commercial uses for support. Allowing the location of adult entertainment uses could negatively affect the desirability of those sites for industrial support functions. If permitted, adult entertainment businesses would not necessarily compete directly for sites with industrial uses, but rather for those sites where other commercial businesses in industrial areas prefer to locate.

Public safety issues are a concern in the Duwamish study area, not necessarily because of proximity to residential or neighborhood commercial development, but because the development pattern necessary for industrial activity and its inherent isolation contribute to the more vulnerable appearance of the area. Large lot and block configurations create a platting pattern that makes east-west local access difficult. The combination of dead end streets, lack of pedestrian lighting, large site layout, outdoor storage of materials, and the lack of oversight provided by pedestrian activity, could hamper law enforcement strategies.

Allowing adult entertainment businesses throughout this large area may increase the perception of public safety risks for people working in or visiting the area and property values could be negatively affected, as well. However, the effect on property values is considered far less likely in industrial areas due in large part to the character of the area and the already lower property values associated with industrial activity than would be true downtown or in other mixed use commercial neighborhoods throughout Seattle.

While there is no historical precedent for adult entertainment businesses operating in this area, in the past, concerns were raised about what effect the

proximity of adult entertainment uses to traditional trades will have on businesses and their employees.

The economic vitality of the Duwamish industrial areas is dependent on maintaining incentives for industrial businesses and employees to remain in the City. Incentives that encourage employment, customer and support services should not be eroded. Allowing adult entertainment businesses to locate in the study area could negatively impact these incentives and contribute to the out-migration of industrial businesses from the City.

However, the most compelling arguments for limiting adult entertainment uses are to reduce the potential for public safety and property value impacts on the broadest number of citizens, in residential, commercial and mixed use neighborhoods throughout the City, where the majority of citizens live and work. Comparing the land use impacts of adult entertainment uses in the different areas of the City, adult cabaret uses would be least intrusive in industrial areas than in downtown and other Seattle, pedestrian-oriented residential and mixed use neighborhoods.

Recommendations

Adult cabarets are proposed to be prohibited in all zones except that portion of the Duwamish industrial area as shown on the map accompanying this report, and defined generally as:

South Walker Street on the north;
3rd and 4th Avenue South on the west;
Interstate 5 on the east; and
Duwamish Avenue South on the south.

South Walker Street is recommended as the northern boundary because it provides a sufficient distance from the historical and mixed use neighborhoods of Pioneer Square and the Chinatown/International District, and from frequent events at the city's major sports facilities.

3rd and 4th Avenues South provide a western boundary that distinguishes the area from the retail centers on 1st Avenue South and the Port activity and transportation corridors associated with the Duwamish.

Interstate 5 provides a formidable eastern boundary, limiting mobility between Beacon Hill and the industrial neighborhood to the west. Interstate 5, in combination with a substantial topographic change, effectively protects the single family and mixed use neighborhoods to the east on Beacon Hill.

The proposed southern boundary is defined by the right-of-way for the diagonal rail yards or Duwamish Avenue South. This boundary would provide a

necessary buffer in both distance and transition to the residential area of Georgetown, approximately $\frac{1}{4}$ to $\frac{1}{2}$ mile to the south.

The area recommended in which to allow adult cabarets would provide adequate locational opportunities for adult entertainment uses away from most residential uses, and pedestrian-oriented mixed use neighborhoods.

Definition

"Adult cabaret" is proposed to be defined as a place of public assembly where licensing as "adult entertainment premises" is required by Seattle Municipal Code 6.270.

Maximum Size of Use

The size of an establishment has some correlation with the potential for impacts associated with the business. The larger the business the greater traffic or parking it is likely to generate, the greater the number of patrons on site at any one time, etc. The City's environmental laws governing traditional project or development-related impacts (SEPA) establishes a threshold for environmental review of establishments that exceed 12,000 square feet of gross floor area in industrial areas. However, non-industrial uses or those that may have unforeseen consequences on industrial use in the area, such as retail, office or residential, are either limited in size compared to industrial use (e.g. office or retail) or generally prohibited (e.g. residential). Restaurants are limited to 5,000 square feet of gross floor area. Given the secondary impacts associated with adult cabarets, and their general common traits with uses such as restaurants, a common size limit is appropriate.

Two existing adult entertainment establishments in the city are in the range of 4,000 to 6,000 square feet of gross floor area. Generally, facilities in the 4,000 to 7,000 square foot size range appear to be the norm and the proposed maximum size limit, not to exceed 5,000 square feet, is believed to be an economically viable maximum size for an adult cabaret use in Seattle.

Separation from Sensitive Uses

In order to minimize the impact of adult cabarets on sensitive uses, it is proposed that any new or expanding adult cabaret be located no closer than 1,000 feet from any religious institution, childcare facility, or any facility operated by the Seattle Public School System that provides public instruction to children, community center, park, or light rail transit station. Of these uses from which adult cabarets must maintain a minimum distance, only a light rail transit station (passenger service is scheduled to begin in 2009) is currently located within the area in which adult cabarets are proposed to be permitted. Interstate 5

effectively separates the area in which adult cabarets would be allowed from the residential and mixed use neighborhoods adjoining this area to the east.

Non-conforming Uses

DPD recommends that existing uses made nonconforming in their present location be allowed to continue. They may maintain, repair, renovate, or structurally alter the structure to accommodate the elderly or disabled. Once a nonconforming use is discontinued for more than a year, it cannot be re-established or recommenced.

Signs

DPD also recommends that pole or roof signs that are visible from State Route 99, the Spokane Street Viaduct, or Interstate 5 are not permitted in conjunction with an adult cabaret.

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Do “Off-Site” Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence

RICHARD McCLEARY and ALAN C. WEINSTEIN

Recent federal court decisions appear to limit the ability of cities to mitigate the ambient crime risks associated with adult entertainment businesses. In one instance, a court has assumed that criminological theories do not apply to “off-site” adult businesses. After developing the legal doctrine of secondary effects, we demonstrate that the prevailing criminological theory applies to all adult business models. To corroborate the theory, we report the results of a before/after quasi-experiment for an off-site adult business. When an off-site adult business opens, ambient crime risk doubles compared to a control area. As theory predicts, moreover, ambient victimization risk is most acute in night-time hours. The theoretical development and empirical results have obvious implications for the evolving legal doctrine of secondary effects.

INTRODUCTION

Can a government, through zoning and licensing, regulate stores that sell sexually explicit material strictly for off-site use? As a matter of law, expressive activities that occur inside adult businesses enjoy a degree of First Amendment protection.¹ The U.S. Supreme Court and the lower federal courts have ruled, nevertheless, that governments may regulate adult businesses so long as the regulations are aimed at mitigating the businesses’ potential adverse “secondary effects,” such as ambient noise, blight, and, in particular, crime.²

To enact an adult business ordinance, a government must collect evidence to show that the businesses are associated with negative secondary effects. Many of the studies conducted by governments over the last three decades find that adult businesses do have significant secondary effects. Most of these studies assume that different types of adult businesses—cabarets,

An earlier version of this article was read at a panel of the American Society for Criminology, 14 November 2007, Atlanta, GA. We are indebted to James W. Meeker, Wendy Regoeczi, and several anonymous referees for comments.

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bookstores, arcades, etc.—have identical secondary effects, however. Whether warranted or not, this assumption has become legally problematic.

To illustrate the problem, suppose that each type of adult business has a unique “average” secondary effect. This implies that one of these different types would have the lowest effect of any adult business. The secondary effects of this type of business might conceivably be sufficiently *de minimis* as to fall below the constitutional threshold where a government could regulate its operation. Alternatively, if the effect falls just above the threshold, the method of operation of that type of business might be “tweaked” to force its secondary effects below the threshold.

