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A Report On Zoning And Other Methods Of Regulating Adult Entertainment In Amarillo

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PLANNING DEPARTMENT
CITY OF AMARILLO, TEXAS

A REPORT ON ZONING AND OTHER METHODS OF REGULATING ADULT ENTERTAINMENT IN AMARILLO

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PREFACE

This report presents the findings of the Amarillo Planning Department regarding the adult entertainment industry within the confines of the Amarillo City Limits. These findings analyze the land use effects of adult entertainment businesses and alternatives for their regulation. Adult entertainment businesses are those that customarily are not open to the general public by the exclusion of minors by reason of age.

Presently, the only authority available to a city for regulating adult business is the city's power to zone and license. These methods of control have been sanctio by the Young v American Mini Theaters, Inc. case.

The determination of what is or is not obscene is to be made by a jury on a case by case basis in accordance with the test described in the Marvin Miller v Stat of California decision. The criminal offenses for dealing in obscenity, proscribed by the Texas Penal Code, are the exclusive province of the State, and the city may not invade this area by seeking to define obscenity or provide rebuff for its sale, display or distribution.

A REPORT ON ZONING AND OTHER METHODS OF REGULATING ADULT ENTERTAINMENT IN AMARILLO

INTRODUCTION

This report on the current extent of pornography in Amarillo was initiated upon the request of the Amarillo Planning and Zoning Commission April 25, 1977. Accompanying the request was the desire for information concerning the possible zoning control of all businesses catering to adults only. For the purpose of this report, adult-only businesses have not been limited to those that display pornographic material, but include bars, lounges, and any other business type which restricts entry, sale or viewing based upon a minimum age.

This study is an attempt to briefly explore the national problem of adult-only businesses with a major emphasis on those which deal in pornographic material. The Amarillo situation was analyzed in relation to the extent of the national growth of the adult-only industry and the extent and limitations to which the City can control, through land use mechanisms, the proliferation of the industry outlets.
No city ordinance regulating any type of adult business is included within this report and none will be drafted until discussion has occurred on the various options available for the control of adult businesses.

In any consideration of whether or not to control and restrict adult-only outlets within the municipal jurisdiction, the following should be reviewed:

1. To prohibit these uses to locate anywhere in the municipality, three points must be considered:

   A. The Courts have generally invalidated legislation which attempts to prohibit a particular use altogether from a municipality.

   B. Prohibiting the location of any pornographic use in the city could be contested on the grounds that it provides an individual engaged in such practice no means of livelihood within the City.

   C. Such legislation could also be contested on the grounds that it infringes upon the right of freedom of speech.

2. If these uses are to be allowed and restricted within the municipality, the City must decide where such uses are to be located.[1]

METHOD OF ANALYSIS

In the preparation of this report, several data sources were employed. Current weekly national news magazines were searched for references to the problems of major urban areas relative to this topic. Several individual cities known to be exploring methods of controlling the growth of the adult-only industry were contacted and adopted City Ordinances were reviewed. The American Society of Planning Officials provided advance information from an unreleased publication on Adult Entertainment which has since been published (copy included for your review). Several recent Supreme Court decisions were reviewed in order to determine the general mood of the law as handed down.[2]

This information was synthesized into a form which details the national limitations placed upon a state and city in the land use control of adult-only businesses. The Texas obscenity law was then reviewed in order to determine the limitations of legislative regulation of adult-only businesses and the extent to which Amarillo, as a city, may regulate the industry through land use and licensing mechanisms.

DEFINITIONS

Obscenity is defined by the Supreme Court in the following exerpts from Marvin Miller v State of California:

1. "Obscene material is not protected by the First Amendment, Roth v United States, 354, U.S. 476, 77 S. Ct. 1307, 1L. Ed. 2d 1498, reaffirmed. A work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and taken as a whole, does not have serious literary, artistic, political, or scientific value."

2. "The basic guidelines for the trier of fact must be: (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, Roth, Supra, at 489, 77 S. Ct. at 1311; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constitutional claims when necessary."

3. "The jury may measure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the forum community, and need not employ a 'national standard'."

