

**Regulating Sexually Oriented
Businesses**
LaPorte County, Indiana


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Purpose of Tonight's Presentation

- Brief County Commissioners and Plan Commission on ...
- Legal aspects of regulating sexually oriented businesses
- Examples of existing sexually oriented businesses in "the region" (including one in Michigan City)
- Introduction to "negative secondary effects" doctrine
- Studies confirming secondary effects of sexually oriented businesses
- Provide an opportunity for questions or comments

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**Legal Context for Regulating
Sexually Oriented Businesses**



First Amendment Protection



- Some sexually oriented business regulations involve activities or goods that have First Amendment protection
- Freedom of expression ...
 - Written expression: books, magazines,
 - Visual expression: videos, movies, erotic performance
- Basic rule
 - Content-based restrictions are subject to "strict scrutiny", which turns the "presumption of validity" on its head
 - Difficult to define "sex businesses" without reference to content

Exception



- BUT, Supreme Court has held that if the "purpose" of local regulations is to reduce "negative secondary effects" of such businesses (rather than to restrict content), regulations will be subject to "intermediate scrutiny" – which puts local government and challenger the same footing
 - *Playtime Theatres, Inc. v. City of Renton*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed 2d 29 (1986)

Expanded Rule



- Courts review SOB regulations under increased scrutiny
 - Content-based regulation: strict judicial scrutiny – most regulations fail
 - Secondary effects regulation: substantial scrutiny, but local governments may reasonably restrict time, place and manner of sexually oriented expression – IF regulation ...
 - Implements a substantial governmental interest
 - Is content-neutral
 - Does not unduly limit "alternative avenues of expression"



First Amendment Protection

Protected

- Books, magazines
- Videos, DVDs
- Movie theaters
- Dance performances, including erotic

NOT Protected

- Obscene works (defined by state)
- Prostitution
- Massage except as licensed or allowed by state
- Body painting, lingerie modeling

Other Critical Legal Issues


- "Adequate alternative avenues" doctrine means that there must be available sites in the community
 - Cannot zone protected businesses out
 - Cannot use excessive separation or buffer requirements to eliminate all sites
- *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 67, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981).
-

Other Critical Legal Issues


- Must have clear and reasonably objective standards for granting licenses or other approvals for businesses protected by First Amendment
 - Process must have time limits and easy access to judicial appeal
- *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988).
- *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990)

Intro to Sex Businesses


In the Region ... and elsewhere



Overview of Sex Businesses



- Retail Sex Businesses
 - Business with a small amount of "adult" material
 - Businesses with "backrooms"
 - Sex shops
 - XXX media stores
- On-Site Entertainment
 - Video viewing booths
 - Adult theaters
 - Adult cabarets
 - Dancers in a box
 - Lap dancing
 - Massage parlors
 - Lingerie modeling
 - Nude photography



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Surveyed Businesses - Cabarets

Deja Vu Showgirls	Lake Station, Lake County
DreamGirls	Lake Station, Lake County
Honey's	Gary, Lake County
Pandora's Show Club	Gary, Lake County
Polekatz Gentleman's Club	Gary, Lake County
Temptations Gentleman's Club	Gary, Lake County
Beer Barrel Tavern	Hobart, Lake County
Centerfolds	South Bend, St. Joseph County
Peaches Show Bar	South Bend, St. Joseph County
The Torch	South Bend, St. Joseph County

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Cabaret Polekatz (Gary)

- Operating hours usually 11 am – 3 am
- Dancers sit and chat with customers, sometimes sitting on their laps, some without cover ups
- On stage dancers have FULL contact with customers
- Lap dances advertised as \$10 but probably higher
- Only club where we were asked to show driver's license before entering



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Cabaret Déjà Vu (Lake Station)

- "Upstairs" - Déjà Vu
 - Full alcohol
 - Dancers keep bottoms on
- "Downstairs" - DreamGirls
 - No alcohol
 - Free drinks
 - Full nudity – some dancers reportedly bottomless
- Lap dances - \$15 to \$20

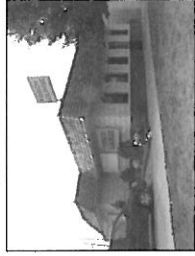


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Cabaret The Torch (South Bend)

- On major north-south street near downtown
- Full liquor
- Casual atmosphere when we were there
- Apparently co-owned with Peaches, 2 doors away and only open during football season

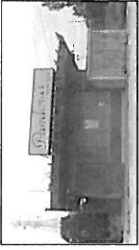


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Cabarets

Some we chose not to visit ...



