

Findings

Purpose

In our Toledo study, we looked for two types of data. First, we looked for evidence of external impacts of the sexually oriented businesses on adjacent neighborhoods. This is called "secondary effects." A basic principle of First Amendment law in the United States is that protected speech may not be restricted because of its content, but such speech can be restricted to reduce the "secondary effects" of the businesses on the neighborhood.⁸

Second, we looked for activities at sexually oriented business that are of the type that concern local residents but that are not protected by the First Amendment's protection of freedom of speech or expression. For example, what a newspaper chooses to print is protected by the First Amendment, but this does not protect its printing plant from reasonable land use restrictions controlled by zoning regulations. Similarly, although the First Amendment protects the performances of dancers on stage as a form of expression, we are aware of no First Amendment protection of lap dancing or other interaction between dancers and the public.

Our findings regarding objectionable activities within the businesses that are not protected by the First Amendment are far more extensive than our findings regarding general impacts on neighborhoods. Yet there is little doubt that the two sets of findings are inter-related. Any veteran police officer will testify that a bar that has been cited for under-age drinking or frequent altercations inside the bar is the kind of bar at which trouble spills onto the street -- and does so far more

often than at other establishments. Similarly, a sexually oriented business that has questionable activities inside is far more likely than others to have negative impacts on the neighborhood -- not necessarily because of the business itself, but because it attracts patrons who are looking for or at least willing to be around such activities.

Finally, in considering the secondary impacts of these businesses, it is important to note that many of our recommendations relate to operating regulations, to be implemented through a licensing ordinance. The purpose of those recommendations is to ensure that each of the businesses is well managed in accordance with clear community standards. By ensuring the quality of the operations within the establishments, the City can often reduce the occurrence unnecessary secondary impacts on surrounding neighborhoods.

Secondary Effects

Proximity and Pedestrian Contact

The most important secondary effect of these businesses is the most obvious -- when such a business is located in close proximity to a residence or a use frequented by families this creates a land-use conflict of the sort that zoning is intended to avoid. As the Supreme Court noted in its landmark decision upholding the constitutionality of zoning:

Thus the question whether the power exists to forbid the erection of a building of a particular kind or of a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality ... A nuisance may merely be a right thing in the wrong place -- like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zon-

⁸ *Playtime Theatres, Inc. v. City of Renton*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed 2d 29 (1986). See, also, *D.G. Restaurant Corp. v. Myrtle Beach*, 953 F.2d 140 (4th Cir. 1991); *Thames Enters. v. City of St. Louis*, 851 F.2d 199 (8th Cir. 1988); *Gemusa v. City of Peoria*, 619 F.2d 1203 (7th Cir. 1980); *S&G News, Inc. v. City of Southgate*, 638 F. Supp. 1060 (E.D. Mich. 1986), *aff'd*, 819 F.2d 1142 (6th Cir. 1987).

ing purposes be fairly deplorable, the legislative judgment must be allowed to control.⁹



Where a sexually oriented business is located in a shopping center or freestanding building with the primary access by automobile, anyone coming in close contact with it is likely to do so by choice. In contrast, when such a business is located at a corner where a residential street intersects a collector or arterial street, residents of the neighborhood may have to walk past the business to reach a bus stop or nearby shops. Similarly, where such a business is located along the access way to or across the street from a school or religious institution, people going to school or to worship service will encounter the business regularly. The yellow building shown in the picture is the Reyn-dor News at 1002 North Reynolds; note the houses just down the street from it – it is also across the street from a house of worship.

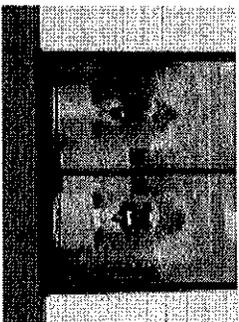
Much of the sensitivity expressed about the businesses at the community meeting held in Toledo – and in other communities – relates to the location of these businesses in close proximity to residential or family-oriented uses. Although City officials had engaged in general discussions with us about conducting this study at an earlier date, it was when Priscilla's opened a sexually oriented retail shop across from Notre Dame Academy that City officials decided that the issue was serious enough to merit a major study, even at a time of budget difficulties in the City. There is nothing fundamentally wrong with Priscilla's; of the businesses that we visited in Toledo, it was one of the cleanest and best managed. Its product line is risqué but certainly not as likely to offend as the hard-core media collections at some of the other establishments. We saw no indication that Priscilla's en-

couraged or allowed sexual activity on or near the premises. In short, as a sexually oriented business goes, it is near the low end of the community impact scale. It is, however, as the Supreme Court noted 75 years ago, "like a pig in the parlor" – a perfectly reasonable creature in a location that is completely inappropriate for it. The picture included here shows a view of the Priscilla's building facing the Notre Dame Academy. The problem with Priscilla's is compounded by the fact that it (and similar sex shops, including Toledo's Love Boutique) use window displays for some of their racy lingerie and, at least in some cases, for sex toys. Priscilla's displays some of the lingerie on translucent body-forms that are lighted from within.



The point of this discussion is not to focus unduly on two establishments but to note the importance of location. The Love Boutique is an operation very similar to Priscilla's; we found no concerns with the Love Boutique's location – located in a strip shopping center, well separated from residential uses (although its inclusion in a large complex of adult uses raises other issues addressed in this report). The primary concern that we had about Priscilla's was its location – but that was a big concern indeed.

In short, one of the most significant "secondary effects" for a community is the impact of causing or allowing unwitting citizens to come in close contact with these businesses while going about their daily lives; it is a particular concern where the people who may come in unintentional or unplanned contact with the businesses are children. Thus, our recommendations reemphasize the importance of a policy already adopted (but incompletely implemented) by the City – the separation of sexually oriented uses from sensitive uses, including areas zoned primarily for residences, houses of worship and schools.



⁹ Village of Euclid v. Ambler Realty Co., 272 U.S. 365, at 388, (1926).

Police Calls

The Toledo Police Department provides copies and summaries of reports of police contacts with addresses associated with these businesses from January 1, 1999, through March 31, 2002.¹⁰ The following tables summarize the data by type of establishment¹¹:

	Total	Violent	Vehicle	Sex	Indecency	Other Theft	Drug	Other
Adult Cabarets (5)	137	45	26	0	5	26	2	33
Adult Theater (1)	10	0	0	2	3	3	0	2
Adult Book Stores (7)	34	14	6	0	0	6	0	8
Contact/Encounter Businesses (6)	26	6	2	6	0	3	0	9
Sex Shop (1)	0	0	0	0	0	0	0	0
South Byrne Cluster (5)	131	39	31	6	2	19	4	30
TOTAL	338	104	65	14	10	57	6	82

Key – Businesses:

“Adult Cabaret” includes Club Chabliss, Club Ecstasy, Hot Shotz, Platinum Showgirls, and Scarlet’s.

¹⁰ We received printed summaries, by address, with NCIC codes, for 1999 and 2000, with some copies of associated reports attached. We received copies of actual reports for 2001 and the first part of 2002.

¹¹ We have not reported data for individual establishments for two reasons: first, the sample size is too small to be meaningful at that level; second, we want to focus on the larger issues, rather than on issues with the individual businesses – although we have made reference to the police call figures in the context of our reports on a handful of the individual establishments.

“Book Stores” includes adult bookstores all of which have video viewing booths.

“Encounter and Touching Businesses” include Diplomat Bath House, Kim’s Lingerie/Oriental Spa, Lorain’s, Rainbow Health Spa, Snapshots Nude Photograph (now closed), and Sun2 Health Spa.

“Sex Shop” includes Priscilla’s.

“South Byrne Cluster” includes five businesses that share a common address (135 South Byrne): Love Boutique (sex shop), Déjà vu (adult cabaret), Chang Mi Health Spa (massage), Pleasure Palace (adult book store with viewing booths), and Field House (bar/nightclub, now open only on weekends). These were lumped together for two reasons: first, for many of the reports, it was impossible to attach them to a particular establishment at that address; second, the cumulative number of police calls for this location accounts for 40% of all reported calls even after reducing the number of calls that appeared to be attributable to the Field House.

Key – Incidents:

“Violent” includes robbery, all forms of assault, menacing, but not domestic violence¹²; “Vehicle” includes some vehicle thefts, although the vast majority involved vehicle-break-ins and thefts of property from the vehicles or other damage to a vehicle; “Sex” includes solicitation, prostitution, pimping, and “sexual imposition” – there were no rapes or similar sex crimes included in the reports that we received; “Indecency” includes incidents reported as public indecency; “Other Theft” includes shoplifting, petty theft (mostly cell phones and cash taken off tables or from employee lockers), as well as burglaries of the businesses; “Drug” includes all drug-related incidents, including at least one that involved drug paraphernalia but no reported drugs; “Other” includes a few liquor violations, one death by natural causes, a couple of incidents of sickness and a variety of other police calls.

¹² We excluded domestic violence from this category because the few instances reported at these businesses were clearly ones that followed the victim to the business and thus apparently had nothing to do with the business itself.

It is difficult to draw absolute conclusions about crime and sexually oriented businesses in Toledo without a control comparison to other types of businesses – something for which we had neither the data nor the budget. However, we have been able to identify some striking facts from this data set. The related findings are set out below.

Location of the Incidents

Of the 338 incidents reported from 1999 through 2002, 294 occurred in businesses or clusters with live entertainment (87%). We found it very interesting that one establishment accounted for 30 percent of the reported incidents, while one location (South Byrne Cluster) accounted for another 39 percent of the reported incidents.

For 226 of the 338 incidents, we were able to determine the location at the addressed premises where the incident occurred.¹³ Of the 226 incidents for which we could determine a location, one-half (113) occurred in the parking lot of the establishment. That is a very significant finding in terms of neighborhood impact. Some 55 of those occurred in the sprawling parking lot of the “South Byrne Cluster”.

Most of the parking lot problems occurred at the establishments or the cluster with live entertainment (101 of 113 incidents that clearly occurred in the parking lots). However, even within the live entertainment group there was significant variation. At one establishment (the one with by far the most police calls for an individual establishment), most of the problems occurred inside, with only 30 percent occurring in the parking lot; at another establishment which may maintain better controls inside the operation (and has far fewer calls), the problems tended to move outside, with 75 percent of the calls involving incidents in the parking lot. Three of the eight bookstores with viewing booths had parking lot incidents – two of them are under the same ownership. With one exception, the problems at the encounter and touching businesses stayed inside.

¹³ For a number of incidents it was not clear whether the reported incident occurred inside the building or in the parking lot.

The Effects of Clustering

As shown on the table above, five businesses located at the South Byrne Cluster (135 South Byrne) accounted for 39 percent of the 338 incidents reported. We feel this number is under-counted, because we did not receive all reports for this address for 2001 and early 2002.¹⁴ These five businesses account for 20 percent of the total businesses included in the crime analysis, but have 40 percent of the reported incidents. This reinforces findings from the City of St. Paul, Minnesota in a study it undertook in 1978. It found that “more than one adult entertainment businesses in an area is associated with a statistically significant increase in crime rate.”¹⁵ These same findings have been reported in a number of other jurisdictions.

Types of Businesses

There were some significant differences in police calls by types of business:

- Although the sexually oriented cabarets accounted for only 5 percent of the 25 businesses included in the crime study (or 20 percent), they were involved in 44 percent of the total police calls.
- The 8 bookstores accounted for 37 of the 338 police calls, but 4 stores had were attributed to 34 of the calls.
- In contrast, we were able to identify only one police call to one of the sex shops, and that was a telephone harassment complaint by an employee at the business that may or may not have related to the business and therefore not included in the tabulations.

¹⁴ We were told that the reports we received omitted those for the Field House.

¹⁵ For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 62-63.

As noted above, it is not entirely surprising that the large cabarets, which attract more people who stay longer, will have more police-related incidents. We make no value judgment about what an acceptable number of police calls to such an establishment might be – in considering the secondary impacts of these businesses, however, it is significant to note that the establishments with live entertainment are likely to have the greatest adverse impacts in terms of incidents requiring police response.

In contrast, there is nothing in the crime data that suggests that the sex shops have an effect on crime around them. With such establishments, the real issue is the first issue addressed in this section – the need to ensure that such businesses are located in places where children and individuals going about their daily business will not encounter them accidentally.

The Effects of Management

There are wide differences among individual establishments within each category. Note that:

- Among the adult cabarets, excluding the South Byrne cluster, one establishment had 102 incidents, one had 25, two others had fewer than 8 and one had no incidents reported;
- Among the sexually oriented bookstores with video viewing booths, there were 37 reported incidents, of which 10 took place at one establishment and two others had 9 and 8, respectively;
- Of the 37 calls to the sexually oriented bookstores, 17 went to two stores under common ownership;
- Of the 37 calls to the sexually oriented bookstores, 15 went to two stores that are only 1 block apart;
- Three of the eight bookstores had no reported incidents;
- Of the 26 calls to the encounter and touching establishments, one establishment had 18 (or 69 percent) of the calls.

These findings reinforce the need for an effective licensing ordinance. If all establishments were as well managed as even the average establishment now located in Toledo, one would expect a substantial reduction in the number of police calls to these businesses.

Types of Incidents

The types of incidents for which the police were called ranged from a number of relatively minor thefts (cell phones and car stereos) to one death by natural causes (in one of the touching establishments). The largest number of calls related to damage to, thefts from or thefts of vehicles. A few significant facts emerge:

- Most disturbing is the fact that 104 of the incidents, or 30 percent, involved violence;
- A relatively small number involved sex-related crimes – 14 (4 percent) pimping, prostitution and solicitation; and 10 (3 percent) public indecency;
- Of the 10 public indecency complaints, five arose at one of the adult cabarets and three at the adult theater, with the other two at non-specific locations in the South Byrne cluster. That means that there were no such incidents at any of the other live entertainment establishments or at any of the bookstores;
- Six of the sex-related complaints were attributable to one of the massage studios, and six others were attributable to the cluster of businesses on South Byrne;
- There were two solicitation complaints at the adult theater.

These facts significantly reinforce the separate findings regarding the importance of management controls and the value of licensing as a regulatory tool to ensure that establishments are well managed.

Effect on Property Values

One of the concerns often expressed about sexually oriented businesses by neighborhood residents relates to the effect on property

values. For findings regarding that issue, we turn to two studies from other communities – one of which we designed.

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 values.¹⁶

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;

¹⁶ For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000. Table 3-6, page 53; Table 3-7, page 54; Table 3-8, page 55; Table 3-9, page 55.

- 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 feet¹⁷.

A study conducted in Indianapolis compared crime rates and “real estate value appreciation.” The study found that:

- The major crime rate in the study areas was 23 percent higher than in the control areas and 46 percent higher than in the police jurisdiction at large;
- The “sex-related crime rate” in the study areas was 46.4, or some 80 percent higher than the rate for the same crimes in the control areas over the same period;
- “Although the housing base within the Study Areas was of a distinctly higher value than that of the Control Areas, its value appreciated at only one-half the rate of the Control Areas’ and one-third the rate of Center Township as a whole during the period 1979-1982.”

- “Twice as many houses were placed on the market at substantially lower prices than would be expected had the Study Area’s market performance been typical for the period of time in question.”

This study also included responses from a national survey of appraisers where in some 75 percent responding “felt that an adult bookstore located within one block would have a negative effect on the value of both residential and commercial properties,” but that “at

¹⁷ For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.

a distance of three blocks” the impact of an adult bookstore fell off sharply so that the impact was negligible on both residential and commercial.”¹⁸

Other Concerns about Secondary Effects

As part of our study, a City Council member organized a meeting for interested citizens to talk with us and with city officials about secondary effects and other issues related to sexually oriented businesses in Toledo. The meeting took place in North Toledo on the evening of Wednesday, June 5, 2002.

The dominant theme of the evening was that the concentration of the sexually oriented businesses – particularly those with live entertainment – in North Toledo has an adverse effect on the quality of life. Other concerns included:

- Market elimination of neighborhood businesses from centers with adult entertainment, both because some customers were reluctant to go into the centers once the adult businesses located there and in part because businesses moved because of their own image concerns (although these comments were somewhat generic, the clear focus was on Platinum Showgirls, which is located in the corner of a strip mall);
- One resident expanded upon that theme and offered the hypothesis that some of the economic problems of the Northtown Mall may be attributable to the growth of sexually oriented businesses in the area.
- Some neighbors complain that they can hear the entertainment from the live entertainment establishments until 3 a.m. on weekends;

- More than one resident indicated that they have seen prostitutes walking the streets in the area. The testimony suggested that the prostitutes may have been attracted to the area and not associated with any particular business. Two different residents reported that prostitutes had asked them for help – in one case to use a phone after her car stalled;
- One resident has observed scantily clad dancers from one business taking a break on a service road behind the business and adjoining a residential area; and
- Several neighbors complained about finding used condoms and tokens for the viewing booths in streets and parking lots, leading to difficult questions from their children about the uses of the devices.

Zoning Issues

Status under Current Zoning

The City has generally taken the position that many of the businesses are lawful nonconforming uses, because they pre-date the 1979 zoning ordinance that established the current rules. In the following table, we make a more detailed examination of the status of these businesses under the current zoning and separation rules.

¹⁸ “Adult Entertainment Businesses in Indianapolis: An Analysis,” 1984, cited in see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 58-59.