What might this “bullet-proof” type of adult business look like? Common sense suggests that it would be a store that sells adult merchandise for off-site use.³ The typical customer drives to the store, parks, goes in, makes a purchase, comes out, and drives away. Except for the merchandise purchased, this routine activity is indistinguishable from the routine activities of convenience stores, dry cleaners, and libraries. Common sense argues then, that the secondary effects associated with off-site adult businesses are likely to be no larger than the analogous effects associated with convenience stores, dry cleaners, and libraries.

Adult book and video stores have made this common sense argument and some courts have found it persuasive. Like many common sense arguments, this one ignores theoretically relevant differences between adult and nonadult businesses. In fact, the routine activity theory of crime (Cohen and Felson 1979; Felson and Cohen 1980; Sherman, Gartin, and Buerger 1989) predicts that virtually all types of adult businesses will have large, significant crime-related secondary effects. The case study results reported here corroborate the theory for stores that sell adult merchandise strictly for off-site use. Before presenting the theory and evidence, we outline the evolution of the laws that Andrew (2000) calls the “secondary effects doctrine.”

EVOLUTION OF THE SECONDARY EFFECTS DOCTRINE

Although the court decisions that motivate this article were published in 2002 and 2003, both rest on an evolving body of law that begins thirty years earlier. In the late 1960s, Boston’s city planners proposed to concentrate the city’s adult businesses in a single small district. This proposal had two theoretical advantages. First, it would keep vice activity out of the city’s other districts. Second, it would allow the police to focus resources on a small area, thereby reducing the risk of crimes associated with vice.

By the early 1970s, the failure of Boston’s “combat zone” experiment was obvious (Skogan 1992; Garnett 2005). At about this time, Detroit consulted with social scientists and real estate experts on the question of whether adult businesses should be allowed to locate near other adult businesses. The experts agreed that dispersing adult businesses would mitigate their

secondary effects. Relying on the experts' opinions, Detroit enacted an ordinance that set minimum distances between adult business sites (*American Mini-Theatres, Inc. v Gribbs* 1975 at 1018). Forced to relocate, several existing adult businesses challenged the constitutionality of the Detroit ordinance. Borrowing from the vocabulary of antitrust cases, the U.S. Supreme Court ruled in *Young v American Mini-Theatres* (1976) that governments could enact adult business ordinances so long as the ordinances were aimed at mitigating adverse secondary effects. By this test, the Court upheld the Detroit ordinance.

Although *Young* (1976) required that regulations be based on secondary effects evidence, it said nothing about the quantity or quality of the evidence. These questions were addressed ten years later in *City of Renton v Playtime Theatres, Inc.* (1986). In the early 1980s, Renton, Washington enacted a zoning ordinance that in many respects resembled the ordinance challenged in *Young*. Since Renton had no adult businesses, it could not base its ordinance on local studies and so looked to a Washington Supreme Court opinion reviewing studies from nearby Seattle (*Northend Cinema, Inc. v Seattle* 1978).

A year later, two theaters located in a prohibited district began to show X-rated films. In the ensuing challenge, the Supreme Court ruled that the ordinance complied with the *Young* (1976) standard in that its sole purpose was the mitigation of secondary effects. Further, the Court explicitly stated that a city need not conduct its own study of secondary effects or produce evidence of secondary effects in addition to that already available from other cities before enacting an ordinance regulating adult businesses, so long as the city believed that whatever studies or evidence it relied on were relevant to the problem the city was addressing (*Renton* 1986 at 51–52). *Renton* (1986) thus legitimized the practice of basing a local ordinance on secondary effects studies from other communities. *Renton* (1986) also set a reliability threshold, albeit a low one, for the government's secondary effects evidence. The evidence must be "reasonably believed to be relevant" (*Renton* 1986 at 51–52).

The Supreme Court revisited this issue sixteen years later in its decision in *City of Los Angeles v Alameda Books, Inc.* (2002). In 1977, Los Angeles had conducted a comprehensive secondary effects study that found, among other things, that concentrations of adult businesses were associated with high ambient crime rates. Based on this finding, Los Angeles enacted an ordinance requiring adult businesses to be separated by a minimum distance. The ordinance was amended in 1983 to prevent businesses from evading the minimum distance rule by merging into a single entity. Instead of requiring minimum distances between adult *businesses*, the amended ordinance required minimum distances between distinct adult entertainment *activities*. Adult businesses that combined on-site coin-operated video viewing booths with sales of videos for off-site use were prohibited.⁴ These multiple-activity businesses were forced to segregate their on-site and off-site activities.

In 1995, two multiple-activity businesses challenged the amended ordinance. Since the 1977 study said nothing about the secondary effects of combining multiple activities under one roof, they argued that Los Angeles had no evidence that multiple-activity businesses were associated with secondary effects. The federal district court agreed, and the Ninth Circuit Court of Appeals affirmed on the ground that because the 1977 Los Angeles study had not investigated the effects of multiple-activities under one roof, the evidence for the amended ordinance did not meet *Renton*'s threshold of being reasonably relevant (*Alameda Books v City of Los Angeles* 2000). But the U.S. Supreme Court took a different view.

As often happens in First Amendment cases, the Supreme Court's decision did not produce a clear majority holding. Because the 1977 Los Angeles study had not investigated the effects of multiple-activities under one roof, the Ninth Circuit found that the evidence for the amended ordinance did not meet the *Renton* (1986) threshold (*Alameda Books* 2000 at 727–28).

While acknowledging the limitations of the 1977 study, Justice O'Connor argued that Los Angeles could infer from its study that concentrations of adult activities would also be associated with secondary effects and, thus, that Los Angeles had complied with the evidentiary requirement of *Renton* (1986).⁵ Justice O'Connor then addressed what evidentiary standard a city would need to meet. After noting that in *Renton* (1986) the Court "held that a municipality may rely on any evidence that is 'reasonably believed to be relevant' for demonstrating a connection between speech and a substantial independent government interest," Justice O'Connor wrote:

This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton*. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance. (*City of Los Angeles* 2002 at 438–39)

Applying this test to the case at hand, Justice O'Connor concluded that, given the early stage of the litigation, the city had complied with the evidentiary requirement of *Renton* (1986).

Justice Kennedy wrote a lengthy concurring opinion to express concern that "the plurality's application of *Renton* (1986) might constitute a subtle expansion" of what is permitted under that case (*City of Los Angeles* 2002 at 425).⁶ In a dissenting opinion, Justice Souter, joined in part by Justice Breyer, argued that imposing stricter evidentiary standards on governments would guard against potential abuses and called for the Court to impose on government a requirement that it demonstrate empirically

that the [negative secondary] effects exist, that they are caused by the expressive activity subject to the zoning, and that the zoning can be expected either to ameliorate them or to enhance the capacity of the government to combat them (say, by concentrating them in one area), without suppressing the expressive activity itself. (*City of Los Angeles* 2002 at 452–53)⁷

In the final section of his dissent, which Justice Breyer did not join, Justice Souter applied this standard to the case at hand and argued that the city offered neither a rationale nor evidence to support the proposition that an adult bookstore combined with video booths would produce the claimed secondary effects (*City of Los Angeles* 2002 at 461–64).

In the wake of *Alameda Books* (2002), adult businesses began to use the approach spelled out by the plurality to challenge ordinances. With one exception, most of these challenges have failed. If a regulation has a plausible rationale, and if it is supported by at least some evidence, the courts continue to show substantial deference to legislatures (see, e.g., *G.M. Enterprises, Inc. v Town of St. Joseph, WI* 2003; *Giovani Carandola, Ltd. v Fox* 2005; *Abilene Retail #30, Inc. v Board of Commissioners of Dickinson County* 2005).⁸

Challenges to government regulations of off-site adult businesses are an exception to this rule. In *Encore Videos, Inc. v City of San Antonio* (2003), an ordinance classified off-site book and video stores as adult entertainment businesses if their inventories included 20 percent adult material. Citing *Alameda Books* (2002), an off-site book store challenged the ordinance's rationale and underlying evidence. Agreeing, the Fifth Circuit found that San Antonio had relied on studies that either excluded off-site adult businesses or, otherwise, had not distinguished between the effects of on-site and off-site adult businesses. In the Court's view, moreover, the city's rationale for ignoring the differences between on-site and off-site businesses was weak.