As stated above the basic guideline for determining what is obscene is through an evaluation of the material utilizing the forum community standard. In Smith v United States, 97 S. Ct. 1756 (1977) the Court amplified its consideration of the community standard when it stated that community standards are required to be applied by the jury in accordance with its understanding of the tolerance of the average person in the community. The result being that the jury has the discretion to determine what appeals to the prurient interests and what is patently offensive in its community. "State law cannot define the contemporary community standards for appeal to the prurient interest and patent offensiveness that under Miller v California are applied in determining whether or not material is obscene . . . Though state legislatures are not completely foreclosed from setting substantive limitations for obscenity cases, they cannot declare what community standards shall be . . . " [Smith v United States (1759)]

The conduct regulated by the Texas Legislature is defined in the Texas Penal Code Subchapter 43B, "Obscenity". The following is that portion of Chapter 43 which regulates the sale, distribution and display of obscene material:

43.21. Definitions

In this subchapter:

(1) "Obscene" means having as a whole a dominant theme that:

(A) appeals to the prurient interest of the average person applying contemporary community standards;
(B) depicts or describes sexual conduct in a patently offensive way; and
(C) lacks serious literary, artistic, political, or scientific value.

(2) "Material" means a book, magazine, newspaper, or other printed or written material; a picture, drawing, photograph, motion picture, or other pictorial representation; a play, dance, or performance; a statue or other figure; a recording, transcription, or mechanical, chemical, or electrical reproduction; or other article, equipment or machine.

(3) "Prurient interest" means an interest in sexual conduct that goes substantially beyond customary limits of candor in description or representation of such conduct. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

(6) "Sexual conduct" means:
(A) any contact between any part of the genitals of one person and the mouth or anus of another person;
(B) any contact between the female sex organ and the male sex organ;
(C) any contact between a person's mouth or genitals and the anus or genitals of an animal or fowl; or
(D) patently offensive representations of masturbation or excretory functions.[3]

43.22. Obscene Display of Distribution

(a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

43.23. Commercial Obscenity

(a) A person commits an offense if, knowing the content of the material:
(1) he sells, commercially distributes, commercially exhibits, or possesses for sale, commercial distribution, or commercial exhibition any obscene material;
(2) he presents or directs an obscene play, dance, or performance or participates in that portion of the play, dance, or performance that makes it obscene; or
(3) he hires, employs, or otherwise uses a person under the age of 17 years to achieve any of the purposes set out in Subdivisions (1) and (2) of this subsection.

(b) It is an affirmative defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.

(c) An offense under this section is a Class B misdemeanor unless committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

43.24. Sale, Distribution, or Display of Harmful Material to Minor

(a) For purposes of this section;-

(1) "Minor" means an individual younger than 17 years.
(2) "Harmful"material" means material whose dominant theme taken as a whole:
(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:
(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;
(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or
(3) he hires, employes, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) of (b)(2) of this section.

(c) It is a defense to prosecution under this section that:
(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or
(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.[4]

The preceding has outlined the substantive limitations of that which can be found obscene in the State of Texas. The enforcement of those sections of the State Penal Code applying to obscene material is left to the discretion of the District and County Attorneys.

The remainder of this report will concern the controls that the City may impose to regulate the adult-only industry through land use controls, licensing, and measures to assure that minors will not be allowed to purchase or view the display of pornographic material in commercial businesses.

THE NATIONAL PROBLEM/CITIES

Urban areas across the nation are beginning a crackdown on the growth of sex-oriented businesses. Recent public outcries and national exposes have been forcing new evaluations of existing pornography law. This renewed attack on pornography is

partially founded upon the Supreme Court decision in Young v American Mini Theater. This decision, affirming the City of Detroit's police power ability to zone adult entertainment, redefined the standards the community can use to appraise that material which is found to be adult entertainment and protected by the 1st and 14th Amendments of the U. S. Constitution. The following exerpt from Young v American Mini Theaters makes clear the Supreme Court view of adult entertainment and zoning:

> Though the First Amendment protects communication in the area of adult motion pictures from suppression, the State may legitimately use the content of such pictures as the basis for placing theaters exhibiting them in a different classification from other motion picture theaters for zoning purposes. The City's interest in the present and future character of its neighborhoods adequately support the limitation imposed . . . on the place where adult films may be exhibited.

As a result of Young v American Mini Theaters, several cities have initiated zoning ordinances similar to Detroit's to control the proliferation of sex industry outlets into incompatible areas of city development. Kansas City, Missouri and Atlanta, Georgia, are examples of cities recently implementing zoning ordinances to control the adult entertainment industry. These cities have accepted the fact that there is a large market for adult entertainment. By implementing and enforcing a zoning ordinance to control site location choices to those sites meeting certain minimum requirements, these cities have sanctioned the adult entertainment industry. However, this sanction does not entail a condonation of commercial sex activities outside the control of land use planning activities.

The problems with the proliferation of adult businesses in major urban areas are growing, not only in the volume of outlets, but also in new types of adult businesse Cities that have attempted to use zoning ordinances to define explicitly each controlled adult entertainment business have found that the ordinances are subject to constant update as the adult entertainment industry implements new techniques for the dissemination of its product. The following list illustrates some of the

kinds of pornographic adult businesses that could have a blighting effect upon a neighborhood if allowed to grow uncontrolled. The list also points to the problem o attempting to define each new adult business.

Pornographic Adult Businesses

Adult bookstores
Adult mini motion picture theater (peep shows)
Adult motion picture theaters
Artists body painting studios
Eating places with adult entertainment
Exotic photo studios
Lounges and bars, topless
Lounges and bars, bottomless
Massage parlor
Nude theater
Nude wrestling parlor

As cities strengthen laws dealing with certain listed businesses, new businesse providing the same or similar services have been invented by the industry. For example, in Birmingham, laws governing massage parlors were tightened forcing most to close.[5] As a result, shoeshine shops, where you can lie down while getting your shoe shined and providing the same service as the massage parlor, were opened. The City then forced to adopt another ordinance requiring that a person could not lie down to get a shoeshine. Similar situations occurred in Boston when massage parlors were under attack. A quick metamorphosis was made of adult entertainment businesses under the guise of sensitivity training parlors, nude wrestling studios and exotic photography centers. These later generation businesses were clearly not massage parlors, even though similar services were offered, and were not subject to the massage parlor ordinances.

Two distinctly different zoning techniques have been used to regulate the adul entertainment industry. They are:

1. The Boston, Massachusetts approach. In 1974 Boston was the first city in the nation to put its official stamp on the adult-entertainment zone. Boston created a special zoning category for adult bookstores, peep

shows, x-rated movies and strip joints. This zone was a special overlay district applying to only seven acres of the City's space. The overlay zone had two main purposes: (A) The City wanted to concentrate similar adult entertainment uses into a single small area; and (B) the City wanted to prevent the spread of these uses to other areas of the City.

The district approach has certain advantages over a case by case zoning approach. Specific district boundaries are set and development standards are established. These two items when taken together reduce greatly the administrative cost when compared to a case by case conditional or specific use permit requirement. The limited confines of the district boundary reduces the potential for new development. The district approach also reduces the opportunity for arbitrary and subjective decisions.

The overlay district offers the potential to evaluate the total public service impact of adult uses. The concentration in a single area allows for the review of relative cost and revenues to the City. Police costs will certainly be higher, as will related traffic and parking costs. These costs though can be determined. Permits can be required and the fees for these can reflect the true costs to the community.

2. The Detroit, Michigan approach. In 1972 Detroit implemented an ordinance designed primarily to prevent the development of additional "skid-rows". It was found that concentrations of various straight and pornographic uses were generally determinates of the deterioration of surrounding areas.

   Detroit has two objectives: (A) to separate typical "skid-row" uses from each other; and (B) to keep these same uses separate from residential areas. These objectives lead to a single policy of dispersing "skid-row" uses and spreading them throughout the commercial and industrial areas of the City.

   After "skid-row" uses had been determined, defined and subjected to a conditional permit process, they were allowed in only certain zones of the City and then only in sites meeting certain requirements.

These two techniques and adaptations to them are the only methods currently being used to control the location of adult entertainment activities. The Supreme Court in Young v American Mini Theaters has upheld the approach that Detroit has implemented. No test has yet been made of the Boston method of controlling the spread of adult businesses. Recently the Boston "Combat Zone" (the seven acre overlay district) has obtained some notoriety as being a failure, with social and administrative costs exceeding a tolerable level.

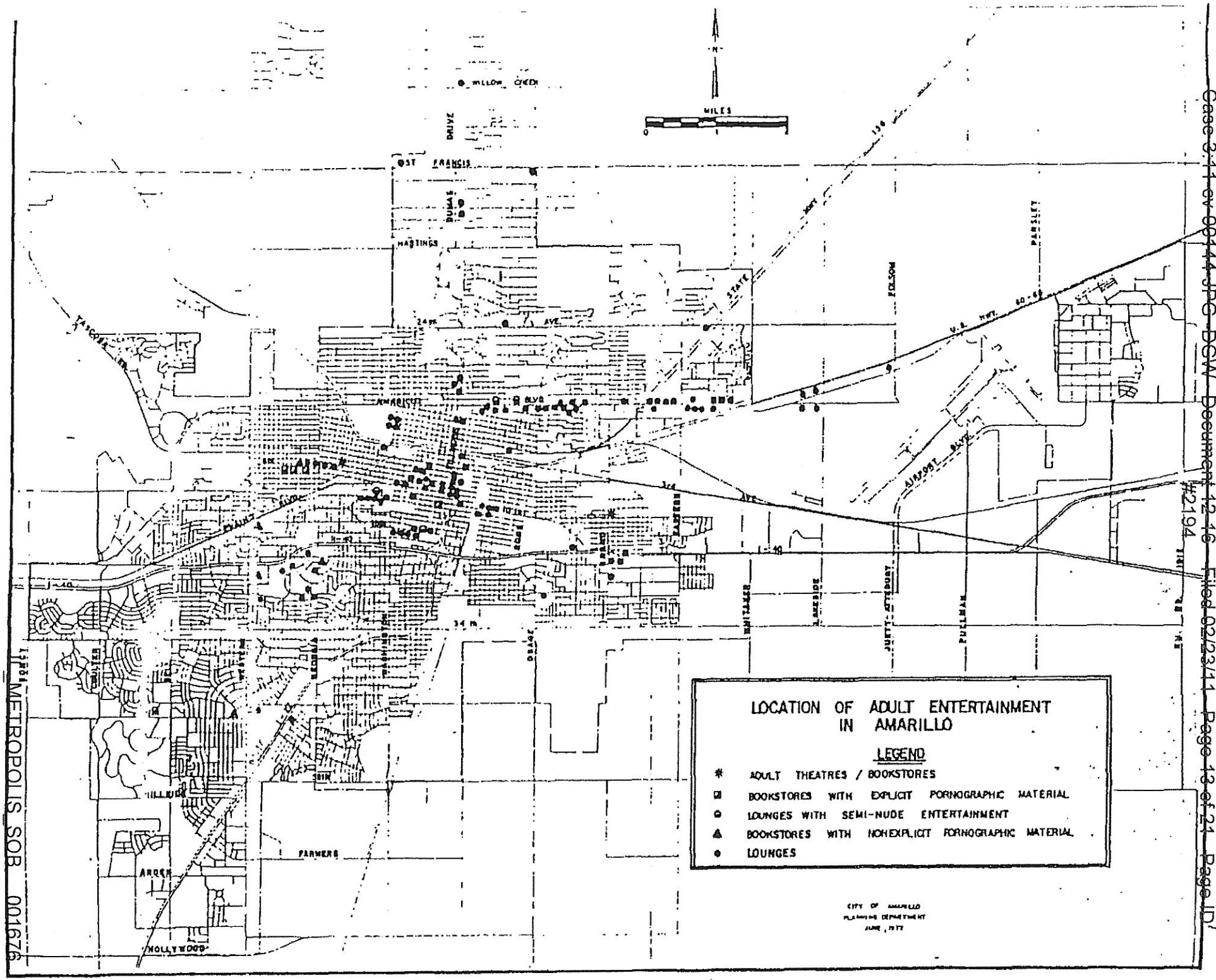
Both Detroit and Boston have chosen land use controls as their primary method of regulating adult businesses. Both use coincidentally a licensing regulation.

Other cities such as Santa Maria, California, have chosen licensing as their primary approach to regulating adult businesses. Licensing approaches have been adopted in order to maintain certain minimum standards at places of adult entertainment. The licensing mechanism is designed to regulate entertainment businesses which also provide food, alcoholic beverages or exhibition of the human body. Licensing outlines required performance standards and sets fees and required deposits as guarantees of compliance with the standard.

ADULT ENTERTAINMENT IN AMARILLO

Several businesses in Amarillo cater either wholly or partially to the adult-only market. The attached map, LOCATION OF ADULT ENTERTAINMENT IN AMARILLO, illustrates the general location of the majority of businesses whose activities include catering to the adult-only market. As the attached map indicates, adult businesses in Amarillo have generally tended to congregate into several areas in a strip fashion along major thoroughfares.

The Amarillo Police Department in a statistical analysis of street crimes (rape, robbery, all assaults, theft from persons, auto burglary, driving under the influence, public intoxication, vandalism and illegal weapons) found that the incidence of street crimes was significantly greater around the concentrations of adult-only businesses than the overall City average. The Police Department went further in their analysis and noted that these street crimes were 2-1/2 times the City average in the immediate vicinity of alcohol only adult businesses, and 1-1/2 times the City average immediately surrounding businesses featuring alcohol and semi-nude entertainment. In reviewing these facts relative to crime in the vicinity of adult businesses, the reader should be aware that adult-only establishments, especially alcohol only lounges, have tended to concentrate in several areas while lounges featuring semi-nude entertainment are fewer in number and have tended to somewhat isolate themselves from other adult-only establishments.



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Outlets for adult-only material in the City include several book stores, drug stores, grocery stores, etc., with sections of books and magazines featuring nudity and nonexplicit sexual activity. Pornographic publications featuring nudity with explicit sexual activity, are available within the City in only seven known locations, three being adult theaters with books, magazines, novelties and peep shows. These are dispersed lineally across the CBD and its fringe. There are also four book stores that devote space to publications featuring pornography with explicit sexual activity. No attempt has been made to locate all activities featuring minimal amounts of pornographic publications.

As can be discerned from this overview of the extent of pornography distribution within the City, our current problem is not great. However, the following paraphrased statement concerning Mason City, Iowa, illustrates the potential for growth of the adult entertainment industry.

> Between 1963 and 1964 go-go dancers gradually began to appear in the lounges and bars of the town. By 1965 the dancers were topless. In 1973 the City received an application for its first adult moviehouse license. The license was refused (probably by an arbitrary and subjective decision). The applicant filed a judicial appeal and won the case forcing the City to grant the license. In 1973 an adult book store opened, complete with sex novelties and movies. Also in 1973 a popular lounge hired totally nude dancers. Four competitors soon followed suit. Finally the City gained its first massage parlor.[6]

There is no reason to assume that Amarillo will be exempt from a growth of adult oriented businesses similar to Mason City. The lack of any valid City mechanism to control and regulate the anticipated growth could lead to (a) concentrations of adult entertainment businesses creating a crime incidence condition equal to or greater than the current situation around concentrations of alcohol only businesses, and (b) a proliferation of adult entertainment businesses in and around residential areas and other family or juvenile oriented activities.

POSSIBLE CONTROL MECHANISMS OF ADULT BUSINESSES IN AMARILLO

Adult businesses in Amarillo are comprised of taverns, lounges, lounges with semi-nude entertainment, adult bookstores and adult theaters. Various state and local laws currently regulate to certain extents each of these uses. The Texas Liquor Control Act regulates all businesses selling alcoholic beverages, after local option-approval, through a licensing procedure. These same businesses must also be licensed by the City and must conform to zoning and occupancy requirements. Those businesses that feature semi-nude entertainment are also controlled by Penal Code Section 21.07, 21.08, and 43.23 (Public Lewdness, Indecent Exposure, and Commercial Obscenity) and City Ordinance 13.29 (Operation Regulations; grounds for revocation, violations of Dance Establishments). Purveyors of adult printed and celluloid material are controlled only by Penal Code Sections 43.22, 42.23, and 43.24 and general zoning and occupancy requirements.

While the above state and local ordinances work to regulate portions of the adult entertainment industry, they are at best a piecemeal approach. For example, the enforcement of Chapters 21 and 43B, of the Penal Code through the appropriate court, is generally a slow and tedious process requiring manpower that is not avail able for this type of low priority victimless crime. The maintenance of the minim requirements of the Texas Liquor Control Act and the various local laws regulating the sale of alcoholic beverages are only a means to maintain certain standards of operation in taverns, lounges, etc. The general zoning regulations which currentl restrict adult businesses are not designed for the particular land use impacts resulting from the adult businesses. These impacts range from late night hours of operation and resulting noise, traffic, lighting, etc., to increases in crime rate immediately surrounding the businesses.