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“Lingerie Modeling” Beer Barrel (Hobart)

- “Modeling” Hours – Tues., Wed, Thurs. 8 pm until ???
- Building has two parts, restaurant and a bar with pool table and “lingerie modeling”
- “Modeling” is really private lap dances behind two alcoves with swinging half doors and a mirror for other customers to view
- Essentially a neighborhood bar that is offering adult entertainment



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Retail Stores with On-premises Video Entertainment

Deja Vu Love Boutique	Michigan City, LaPorte County
Little Denmark	South Bend, St. Joseph County
Romantik Adult Superstore	South Bend, St. Joseph County
Romantik Adult Superstore	Gary, Lake County

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Retail with Video Booths – Romantix (South Bend)

- Hours – 24/7
- Very nice large retail area with sex toys, novelties & media
- People hanging out in arcade area and in vehicles outside
- Arcade had about 12 very large booths (probably 80 sf)
- Each booth had a bench-couch for two but no glory holes
- Multiple indications of attempted sexual contact

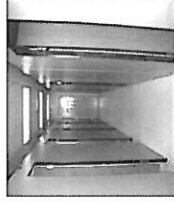


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Video Booths (taken elsewhere)

- "Masturbation booths" facilitating anonymous sex

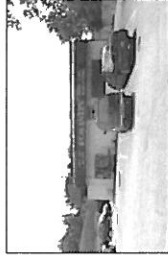
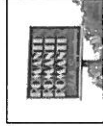


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Retail with Video Booths Romantix (Gary)

- Hours – 24/7
- Very small and dingy retail area
- Dark arcade with 12 booths (20 sf) with locks
- Many booths had glory holes
- People hanging out in arcade area
- Separate "theater"



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Retail with Video Booths Déjà Vu Boutique (Michigan City)

- Only apparent adult use in LaPorte County
- Operating hours 9 am – 1 am
- Retail area in two front rooms
- Arcade area in rear with 20 viewing booths (70 sq ft) with no glory holes
- "Theater" – small room with large television and 8 plastic chairs
- 3 glass-faced booths for individualized dancing with signs "permanently closed"



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Uses Not Found or Not Visited ... but Relevant



Retail – with Some Explicit Material

- Many book and video stores have at least some material that meets definition of "adult" material
- Pose no adult-use problems



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Retail with Backrooms

- Media has strong 1st Amendment protection
- Mainstream stores with large backrooms and significant quantities of hard-core material
- If backroom access limited, these stores also pose no adult-use issues



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Adult Theaters

- Structure is the "medium"
- Often operated with viewing booths, retail store or live entertainment
- Shrinking part of adult market
- Must allow because of two Supreme Court decisions – but unlikely to see any real cinemas



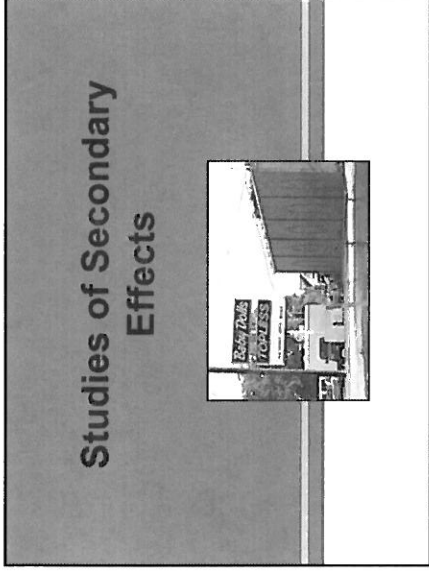
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Non-licensed Massage


- "Massage" Parlor
 - Allows direct contact between customer and performer, usually in private room
 - Massage providers NOT certified massage therapists



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What are “Secondary Effects?”




- **Definition:**
 - The external impacts of sexually oriented businesses on adjacent or nearby properties
- **Secondary effects vary by type of SOB and regulations must differentiate between types:**
 - Off-premise retail stores - have adult merchandise such as videos, magazines, lingerie, and sexual novelties – less regulation needed!
 - On-premise entertainment – topless or nude cabarets, video viewing booths, and nude modeling – more regulation needed!

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Types of Negative Secondary Effects

- Reduction in residential and commercial values
- Difficulty in selling or renting homes and businesses
- Perceived impact that neighborhood is unsafe
- Increased vice-related activities and other crimes
- Negative impacts of noise, lighting and traffic
- Risk for minors from exposure or contact
- Overall community blight



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Findings from Studies



- Sex crimes rate 2 - 5 times greater in areas with sex businesses. (Austin & Phoenix)
- Concentrations of sexually oriented businesses increased crime. (Austin, Phoenix, Denver, Indianapolis, Whittier, & St. Paul)
- Significant correlation between sex businesses and neighborhood deterioration. (Minnesota)
- Higher turnover rates in commercial and residential areas adjacent to sex businesses. (Whittier, CA)

Findings from Studies (2)



- On-premise live entertainment with interaction between customers and entertainers has greatest negative effects. (Newport News, St. Paul, & Whittier, CA)
- Sperm samples on floors/walls of most video-viewing booths inspected. (Tucson & Alachua)
- Retail businesses such as adult book/video stores have lower impacts but do have impacts. (Denver)
- Greater negative impact on residential values than on commercial. (Rochester, Indianapolis, Garden Grove)

Findings from Studies (3)



- Negative impact increases with proximity to sex businesses - minimal impact beyond 1500 feet (Rochester, Indianapolis, Garden Grove)
- Appraisal studies find negative impact on values extend beyond 1500 feet. (Texas & Florida)
- Prostitution flourishes in some sex businesses. (Denver & Whittier)
- Take-home only businesses draw large number of potential victims that attract predatory criminals. (Sioux City, IA)

Secondary Effects – Property Values

- Survey of Appraisers
 - Kelly and Cooper have conducted surveys of appraisers
 - Appraisers' opinions are self-fulfilling prophecies – because most real estate sales involve mortgages, and the mortgage depends on the appraisal
 - Appraisers accustomed to determining "market value," which is the issue here



TX Appraisers Survey



- Impact on Single Family
 - 91% of appraisers believe adult businesses have a negative effect on market value of a single-family home if within 500 feet
 - 71% believe negative effects do not disappear until ... at least ¼ mile +
 - 80% believe a concentration of sexually oriented businesses increases negative effect

TX Appraisers Survey



- Impact on Community Shopping Center
 - 64% of appraisers believe adult businesses have negative effect on market value of community shopping center if within 500 feet
 - 63% believe negative effects do not disappear until ... at least a ¼ mile + (impact of video peep booths did not disappear until ½ mile +)
 - 61% believe a concentration of sexually oriented businesses increases negative effect

Secondary Effects – Crime



- Prof. Richard McCleary, a University of California Professor of Criminology, has consistently found
 - Increased crime around sex businesses with on-premise entertainment
 - Around those that are retail only businesses
 - Interestingly, industry “experts” (not criminologists – one not even a Ph.D.) claim to have found no correlation between sex businesses and crime

Secondary Effects – Crime

- Marcus Felson, professor at Rutgers University, has set out the “routine activity theory”
 - A concept that crime rates are likely to increase in areas with “soft targets,” “valuable targets” and low “guardianship”
 - Criminals recognize such circumstances and are attracted to them



Secondary Effects – Crime



- “Soft targets”
 - People who are vulnerable
 - People who have been drinking
 - Young males more present and at risk
 - People with something to hide
 - People out during late hours
- “Valuable Targets”
 - People visiting businesses that deal primarily in cash – strip club or video viewing booths

Secondary Effects – Crime

- Areas of "low guardianship"
 - Anonymous environment
 - Concentration of bars or adult establishments
 - In contrast, consider a shopping mall, where other merchants are likely to call the police if they see wrongdoing – anywhere



Secondary Effects – Crime

- Adult entertainment establishments ...
 - