

EXECUTIVE SUMMARY

Background

In the two decades since the U.S Supreme Court upheld a Detroit ordinance imposing separation requirements on adult use businesses, state and local governments increasingly have turned to zoning laws to regulate the location and operation of such businesses.

Regulations imposed on adult use businesses have serious constitutional implications because of the First Amendment's guarantees of freedom of expression and speech. The importance of these issues is reflected in the hundreds of appellate court cases nationwide challenging the constitutionality of state or local regulation of adult uses.

In October 1996, the Denver City Council imposed a temporary moratorium on the issuance of zoning permits for adult use businesses in certain districts, and directed city departments and agencies to undertake a comprehensive study of the secondary impacts of such businesses on nearby properties and neighborhoods.

Efforts to regulate adult uses in Denver are aided by the experiences of other municipalities in defending their ordinances against such challenges, including documentation of the negative impacts caused by adult use businesses on property values and the safety and well-being of people who live and work in areas surrounding such businesses.

Zoning

Twenty adult use businesses are currently operating in Denver under approved use permits in the B-3, B-4, B-5 and B-8 zone districts. They include five adult theaters/bookstores, four cabarets, three pop shops and eight adult bookstores (seven of which also offer live entertainment and/or video booths).

Seventeen of these 20 businesses do not meet separation requirements established in 1976 for adult uses but, because they were in existence prior to that time, have continued to operate as legal nonconforming uses. Three new adult use businesses, all of which meet the city's separation requirements, have been established since 1992.

Applying the current separation requirements, there are currently 597 acres of land available for adult use businesses to operate in the City's business zone

districts and Planned Unit Development (PUD) zone districts. The number of individual sites currently available for adult uses is 89, including the 20 sites currently occupied by adult use businesses. An additional 25 sites are available for use by adult businesses in industrial districts, where structures erected before 1956 are eligible for use exceptions.

Licensing

Of the 20 adult use businesses currently operating in Denver, all but one (Las Vegas Adult Palace) require licensing, as either amusements or cabarets, by the Denver Department of Excise and Licenses.

The department issues Amusement Class 16 licenses to establishments and individuals providing live entertainment, Amusement Class 15 licenses to establishments that have picture show devices and Amusement Class 6 licenses to those that show movies. If the adult entertainment establishment sells alcohol, the operator must possess an adult cabaret license, in addition to a liquor license.

Both amusement and cabaret licenses can be suspended, revoked or not renewed by the excise and licenses department after notice to the applicant of the allegations forming the basis of any complaint, followed by a hearing. The cabaret provisions are more detailed and inclusive regarding the grounds for suspension, revocation or non-renewal. The department director has the authority to put conditions on a cabaret license, but not on an amusement license.

Most adult use businesses in Denver have had their licenses suspended on one or more occasions for criminal violations by patrons or employees (or, in some cases, for licensing violations short of criminal behavior). The overwhelming majority of such violations involved public indecency, including masturbation, fondling and deviate sexual intercourse. In addition, many adult use businesses have had warnings or order-ins issued by the police or by the department of excise and licenses for similar offenses.

Among the four groups of adult use businesses licensed by the City, Amusement Class 15 licensees, which offer adult books and adult picture show devices, do not seem to generate the same amount of violations as those establishments that offer live entertainment or movies.

Neighborhood Impacts

The Adult Use Study Team reviewed impact studies, or summaries of studies, conducted in 21 jurisdictions. These studies have found such businesses to cause negative secondary impacts to nearby properties and neighborhoods, including criminal activity, litter, noise, traffic problems and depreciation in property values.

Surveys, interviews and site inspections conducted as part of this study show that people who live or own businesses near adult use businesses – particularly bookstores and theaters – feel their presence in the neighborhood lowers property values, generates crime and contributes to an overall decrease in quality of life.

While all of the adult businesses in the study areas have had a negative impact on adjacent residential areas, those that have had the greatest impact are adult theaters/bookstores, which generally operate 24 hours a day, seven days a week. The intense level of activity generated by adult cabarets and pop shops has also had a negative impact on adjacent neighborhoods.

In general, a greater percentage of residents than business owners have experienced negative secondary impacts from adult use businesses. This is probably due to the fact that most of the neighborhood businesses are open only during the day, while residents are in the neighborhood day and night. Enough of the local businesses, however, are experiencing impacts to warrant concern.

Among the specific findings of the Department of Planning and Community Development's survey of neighborhood residents and business owners:

Overall Impact on Neighborhood

Of the residents surveyed, 69% felt that adult use businesses had a negative overall effect on their neighborhood. The most frequently mentioned impacts were neighborhood appearance, litter, traffic and decreased property values.

A negative perception of the overall impact of adult use establishments was less prevalent among neighborhood business owners. Fifty six percent of business owners surveyed said the presence of adult uses in the neighborhood had no effect on their daily activities. The most frequently mentioned impacts were neighborhood appearance, decreased property values and litter.

Specific Activities and Impacts Observed by Neighbors

Activities observed by those living near adult use businesses included littering, trespassing and drinking alcohol in public . Litter generated by such businesses includes printed material containing pornography, used condoms, sex paraphernalia and used syringes. Residents also mentioned having seen people urinating, masturbating and soliciting for prostitution in areas adjacent to adult use establishments.

Of the activities observed by neighborhood business owners, the most frequently mentioned were littering, harassment of pedestrians and fighting.

Actions Taken by Neighborhood Residents and Business Owners in Response to Negative Impacts Caused by Adult Businesses

Some survey respondents said that the negative impact of adult use businesses on their neighborhood has forced them to take action or seek assistance, including restricting parking in front of their homes, calling the police and installing new lighting .

Business owners mentioned calling the police , restructuring business hours and installing better locks or hiring security guards.

Impact of Adult Uses, by Type of Business

- ***Adult bookstores with live amusement.*** Among people who live or work near adult bookstores featuring live amusement, 75% of residents and 67% of business owners felt that such businesses had a negative overall impact on the neighborhood. The most frequently cited complaints were drug dealing, trash, and prostitution and other illicit sexual activity in parking lots and nearby alleys.
- ***Adult theaters.*** Among people who live or work near adult theaters, 80% of residents and 41% of businesses owners felt that such businesses had a negative overall impact on the neighborhood. Complaints included prostitution, drug dealing, litter and the parking of patrons' cars on neighborhood streets.

- *Adult Cabarets and Pop Shops.* Among people who live or work near adult cabarets or pop shops, 78% of residents and 47% of businesses owners felt that such businesses had a negative overall impact on the neighborhood. The most frequently cited complaints were litter and trash containing pornographic material.

Incidence of Crime

To assess the impact of adult use businesses on neighboring properties, the Department of Public Safety collected and analyzed three categories of data for 1995 and 1996 -- calls for service, reported offenses and arrests -- for 15 study areas surrounding such businesses. Study areas were established by aggregating the statistics from the most active locations within a one-block area with the data for each existing adult use business.

The analysis showed that the incidence of certain kinds of crimes was proportionately higher in the study areas -- and significantly higher at many of the individual adult business locations -- than in the city as a whole. These crimes included disturbing the peace, public indecency, prostitution, drug-related violations, loitering, robbery, larceny, theft from motor vehicle, drinking in public/vehicle and urinating in public.

The analysis also showed that the incidence of certain kinds of criminal activity -- prowler and disturbance complaints, public drunkenness, drug-related crimes and public indecency -- was higher in the areas surrounding adult theaters and bookstores than in areas surrounding other types of adult businesses.

Effect on Property Values

Using 1994-97 assessment data, existing adult businesses in Denver were categorized into seven study groups in order to measure the impact of such businesses on assessed property values.

Analysis showed that commercial properties within the adult business blocks and residential properties abutting the adult business blocks tended to increase to a lesser degree than other properties in the same location.

Also, the impact on residential values is greater for properties that abut adult use businesses than on commercial properties that abut such businesses.