Bypassing the intrinsic limitations of enforcement of the Penal Code, an app to a more definite control of these businesses is through a strengthening of zoni regulations specifically defined to moderate the land use impact of adult-only

businesses. Coincidentally with the improved zoning regulations, a license and permit mechanism can be implemented. This mechanism can set and require compliance with minimum standards of operation for various adult businesses and recover actual or expected expenses incurred in their enforcement through annual permit fees. These fees can reimburse the City for the added costs of police patrols, improved streets, additional street lighting to reduce accident and crime potential, routine City Depar ment inspection, etc.

These measures would generally be applied to all adult-only businesses. No infringement upon their constitutional rights would result from compliance with a zoning and licensing mechanism designed to minimize the land use and social impacts of adult-only businesses.

Zoning regulations specifically designed to restrict adult-only businesses can serve the following purposes:

1. Assure a land use compatability between the adult use and the surrounding land use.

2. Require that certain minimum density standards for adult uses are maintained.

3. Require the amortized termination of those adult uses not currently meeting either or both of the preceeding zoning purposes.

Licensing adult-only businesses can serve the following purposes:

1. Maintain a record of business, location, owner, etc.

2. Assure that certain performance requirements are met, such as hours of operation, maintenance of employment standards and compliance with all laws governing material sold or displayed by the business.

3. Provide a method by which the City can recoup any expenditures for public services required above the city average exclusive of the licensed business type.

Performance standards can include a provision for administrative revocation of an adult business license for any noncompliance with a performance standard. This revocation of license would not necessarily be supported by any conviction or state criminal charge against the license holder. The basis for the revocation would be for violation of the performance standards as defined explicitl

in the City Code's standards for operations of an adult business. Performance standar would of course be required to vary in content relative to controlled adult business t

Adult business licenses should not attempt to regulate the land use effect of the use on the neighborhood or community, but should be utilized to assure performance at a certain standard, to maintain an accurate record of business locations, and to provide fees to the City for services above the average. By maintaining a clear distinction between the requirements of a license and the zoning ordinance the entire control mechanism is strengthened.

The preceeding portion of this section has dealt with the regulation of business that totally restrict entry, sale, and viewing of products to adults only. Methods t control the ease of view of generally distributed pornographic material are numerous and not detailed explicitly in this report. Briefly though, methods to control the display of this material range from requiring the display to be in separate rooms with an enforceable and enforced restricted admittance, to simply covering the entire publication with an opaque slip cover with the publication's name printed on the cover. The control of the display and sale of pornographic material through a City Ordinance licensing mechanism would work to protect minors from harmful material (Section 43.24) and adults who would be offended by certain displays of pornographic material (Section 43.22) generally available for the public's view.

SUMMARY AND FINDING

The analysis of the impacts of adult-only businesses upon surrounding land uses indicates that these businesses do have effects that can be distinguished from other uses allowed in like zoning districts. The following identifies two causal factors isolated in this preliminary analysis:

1. The Amarillo Police Department's statistical survey of street crime in the vicinity of adult-only business indicates that crime rates are considerably above the City's average immediately surrounding the adult-only businesses analyzed.

2. Concentrations of these adult-only activities have detrimental effects upon surrounding residential and commercial activities. These effects are caused by (a) the noise, lighting and traffic generated by the pedestrian and vehicular traffic frequenting these businesses whose primary hours of operation are from late evening to late night, (b) the increased opportunity for "street crimes" in areas with high pedestrian traffic, and (c) the tendency to avoid areas where adult businesses (especially pornographic) are established. This avoidance and other factors can lead to the deterioration of surrounding commercial and residential activities.

Other cities have noted these effects of adult-only businesses and have attempte remedies to the problem. Boston, Massachusetts, has concentrated all adult uses intc a single area of the City. Detroit, Michigan, has dispersed adult uses throughout the city to sites that meet certain minimum land use requirements. Both of these cities have adopted zoning ordinances that restrict location choices of adult book stores, theaters, cabarets, etc. Their ordinances are limited to those activities that definitely do not fall under penal code control. The City of Los Angeles study on adult entertainment includes a consideration for the zoning control of other adult oriented activities including massage parlors, nude modeling studios, adult motels, arcades, etc. Los Angeles has disregarded the question of legitimacy and has suggested zoning those adult businesses as recognized existing land uses.

Detroit has implemented an ordinance which requires that adult entertainment businesses not be located within 500 feet of residentially zoned areas, or within 1000 feet of another regulated use. In Amarillo, adult uses are currently allowed in general retail and all less restrictive zoning districts. If Amarillo adopted an ordinance with space requirements between regulated uses and residential zones similar to that of Detroit, the number of potential sites for adult businesses would be severely limited. This method, liriting severely the potential site choices of adult businesses, would probably not be upheld by the Courts. The limitation of site choices would be caused by the narrow commercial strip developments less than 500 feet wide along most of Amarillo's major throughfares. Also, this approach would probably tend to concentrate adult activities into the central business district and a few industrial areas.

RECOMMENDATIONS FOR THE CONTROL OF ADULT-ONLY BUSINESSES IN AMARILLO

If the Planning and Zoning Commission and City Commission should find from the data presented in this report that there exists sufficient need to control adult-only businesses and businesses which display generally circulated pornographic material, the Planning Department would recommend the following:

A. Any zoning ordinance amendments proposed to regulate adult businesses should not attempt to define individual activities but should instead regulate the site location choices of all businesses that restrict sale, display or entry based upon a minimum age, and not consider the legitimacy of the use.

B. The potential site location choices for adult-only uses should be dispersed rather than concentrated. This distance should be measured radially from property line to property line and should be at least 1,000 feet. Requirements designed to maintain the integrity of residential zones and other areas where th there is considerable traffic in juvenile or family oriented activities should be adequate for the purpose but should not be overly restrictive.

C. Should the City develop amendments to the Code of Ordinances designed to control the site location choices of adult entertainment businesses, it may be desirable to specify an amortized termination schedule for any existing adult business which does not meet the minimum site location standards as specified in the Ordinance.

D. Concurrent with any zoning ordinance revisions designed to control adult uses, a permit and license mechanism should also be developed. The minimum operational standards specified by the license will vary according to the type of business to be regulated.

E. Any zoning ordinance amendments concerned with adult businesses should provide provisions to regulate signs and similar forms of advertising.

F. The City Commission should encourage a vigorous enforcement of the State Penal Code to remove illegitimate uses. Especially important is that portion of the

Penal Code which protects minors from all pornographic material. The City should impose specific amendments to the Code of Ordinances requiring businesses publicly displaying generally circulated pornographic material to prohibit minors, by an enforced physical barrier, from viewing or purchasing pornographic material.

If the City Commission, following a recommendation from the Planning and Zoning Commission, finds the necessity to control adult-only businesses and the public display of generally circulated pornographic material, all amendments to the Code of Ordinances should be prepared as a total package and submitted to the Planning and Zoning Commission for preliminary review, before action by the City Commission. The Planning and Zoning Commission review should have the intention of assuring the purpose and continuity of each amendment to the overall goal of regulating these adult businesses and adult material displays.

[1] Zoning for the Pornographic Arts, City Development Department, August, 1976, Kansas City, Missouri

[2] The cases reviewed in depth were:

A. Young v American Mini Theaters, Inc., 96 S. Ct. 2440 (1976). This was the Supreme Court review of the City of Detroit zoning ordinance which regulated (a) the proximity of adult uses to residential zones, (b) the proximity of adult uses to other areas where heavy traffic or concentrations of minors were found and (c) the density of adult businesses. The Court held that a city has the authority to control the location and density of adult entertainment businesses based on its police power right and duty to protect the health, safety and welfare of its citizenry.

B. Miller v California, 93 S. Ct. 2607 (1973). This decision laid down the most recent standard for determining what is obscene. This decision is the basis for the Texas Penal Code Chapter 43, Public Indecency.

C. Smith v United States, 97 S. Ct. 1756 (1977), Paris Adult Theatre I v Slaton, 93 S. Ct. 2629 (1973), and Roth v United States, 77, S. Ct. 1304 (1957). These earlier decisions were reviewed in order to determine the history of restrictions upon 1st Amendment guarantees. This review revealed that in effect the Court is ruling on the controversial problem of obscenity and state community standards determining prurient appeal and patent offensiveness on a case by case basis.

[3] Amended by Act 1975, 64th Leg., p 372, Ch. 163, § 1, eff. September 1, 1975.

[4] Acts 1973, 63rd Leg., p 883, Ch. 399, § 1, eff. January 1, 1974.

[5] U.S. News & World Report, September 13, 1976, p. 76.

[6] Time, April 5, 1976.