Off-site businesses differ from on-site ones, because it is only reasonable to assume that the former are less likely to create harmful secondary effects because of the fact that consumers of pornography are not as likely to linger in the area and engage in public alcohol consumption and other undesirable activities. (*Encore Videos* at 294–95)

Other factors influenced the decision, of course, and a recent Fifth Circuit decision, to be discussed shortly, clarifies *Encore Videos* (2003). For present purposes, however, we end with the Court's theory. While the theory is compelling from a common sense perspective, it ignores theoretically relevant characteristics of off-site adult businesses.

THE ROUTINE ACTIVITY THEORY OF CRIME HOT SPOTS

The prevailing criminological theory of secondary effects is derived from a special case of the routine activity theory of crime (Cohen and Felson 1979; Felson and Cohen 1980; Clarke 1983; Felson 1998). Applied to secondary

effects, the theory holds that the routine activity at adult business sites attracts predators, generating a "hotspot of predatory crime" (Sherman, Gartin, and Buerger 1989; Brantingham and Brantingham 1981, 1993).

Applied to crime hot spots, the routine activity theory assumes that a pool of *offenders* moves freely from site to site, stopping to prey when a relatively attractive site is discovered. The relative attractiveness of a site is proportional to the number of *targets*, weighted by their *value*, and inversely proportional to the level of *police presence* at the site. Sites with relatively many high-value targets and relatively low police presence attract relatively many predators.

Limiting the routine activity theory to crime hot spots allows for two simplifications of the original general theory of Cohen and Felson (1979; Felson and Cohen 1980). First, the original theory's more general "capable guardians" factor can be reduced to *police presence* at the site. Second, the original theory's more general "suitability" factor, which determines the relative risk of a target, can be reduced to the *value*, in the predator's estimation, of the targets at a site. Both simplifications reflect the characteristics of the expected offenders.

The offenders who are attracted to adult business sites lack legitimate means of livelihood and devote substantial time to illegitimate activities. By Sutherland's (1937) definition, they are "professional thieves." Otherwise, they are a heterogeneous group. Some are vice purveyors who dabble in crime; others are criminals who use the promise of vice to lure and lull their victims. Despite their heterogeneity, these predators share a rational decision-making calculus that draws them to adult business sites.

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

Criminological thinking on the connection between vice and predatory crime has changed little in the seventy-five years since Shaw's *Jack-Roller* (Felson 2006; Potter 1989). To document the rational choices of predatory criminals, Wright and Decker (1997) interviewed eighty-six active armed robbers. Asked to describe a perfect victim, all mentioned victims involved in vice, either as sellers or buyers. Three of the armed robbers worked as prostitutes:

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

The rational calculus described by these prostitute-robbers echoes the descriptions of other predators (see, e.g., Bennett and Wright 1984; Feeney 1986; Fleisher 1995; Katz 1988, 1991; Shover 1998).

Like tourist attractions (Dimanche and Lepetic 1999; Danner 2003) and sporting events (Corcoran, Wilson, and Ware 2003; Westcott 2006), adult business sites attract targets from wide catchment areas. Compared to the targets attracted to these other hot spots, however, adult business patrons are disproportionately male, open to vice overtures, and carry cash. When victimized, moreover, adult business patrons are reluctant to involve the police. They are "perfect" victims, from the rational predator's perspective.

Given a choice among equally lucrative sites, predators prefer sites with low levels of *police presence* (Sherman and Weisburd 1995). In the original statement of the routine activity theory (Cohen and Felson 1979; Felson and Cohen 1980), the pool of "capable guardians" included not only the police but, also, the targets themselves and any potential witnesses. Given the stigma associated with adult businesses, however, customers may be reluctant to have their presence at the site documented in police records. The level of guardianship at an adult business site then is proportional to the level of physical (e.g., motor or foot patrols) or virtual (e.g., security cameras) *police presence*.

The relative effectiveness of a fixed level of police presence can be affected by broadly defined environmental factors, of course. Because conventional police patrolling is less effective in darkness, for example, ambient victimization risk rises after dark (Coupe and Blake 2006). Architectural structures that obscure vision can have a similar effect, but outdoor lighting can mitigate the risk (Farrington and Welsh 2002). Because rural areas have fewer police resources (Thurman and McGarrell 1997; Weisheit, Falcone, and Wells 1999), rational predators may view rural adult business sites as more attractive (McCleary 2008).

In theory, any type of adult business that attracts high-value targets will generate an ambient public safety hazard. The theory allows for qualitative differences nevertheless. Some differences arise from idiosyncratic opportunity structures associated with a particular type of adult business. In this instance, for example, the video viewing booths that distinguish on-site and off-site adult bookstores create opportunities for victimless vice crimes (Sundholm 1973; Tewksbury 1993; Weatherford 1986). To the extent that on-site and off-site adult bookstores attract high-value targets from wide catchment areas, both business types are expected to attract predators to their neighborhoods, thereby generating ambient victimization risk. The case study data presented here corroborate this theoretical expectation.

DR. JOHN'S: A CASE STUDY

Adult businesses are nothing new to Sioux City, Iowa. Two adult businesses had operated without incident in the city's older downtown area for decades. Although both businesses sold sexually explicit DVDs for off-site use, most of their revenue came from coin-operated viewing booths.

Nevertheless, strictly speaking, both belonged to the adult business model that Justice Souter characterized as the “commercially natural, if not universal” model (*City of Los Angeles* 2002). In terms of “look and feel,” the two businesses were indistinguishable from adult businesses in larger cities.

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

[T]he first impression of the store is a far cry from the first image that most people would likely have of an “adult book store” or “sex shop.” There is nothing seedy about the neighborhood, store building, or store front. In fact, from a quick drive-by, one would likely assume that the business was a rather upscale retail store for women's clothing and accessories. There are no “adult” signs or banners proclaiming “peep shows,” “live entertainment booths,” “XXX movies,” “live models,” “adult massage,” or any of the other tasteless come-ons all too familiar from adult entertainment stores that exist in virtually every American city of any size and which one may find scattered along interstates and highways even in rural America. (*Dr. John's, Inc. v City of Sioux City, IA* 2005 at 1103)

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

Regardless of its look and feel, *Dr. John's* was located in a prohibited zone. When Sioux City attempted to enforce its zoning code, *Dr. John's* sued, arguing that off-site adult businesses lacked the typical crime-related secondary effects associated with adult businesses. To counter this argument, Sioux City produced police reports of incidents occurring within five hundred feet of *Dr. John's* during the four years between 1 January 2002, and 31 December 2005. For purposes of quasi-experimental control, reports of incidents occurring within five hundred feet of a nearby motel were also retrieved.

Table 1 breaks the incidents down by broad categories for 793 days before and 668 days after *Dr. John's* opened. In the *Dr. John's* circle, the annual crime rate rose from 7.8 to 22.4 incidents per year, an increase of

Table 1. Crime Incidents Before and After the Opening of *Dr. John's*

	Dr. John's		Control	
	Before	After	Before	After
<i>Property</i>	10	20	21	25
<i>Personal</i>	1	3	8	5
<i>Other</i>	6	18	15	16
<i>Total</i>	17	41	44	46

Table 2. Null Hypothesis Tests

Total Incidents	Before		After				
	N	Rate	N	Rate	A:B Odds	Ratio	p <
Dr. John's Control	17	7.8	41	22.4	2.86		
	44	20.3	46	25.1	1.24	2.31	0.01
Officer-Initiated Excluded	Before		After				
	N	Rate	N	Rate	A:B Odds	Ratio	p <
Dr. John's Control	12	5.5	31	16.9	3.08		
	26	12.0	32	17.5	1.46	2.11	0.04

approximately 190 percent. Crime in the control circle rose as well, from 20.3 to 25.1 incidents per year, a more modest increase of approximately 25 percent. Assuming that plausible alternative hypotheses can be ruled out, a crude comparison of rates suggests that *Dr. John's* poses an ambient victimization risk.

NULL HYPOTHESIS

The most obvious alternative hypothesis is that the before/after effect is due to chance. To test this hypothesis, we take advantage of the fact that crime incidents in the two circles are not different than Poisson (Haight 1967: 94–95). Under a Poisson hypothesis, the after/before odds for the *Dr. John's* and control circles, reported in Table 2, are distributed as unit-mean log-Normal variables (Bishop, Fienberg, and Holland 1975: 315–17). The ratio of the two odds, also distributed as unit-mean log-Normal, is the maximum-likelihood estimate of the before/after change. In this instance, the estimated odds ratio ($17/41 \times 44/46 \approx 2.31$) implies that ambient crime rose by 131 percent after the opening of *Dr. John's*. Since estimates of this size or larger occur by chance with probability smaller than 0.01, the null hypothesis is rejected.

Internal Validity

Another set of alternative hypotheses involve uncontrolled threats to internal validity. The quasi-experimental design summarized in Table 1 is a variation of the Campbell and Stanley (1963: 55) "multiple interrupted time series quasi-experiment." It is "the best of the more feasible designs," in their opinion (Campbell and Stanley 1963: 57; see also Cook and Campbell 1979: 214–18; Shadish, Cook, and Campbell 2002: 206). All three primary authorities cite *history*, *maturation*, and *instrumentation* as plausible threats

to internal validity. The control circle contrast makes these threats implausible in principle. If the *Dr. John's* and control circles have significantly different crime risk factors, however, the quasi-experimental contrast fails.

Campbell and Stanley (1966: 55–57) analyze the failed quasi-experimental contrast as a *selection-interaction* threat. Because *selection-interaction* is defined by the logical conjunction of *selection* and, in this instance, *history*, *maturation*, or *instrumentation*, *selection-interaction* is ruled out by ruling out *selection*—or by ruling out *history*, *maturation*, and *instrumentation*. We use both arguments to rule out the plausible alternative explanations based on uncontrolled threats to internal validity.

Selection

Ambient crime risk factors in the *Dr. John's* and control circles seem roughly comparable. Because the two circles are tangent, for example, face the same thoroughfare, and have identical pedestrian accesses, their traffic flows are identical. Because the two circles have roughly the same numbers and types of businesses, they have roughly comparable opportunities for commercial crime. The circles are in the same Census blocks, municipal zone, and postal (zip) code.

The crime rates in Table 2 suggest one apparent difference, nevertheless. Over the 793-day preintervention period, the crime rate in the control circle is approximately 2.5 times that of the *Dr. John's* circle. Much of this difference is due to the fact that the control circle is centered on a motel and that the local police department uses a National Incident Based Reporting System (NIBRS)⁹ incident coding protocol. If the Uniform Crime Reporting (UCR)¹⁰ “hotel” and “hierarchical” coding rules were applied to these data, the difference in crime rates would be reduced by half (Rantala and Edwards 2000; James and Council 2008). Since the NIBRS protocol is used in both the pre- and postintervention segments, of course, its effect is cancelled in the before/after ratio. Otherwise, the control circle appears roughly comparable to the *Dr. John's* circle in all theoretically relevant respects.

Although a *selection-interaction* threat cannot be ruled out categorically, it does not seem to be wholly plausible. When plausibility of the conjoined threats of *history*, *maturation*, and/or *instrumentation* is considered, moreover, *selection-interaction* seems wholly implausible. We begin with the least plausible of the three conjoined threats.

MATURATION

If a times series is a realization of a nonstationary process, any arbitrary test of a before/after null hypothesis is biased in favor of rejection. Since homogeneous Poisson processes are stationary (Kingman 1993: 9–10), the maturation hypothesis can be tested through a Poisson goodness-of-fit test. Since a Kolomogorov-Smirnov test statistic (Kendall and Stuart 1979: 476–81)

for the daily time series ($Z = 0.14$) lies within the 95 percent confidence interval ($p < 0.89$), the Poisson hypothesis cannot be rejected. Accordingly, the *maturation* hypothesis is implausible.

HISTORY

To assess the threat of *history*, public records and local media were searched for the period of 120 days before and 120 days after the opening of *Dr. John's*. The search turned up no potentially disruptive events within 1,500 feet of either site during that period. *History* too is implausible.

INSTRUMENTATION

Instrumentation threats arise in crime rate time series when an intervention affects the manner in which crime incidents are recorded (McCleary, Erven, and Nienstedt 1982). If the opening of an adult business like *Dr. John's* leads to heightened police surveillance, for example, the probability of discovering and recording latent incidents may rise.¹¹ Whereas this explanation might be plausible for crime incidents discovered by police patrols, however, it is implausible for crimes reported to the police by victims or witnesses.

This suggests a straightforward test of the *instrumentation* hypothesis. Based on their independent reading of crime incident narrative reports, graduate research assistants separated the incidents into incidents initiated by a complaining victim or witness and incidents initiated by patrol officers. As reported in Table 2, excluding officer-initiated crime incidents leads to the same conclusion. The null hypothesis is rejected with 95 percent confidence, rendering the *instrumentation* hypothesis implausible.

In addition to hypothesis tests for specific threats to internal validity, the plausibility of any alternative hypothesis rests on the *coherence* of the observed effect (Shadish, Cook, and Campbell 2002: 35–36). Table 3 reports auxiliary data that indirectly corroborate a nominal interpretation of the before/after effect. The before/after effect is most pronounced during the eight-hour overnight shift. Because twenty-four-hour businesses had operated in both

Table 3. Crime Incidents by Time of Occurrence

	Dr. John's		Control	
	Before	After	Before	After
8 PM–3:59 AM	3	21	12	13
4 AM–7:59 PM	14	20	32	33
Total	17	41	44	46
Odds Ratio = 4.66; t-Statistic = 1.88				

circles without interruption since 2002, the abrupt increase in nighttime risk cannot be attributed to the mere onset of late-night and early-morning commerce, but, rather, must be attributed to the adult nature of the new commercial activity.

DISCUSSION

Readers who are unfamiliar with Poisson time series might be tempted to discount the statistical significance levels reported in Tables 1–3. The statistical significance of a Poisson time series effect is determined not by the number of nonzero observations, however, but by the length of the series. Time series of $N = 1,461$ daily observations are sufficiently long to detect effects considerably smaller than those reported.

Although the common threats to internal validity cannot be ruled out categorically, they do not seem plausible in light of the available auxiliary data. Questions of generality remain, of course. That is the nature of case study evidence. Nevertheless, in light of the strong underlying theory and the coherent pattern of effects, it is reasonable to think that the findings apply to off-site adult businesses generally.

The routine activity theory of hot spots holds that people who carry cash and who are reluctant to report crimes are at risk of predation. Adult business customers are not alone in that respect. Drug dealers (Topalli, Wright, and Fornango 2002) and illegal immigrants (Davis, Erez, and Avitabile 2001) are vulnerable to predation for similar reasons. When vulnerable targets are attracted to a site, their presence attracts predators with predictable consequences: ambient crime risk. Adult business sites are not unique in that respect. Currency exchanges are notorious hot spots because illegal immigrants who cash checks at the site are robbed as they walk home (Barr 2004). Pedestrians in downtown commercial districts do not carry cash and are not reluctant to report crimes; and they have relatively low robbery risks (Wright and Decker 1997).

The coherent pattern of effects reinforces the theory. The routine activity theory holds that crime rates rise and fall across a twenty-four-hour day in response to the diurnal routine activity cycle, for example. Crime rates are lower at night because businesses are closed and people are safely asleep in their homes; fewer targets are available for predation. When targets are at risk around the clock, however, the risk is most acute in hours of darkness (Van Koppen and Jansen 1999; Coupe and Blake 2006). The corroborating postintervention diurnal cycle (Table 3) makes the straightforward generalization more credible.

In contrast to the relevant criminological theory, the common sense theory of secondary effects predicts that off-site adult bookstores pose relatively small ambient public safety hazards. This prediction rests on the assumption that an “average” customer drives up to the store, parks, runs in, makes a purchase, runs out, and drives off. Because the “average” customer spends

very little time in and around the store, the neighborhood will have few (if any) vulnerable targets to attract predators. Absent both targets and predators, common sense argues that the crime-related secondary effects of off-site adult bookstores will be smaller than the analogous effects of on-site adult businesses.

Although the assumed "average" behavior of off-site adult business customers may be consistent with common sense, it is inconsistent with the data. In an ethnographic study of an off-site adult business, Hefley (2007) reports that patrons spend significant periods of time in the immediate vicinity of the site. Some wait outside until the business is empty. Others "case" the business on multiple occasions before deciding to enter. Some patrons park their cars a block or more away and walk to the store. These "average" behaviors attract predators to the site, creating the ambient public safety hazard predicted by the routine activity theory.

Like the formal scientific theories that they precede, common sense theories evolve in light of experience (Popper 1979: 32–105). An ambiguous passage in the *Encore Videos* (2002) decision left the impression that the Fifth Circuit had endorsed an interpretation of criminological theory favoring the plaintiffs. Four years later, however, in *H and A Land Corp. v City of Kennedale* (2007), the court revisited the issue. In *Encore Videos* (2002), the Fifth Circuit struck down portions of a San Antonio ordinance that dealt with off-site adult bookstores because the factual predicate of the ordinance included no secondary effects studies of off-site stores. The factual predicate of the ordinance challenged in *H and A Land Corp.* (2007), in contrast, included at least two studies of the secondary effects of off-site adult businesses. The Fifth Circuit panel upheld the ordinance on that basis:

This case differs from *Encore Videos* because Kennedale, unlike San Antonio, offers evidence that purports to show a connection between purely off-site businesses, or "bookstores," and harmful secondary effects. (*H and A Land Corp.* 2007 at 339)

The Fifth Circuit panel, including one member who had participated in *Encore Videos*, took the unusual step of retracting the ambiguous passage that seemed to endorse an interpretation of criminological theory favoring plaintiffs. This clarification proved prescient. One week later, a customer who had parked several hundred feet away from one of the plaintiff's off-site stores was confronted by an armed robber and seriously wounded (Bourgeois 2007). The facts of this incident are consistent with the data and theory.¹²

The secondary effects studies relied upon in *H and A Land Corp.* (2007), as well as the case study findings reported here, corroborate the criminological theory of routine activities. In turn, these findings corroborate the findings and experiences of urban planners (Burr 1998; Ford and Beveridge 2004; Papayanis 2000; Ryder 2004). The emerging picture of the problems associated adult businesses is convincing. Governments have the ethical dilemma of balancing the mitigation of secondary effects and the First Amendment rights of citizens.

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NOTES

1. See, for example, *City of Erie v Pap's A.M.*, (2000 at 319), where Justice O'Connor stated, "nude dancing still receives First Amendment protection, even if that protection lies only in the 'outer ambit' of that Amendment."
2. See, for example, *City of Renton v Playtime Theaters, Inc.* (1986) where zoning to control the location of adult businesses is upheld.
3. "Common sense" (or "fallible realism") refers to the evolving body of knowledge that is open to nonexperts. Scientific knowledge, which is open only to experts, is preceded by common sense. "[A]ll science, and all philosophy, are enlightened common sense" (Popper 1979: 34; see also Musgrave 1993).
4. In *City of Los Angeles v Alameda Books, Inc.* (2002), Justice Souter characterizes this model as "commercially natural, if not universal."
5. Justice O'Connor's opinion criticized the Ninth Circuit for imposing too high a bar for cities that seek merely to address the secondary effects of adult businesses. The Ninth Circuit found that the 1977 study did not provide reasonable support for the 1983 amendment because the study focused on the secondary effects associated with a concentration of establishments rather than a concentration of operations within a single establishment. While acknowledging that the city's 1977 study did not assess whether multiple adult businesses operating under one roof were associated with an increase in secondary effects, Justice O'Connor argued that the city could infer that a concentration of operations, no less than a concentration of establishments, would be associated with an increase in negative secondary effects. She then criticized the Ninth Circuit for implicitly requiring that the city must not merely provide reasonable support for a theory that justifies its ordinance, but also prove that its theory is the only plausible one.
6. Justice Kennedy contended that this case raised two evidentiary questions for the Court. "First, what proposition does a city need to advance in order to sustain a secondary-effects ordinance? Second, how much evidence is required to support the proposition?" (*City of Los Angeles* 2002: 425). He argued that the plurality answered only the second question, and while he believed that answer was correct, in his view more attention needed to be paid to the first. The critical inquiry that Justice Kennedy believes the plurality "skips" is "how speech will fare under the city's ordinance." In his view, shared by Justice Souter's dissenting opinion, a "city may not assert that it will reduce secondary effects by reducing speech in the same proportion." In short, "[t]he rationale of the ordinance must be that it will suppress secondary-effects-and not by suppressing speech" (Ibid. at 450-51). Applying this first step to the ordinance in this case, Justice Kennedy argued that it would have one of two effects when applied to an establishment operating two adult businesses under one roof: one of the businesses must either move or close. Since the latter of these effects cannot lawfully be the rationale for the ordinance—that is, the city cannot lawfully seek to reduce the amount of secondary effects merely by reducing the number of adult businesses—the city's rationale must be that affected businesses will relocate rather than close and that

the resulting dispersion of businesses will reduce secondary effects but not substantially diminish the number of businesses. Having identified the city's "proposition," Justice Kennedy next asked whether the city had presented sufficient evidence to support that proposition. In line with the plurality, Justice Kennedy argued for significant deference to local government fact-finding in making this inquiry. Citing *Renton* and *Young*, he contended that cities "must have latitude to experiment at least at the outset, and that very little evidence is required." He also cautioned that "[a]s a general matter, courts should not be in the business of second-guessing the fact-bound empirical assessments of city planners," noting: "The Los Angeles City Council knows the streets of Los Angeles better than we do. It is entitled to rely on that knowledge; and if its inference appears reasonable, we should not say there is no basis for that conclusion." Here, Justice Kennedy found that, for purposes of surviving a motion for summary judgment, the city's proposition is supported by both its 1977 study and "common experience" and that the 1983 ordinance was reasonably likely to reduce secondary effects substantially while reducing the number of adult entertainment businesses very little (*Ibid.* at 457).

7. Justice Souter was concerned about what he viewed as the significant risk that courts will approve ordinances that are effectively regulating speech based on government's distaste for the viewpoint being expressed. "Adult speech refers not merely to sexually explicit content, but to speech reflecting a favorable view of being explicit about sex and a favorable view of the practices it depicts; a restriction on adult content is thus also a restriction turning on a particular viewpoint, of which the government may disapprove." For Justice Souter, the risk of viewpoint discrimination may be addressed by imposing on government a requirement that it demonstrate empirically "that the effects exist, that they are caused by the expressive activity subject to the zoning, and that the zoning can be expected either to ameliorate them or to enhance the capacity of the government to combat them (say, by concentrating them in one area), without suppressing the expressive activity itself." Justice Souter claimed that his call for empirical evidence does not impose a Herculean task on government; rather, the harms allegedly caused by adult establishments "can be shown by police reports, crime statistics, and studies of market value, all of which are within a municipality's capacity or available from the distilled experiences of comparable communities" (*City of Los Angeles* 2002: 452–53). He also noted that the need for "independent proof" can vary with the proposition that needs to be established and thus "zoning can be supported by common experience when there is no reason to question it" (*Ibid.* at 458–59).
8. But see also *R.V.S., L.L.C. v City of Rockford* (2004) (finding it unreasonable for city officials to believe that secondary effects were associated with a business where dancers performed wearing fully opaque clothing over the pubic area, buttocks, and breasts when the city had no evidence of secondary effects associated with such businesses and plaintiff's two experts testified no studies demonstrated adverse secondary effects from such businesses; nor did the experts believe such effects could be found).
9. The NIBRS coding protocol breaks crime events down into component incidents. To illustrate, under the NIBRS protocol, a robbery-homicide event would be coded as two incidents, each with its own characteristics. Incident-based crime rates are ordinarily higher than event-based crime rates.
10. The UCR coding protocol ignores all but the most serious component incident of an event. Under the UCR protocol, a robbery-homicide event would be coded as a homicide. The per capita crime rates reported in the popular media are ordinarily event-based rates.
11. Paul, Linz, and Shafer (2001: 379) argue that the Los Angeles secondary effects study challenged in *Alameda Books* found more crime in adult business

neighborhoods because the police "were trying harder to find" crime in those neighborhoods. Though not addressing the methodological issue, Justice O'Connor criticized the Ninth Circuit for requiring the City of Los Angeles to rule out alternative explanations of its secondary effects evidence (*Alameda Books* 2000 at 727-28).

12. Such anecdotes are legitimate secondary effects evidence. See, e.g., *World Wide Video of Washington, Inc. v City of Spokane* (2004) ("Anecdotal evidence and reported experience can be as telling as statistical data and can serve as a legitimate basis for finding negative secondary effects" (Ibid. at 1195-96)).

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Incident summary for: 03/18/14 - 12/31/14

Output for: DP9211 (DPW003)

Click on heading to change sort order.

	Inc IncName	Pri	Type	Dispo	Group	RD/MapBox	Unit	From	To	Location
1	[03/19/14]									
	DP140004158	4	OTHER4	N	D1	DP0051	6D3	04:54	04:54	22862 PACIFIC HWY S, DES
	[03/22/14]									
2	DP140004399	3	UNWANT	S	D1	DP0051	3D3	19:59	20:16	PAWN EXCHANGE, DES
	[04/09/14]									
3	DP140005421	4	MAL2	H	D1	DP0051	3D2	21:57	22:16	SECRETS ADULT ENTERTAINMENT, DES
	[04/10/14]									
4	DP140005455	4	MAL2	T	D1	DP0051	1D2	11:33	12:03	SECRETS ADULT ENTERTAINMENT #ISR, DES
	[04/14/14]									
5	DP140005765	4	LEWD2	T	D1	DP0051	3D2	23:52	01:08	SECRETS ADULT ENTERTAINMENT, DES
	[04/17/14]									
6	DP140005876	3	ALMCOM	P	D1	DP0051	1D3	10:21	10:31	22862 PACIFIC HWY S, DES
7	DP140005882	2	LEWD	N	D1	DP0051	1D2	13:19	14:27	22862 PACIFIC HWY S, DES
	[05/03/14]									
8	DP140006702	2	SUSCIR	E	D1	DP0051	6D3	01:40	03:34	SECRETS ADULT ENTERTAINMENT, DES
	[05/13/14]									
9	DP140007310	4	OTHER4	H	D1	DP0051	3D2	22:51	22:52	22862 PACIFIC HWY S, DES
	[05/14/14]									
10	DP140007347	4	ADMIN	N	D1	DP0051	1D23	14:49	14:56	SECRETS ADULT ENTERTAINMENT, DES
	[05/25/14]									
11	DP140007982	4	SUS2	N	D1	DP0051	1D4	17:38	17:41	SECRETS ADULT ENTERTAINMENT, DES
	[05/26/14]									
12	DP140008033	2	THRT	T	D1	DP0051	3D2	17:49	18:52	SECRETS ADULT ENTERTAINMENT, DES

13	[06/03/14]	DP140008544	3	MAL1	T	D1	DP0051	3D1	21:38	22:26	SECRETS ADULT ENTERTAINMENT, DES
	[06/24/14]										
14		DP140009783	3	SUSSUB	O	D1	DP0051	1D4	15:36	16:02	SECRETS ADULT ENTERTAINMENT, DES
15		DP140009788	3	SUSSUB	T	D1	DP0051	1D4	17:27	17:42	SECRETS ADULT ENTERTAINMENT, DES
	[07/13/14]										
16		WF140008889	1	AIDMD	19M1	FIR2	WF1412	FDINFO	16:06	16:26	22862 PACIFIC HWY S, DES
	[07/17/14]										
17		DP140011313	3	SUSSUB	O	D1	DP0051	6D1	14:09	14:47	SECRETS ADULT ENTERTAINMENT, DES
	[07/22/14]										
18		DP140011682	3	SUSSUB	CAN	D1	DP0051		23:57	00:03	22862 PACIFIC HWY S, DES
	[07/30/14]										
19		DP140012076	2	SUSCIR	R	D1	DP0051	1D4	14:22	14:57	SECRETS ADULT ENTERTAINMENT, DES
	[08/01/14]										
20		DP140012200	4	THEFT2	G	D1	DP0051	3D2	15:03	19:07	SECRETS ADULT ENTERTAINMENT, DES
	[08/09/14]										
21		DP140012644	3	SUSSUB	O	D1	DP0051	3D2	00:50	00:57	SECRETS ADULT ENTERTAINMENT, DES
	[08/18/14]										
22		DP140013173	3	WARMIS	N	D1	DP0051	1D1	12:58	14:30	22862 PACIFIC HWY S, DES
	[08/31/14]										
23		DP140013908	2	SUSCIR	A	D1	DP0051	3D3	18:49	20:18	22862 PACIFIC HWY S, DES
	[09/07/14]										
24		DP140014307	4	BURGC2	G	D1	DP0051	1D2	13:28	15:27	SECRETS ADULT ENTERTAINMENT, DES
	[11/10/14]										
25		DP140017583	3	BD	T	D1	DP0051	3D3	04:31	04:32	SECRETS ADULT ENTERTAINMENT, DES
	[11/21/14]										
26		DP140018179	3	AUTO1	G	D1	DP0051	3D2	21:06	22:20	SECRETS ADULT ENTERTAINMENT, DES
	[11/22/14]										
27		DP140018229	3	JUVPRB	T	D1	DP0051	3D3	18:16	18:39	SECRETS ADULT ENTERTAINMENT, DES
28		DP140018231	3	JUVPRB	O	D1	DP0051	3D2	19:11	19:47	SECRETS ADULT ENTERTAINMENT, DES

	4	FUP	T	D1	DP0051	3D2	20:57	21:20	SECRETS ADULT ENTERTAINMENT # FONE, DES
[12/05/14]									
DP140018881	4	OSA2	T	D1	DP0051	6D1	12:28	12:43	22862 PACIFIC HWY S, DES

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Incident summary for: 01/01/15 - 08/12/15

Output for: DP9211 (DPW003)

Click on heading to change sort order.

	Inc IncName	Pri	Type	Dispo	Group	RD/MapBox	Unit	From	To	Location
1	[01/05/15]									
	DP150000229	2	AUTOR	D	D1	DP0051	3D4	19:59	22:58	SECRETS ADULT ENTERTAINMENT, DES
2	[02/03/15]									
	DP150001586	3	ALMCOM	P	D1	DP0051	1D3	06:41	07:15	SECRETS ADULT ENTERTAINMENT, DES
3	[05/07/15]									
	DP150006140	2	T	E	D1	DP0051	1D3	14:25	14:30	SECRETS ADULT ENTERTAINMENT, DES
4	[05/08/15]									
	DP150006229	2	FITE	T	D1	DP0051	3D2	22:49	22:56	SECRETS ADULT ENTERTAINMENT, DES
5	[06/11/15]									
	DP150008032	3	ALMCOM	P	D1	DP0051	3D2	01:32	01:41	SECRETS ADULT ENTERTAINMENT, DES

Incident summary for: 03/18/14 - 12/31/14

Output for: DP9211 (DPW003)

Click on heading to change sort order.

	Inc IncName	Pri	Type	Dispo	Group	RD/MapBox	Unit	From	To	Location
	[03/21/14]									
1	DP140004351	2	SUSCIR	N	D1	DP0042	3D12	21:38	21:44	21635 PACIFIC HWY S, DES
	[04/08/14]									
2	DP140005341	4	ADMIN	N	D1	DP0042	1D12	11:43	11:43	AIRPORT VIDEO II, DES
	[04/14/14]									
3	DP140005732	3	PROSTI	N	D1	DP0042	1D12	12:58	13:00	21635 PACIFIC HWY S, DES
	[04/18/14]									
4	DP140005903	4	LEWD2	N	D1	DP0042	3D2	00:46	01:14	AIRPORT VIDEO II, DES
	[05/04/14]									
5	DP140006741	2	SV	T	D1	DP0042	3D2	00:08	00:11	AIRPORT VIDEO II, DES
	[05/31/14]									
6	DP140008291	3	UNWANT	I	D1	DP0042	3D2	02:03	02:14	AIRPORT VIDEO II, DES
	[06/21/14]									
7	WF140007823	1	AIDMD	5M5	FIR2	WF1362	E45	01:06	01:33	AIRPORT VIDEO II, DES
	[06/28/14]									
8	DP140010051	3	JUVPRB	O	D1	DP0042	K961	23:27	23:34	AIRPORT VIDEO II, DES
	[07/23/14]									
9	DP140011743	3	UNWANT	Z	D1	DP0042	3D23	22:54	22:57	AIRPORT VIDEO II, DES
10	WF140009431	2	AID	19R7	FIR2	WF1362	A67	23:28	23:39	AIRPORT VIDEO II, DES
	[10/07/14]									
11	DP140015912	3	MAL1	T	D1	DP0042	1D1	10:22	10:43	21635 PACIFIC HWY S #B, DES
	[10/13/14]									
12	DP140016234	2	THRT	O	D1	DP0042	1D4	13:03	13:22	21635 PACIFIC HWY S, DES
	[12/17/14]									

13	DP140019500	2	HANGUP	I	D1	DP0042	1D2	14:59	15:18	21635 PACIFIC HWY S, DES
	[12/26/14]									
14	DP140019859	4	BURGC2	G	D1	DP0042	1D2	09:57	10:17	AIRPORT VIDEO II, DES

Incident summary for: 01/01/15 - 08/12/15

Output for: DP9211 (DPW003)

Click on heading to change sort order.

Inc IncName	Pri	Type	Dispo	Group	RD/MapBox	Unit	From	To	Location
[01/11/15]									
DP150000534	3	UNWANT	T	D1	DP0042	3D1	18:41	18:56	AIRPORT VIDEO II, DES
[01/21/15]									
DP150000991	3	CIVIL	S	D1	DP0042	1D2	14:25	14:42	21635 PACIFIC HWY S, DES
[01/24/15]									
DP150001112	3	WARMIS	N	D1	DP0042	3D3	02:12	02:54	AIRPORT VIDEO II, DES
[02/05/15]									
DP150001723	2	SHOP	O	D1	DP0042	3D4	21:17	21:36	AIRPORT VIDEO II, DES
[03/02/15]									
DP150002867	3	HBD	T	D1	DP0042	6D3	02:20	02:54	AIRPORT VIDEO II, DES
[03/26/15]									
DP150004053	2	SS	T	D1	DP0042	3D4	05:06	05:08	AIRPORT VIDEO II, DES
[05/08/15]									
DP150006173	3	OSA1	R	D1	DP0042	3D3	02:05	02:09	AIRPORT VIDEO II, DES
[05/16/15]									
DP150006600	3	SUSSUB	T	D1	DP0042	3D4	21:11	22:39	21635 PACIFIC HWY S, DES
[05/25/15]									
DP150007146	3	TRESP	B	D1	DP0042	1D3	15:36	16:51	AIRPORT VIDEO II, DES

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CITY COUNCIL

Speaker Sign-Up Sheet

February 25, 2016

NAME (PLEASE PRINT)	ADDRESS	TOPIC	PHONE/E-MAIL ADDRESS
X NEIL KELLY	22737 M.V.D.S. Des Moines	Des Moines YACHT CLUB Community EVENTS	253-951-6940
X Steve Comstock	33313 1st Way So F. Way WA 98003	Change of Zone WC	(206) 380-4074
X Lonnie Midgett	816 S 216 th ST Des Moines WA 98198	Closing Senior center 1st Fri of month	206 870-8411
X Nancy Corr	23025 17 th AV S Des Moines 98198	"	206 824 3555
X John Corr	"	"	1r
X Kevin ISHERWOOD	REXONDO BEACH	GENERAL	
X Kaylene Moon	24032 9 th Pl S.	Closing Bldg.	206 824-1764
X Rick Johnson	28624 Rexondo Beach Dr S		



COLDWELL BANKER COMMERCIAL

DANFORTH

33313 1ST WAY S
FEDERAL WAY, WA 98003

OFFICE 253-874-3200

OFFICE 206-212-2200

TO: Mayor Matt Pena; Mayor Pro Tem Vic Pennington; and Councilmembers

2.25.2016

Cc: Mr. Anthony Piasecki, City Manager
Mr. Michael Matthias, Assistant City Manager/Economic Development Director

OBJECTIVE:

Our intent today is to provide compelling reasons as to why we feel it is in the City's best interest to include "Mixed Use" in the Woodmont Commercial Zone (WC).

PROBLEM 1 - COMMUNITY NUISANCE ISSUE:

- The first item on the City's listed "Strategic Short Term Objectives" is, "Aggressively remediate nuisance properties"
- In 2014 my office (Coldwell Banker Commercial) received a letter regarding the City's concerns about the property we have listed. (Letter & Listing are attached for your reference) Consequently this land has been mowed and cleared of vagrants every year since that notification. Officers Kory Batterman and Nancy Uhrich will attest to the colonies of vagrants we have found amongst the bushes each time. The neighboring Service Station will attest to the many "snatch and run" robberies as well.

PROBLEM 2 - MAXIMIZING POTENTIAL TAX BASE:

- The City has limited opportunities to maximize its tax income
- However, tax income on vacant land is minimal
- Even the City's incentives have not enticed its targeted users

PROBLEM 3 - YOUR TARGETED MARKETS ARE REJECTING THIS PROPERTY:

My commercial market specialties are the Religious, the Hospitality, and the Gaming Industries. All are within the existing WC Zone allowances. From the beginning I have repeatedly reached out to those markets and here is what I have found;

Religious: Only a small percent of congregations have the funding, the expertise, or the patience to buy land and then build.

Hospitality: New construction by flagged hotel chains is constricted by franchise territory limitations. Plus, many independent hotel owners have pointed out that there is a competing hotel only a block away and another within a half mile.

Gaming: The privately owned Casino market is contracting, not expanding, primarily due to Tribal advantages and concerns about increased health care and minimum wage trends.

PROPOSED SOLUTION:

Coldwell Banker Commercial is a record-setting Realty Firm and has received acceptable purchase offers from several qualified buyers who see the highest and best use for this property as a quality Mixed Use facility. They point out that immediately to the west of this property is an attractive multi-family complex. We currently have another Letter of Intent to buy the subject property for this purpose contingent upon permission for Mixed Use.

We respectfully ask the City of Des Moines to add Mixed Use to the WC Zone.

Sincerely,

Steve Comstock, Broker

Coldwell Banker Commercial Danforth

C: 206-380-4074 | O: 253-874-3200

Bob Fredrickson, CCIM

Coldwell Banker Commercial Danforth

C: 206-595-7232 | O: 206-212-2216

City of Des Moines



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
21630 11TH AVENUE SOUTH, SUITE D
DES MOINES, WASHINGTON 98198-6398
(208) 870-7578 FAX (208) 870-6544



Steve "Yong" Oh
16400 S Prairie Avenue
Lawndale CA, 90260

March 26, 2014

PROVIDED BY EMAIL

RE: Clean-up of vacant property at 25940 Pacific Highway S (Parcel ID # 2822049245)

Dear Mr. Oh:

We appreciate your willingness to work with the City of Des Moines to clean up your vacant property located at 25940 Pacific Highway S in Des Moines, WA. Clean-up of your property is intended to address public safety issues associated with multiple theft, burglary and trespassing reports at the businesses and residences around your property as well as the homeless people camping in tents on your property.

This letter provides the City of Des Moines authorization and conditions under which you can clear and clean-up your vacant property:

Per DMMC 14.20.180(1)(b), a grading or land clearing permit shall not be required for "removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards."

Per DMMC 14.20.180(2), "Exemptions from the permit requirements shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City "

Site clearing shall conform to the following conditions:

- A mower or brush hog shall be used to clear small undergrowth only
- Existing trees and shrubs on the site shall be protected
- Native soils shall remain undisturbed

Please contact Nancy Uhrich, Code Enforcement Officer at 206-870-6558 prior to commencing work on your property.

Regards,

Denise E. Lathrop, AICP
Community Development Manager

Pacific Hwy S @ S 259th St
25940 Pacific Hwy S Des Moines WA 98198

Listing #: 533728 | Status: Available | Listing Date: 10/30/2013 | Last Modified: 2/14/2016 |



For Sale

25940 Pacific Hwy S Des Moines WA 98198



Listing Information

Price

Listing Price	\$ 1,300,000
\$/lot sf	\$ 13.60
Selling Ofc Com	2.5
Listing Status	Available
Days On Market	821
Asset Class	Land
Search Tags	Parking Lot, Parking Structure, Recreation Use, Yard, Agriculture, Residential
Terms	Seller Carry Possible w/50% Down

Property Information

Building Information

Building Status	Land
# of Buildings	0
Lot Sq/ft	95,571
Acres	2.19

Property Type

Property Type	Land
Owner User	Yes

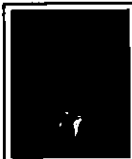
Location

County	King
Vicinity	Woodmont
Location Description	West side of Pacific Hwy S just north of S 260th S
Cross Street	Pacific Hwy S & S 260th S
Market Area	Des Moines
Tax ID #	2822049245
Zoning	WC
Land Use Type	Office, Retail, Industrial, Other, Specialty

Agent Information

Contact Details

Call Listing Agent	No
Use Discretion	Yes



Steve Comstock
(206) 380-4074
steve@comstockventurescorp.com



Bob Fredrickson, CCIM
(206) 595-7232
bfredrickson@cbcworldwide.com

Coldwell Banker Comm. Danforth
(253) 874-3200

Investment Information

Detail Listing Information

Min Total SF	95,586
Max Total SF	95,586
Topography	flat, treed,
Total Units	0

Utilities

Sanitary Sewer	Yes
Water	Yes
Electricity	Yes
Gas Lines	Yes

Utilities

Gas Available	Yes
Sewer	Yes
Electric Standard	Yes

Land Asset Class Information

Land Depth	284
Land Width	373
Land Use Category	Office, Retail, Industrial, Other, Specialty

Access

Curb Cuts	Yes
Road Frontage 1	Pac Hwy S
Road Frontage 2	S 260th S
Access From	Pac Hwy S

Associated Files

Zoning & City Incentives
SHAPE & DIMENSIONS
Bob Fredrickson Profile and Listings
Steve Comstock Profile and Listings
Listing Website
View Flyer

Pacific Hwy S @ S 259th Street - Land

Public Comments: Pac Hwy S daily traffic count over 52,000 vehicles. Just south of SeaTac and east of the active downtown Des Moines core; restaurants, multifamily developments and famous Marina for over 800 boats and fishing pier. See attached City of Des Moines incentives for Hotel, Casino, etc. on this site.

Showing Instructions: Choice location near SeaTac on Pac Hwy. WC Zoning allows MULTI-FAMILY, if w/Mixed Use, RETAIL.

[illegible]

4

COMMON MYTHS ABOUT COMMERCIAL SEX

1. Myth: Child Sex Trafficking is not happening in the United States.

Fact: Domestic minor sex trafficking (DMST), which is the commercial sexual exploitation of children through buying, selling, or trading their sexual services, is happening in the United States. Forms of DMST include prostitution, pornography, stripping and other sexual acts.¹

Fact: At least 100,000 American children are being exploited through pornography or prostitution every year.²

Fact: Pimps commonly sell minor girls for \$400 an hour or more on America's streets.

2. Myth: Women and girls choose a life of prostitution.

Fact: Traffickers and pimps use physical, emotional and psychological abuse to coerce young women and girls into a life in sex trafficking. They often use "lover-boys" to recruit girls from middle schools and high schools.³

Fact: The average age a child is first exploited through prostitution is 13 years old. If the child is a minor, they cannot legally consent to having sex.⁴

3. Myth: Only a small percentage of people view child pornography or purchase kids for sex.

Fact: 1 out of every 5 pornographic images is of a child; and 55% of child pornography comes from the U.S.⁵

Fact: The sale of child pornography in the U.S. has become more than a \$3 billion annual industry.⁶

4. Myth: Pornography isn't harmful to me or anyone else.

Fact: In a study of 932 sex addicts, 90% of the men, and 77% of the women indicated that looking at pornography "played a significant role in their addiction."⁷

Fact: According to the *Journal of Adolescent Health*, pornography use leads to: diminished trust between intimate couples, belief that promiscuity is the natural state, belief that marriage is sexually confining, and lack of attraction to family and child-raising.⁸

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www.theDefendersUSA.org
www.sharedhope.org



1. <http://carter.ssw.upenn.edu/~restes/CSEC.htm>
2. 28. Cite: Estes, R. & Weiner, N. "Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico." University of Pennsylvania, 2001
3. <http://www.state.gov/j/drl/rls/hrpt/2005/61666.htm>
4. M.H. Silbert and A.M. Pines.
5. Estes, Richard J. and Neil Alan Weiner.
6. Family Safe Media, (2006). Pornography Statistics. Retrieved February 25, 2008, from Preserving Family Values in a Media Driven Society website: www.familysafemedia.com/pornography_statistics.html
7. www.onenewsnw.com/2007/02/bill_tackles_us_child_porn_epi.php
8. Dolf Zillmann. "Influence of Unrestrained Access to Erotica on Adolescents' and Young Adults' Dispositions toward Sexuality." *Journal of Adolescent Health*, Vol. 27, Iss. 2, Supp. 1, pgs. 41-44, Aug. 2000. Abstract: ScienceDirect. Web. 25 Nov. 2009. <<http://www.sciencedirect.com/science/article/B6T80-40RTM34-8/2/d8568349f3984dbaa02fbdd7a5f1a09>>.

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Effects of Pornography

- UK Government Study effects of pornography on children

<http://www.mdx.ac.uk/Assets/BasicallyporniseverywhereReport.pdf> *Middlesex University London/Children's Commissioner UK full report*

- Porn and Prostitution and other harmful effects

<http://prostitutionresearch.com/topic/pornography/>
<http://pornharmresearch.com/>

- Porn desensitizing men's relationships with women. (Interview comments from serial killers included)

<http://www.catholicnewsagency.com/resources/life-and-family/pornography/the-harmful-effects-of-pornography/>

- Miscellaneous Social Issues

<http://www.internetsafety101.org/upload/file/social%20costs%20of%20pornography%20report.pdf>

The Social Costs of Pornography: The Pornified Life Mary Anne Layden, Ph D"

If you'd like a digital copy of this information email nick@gencities.org

<http://www.TheDefendersUSA.org>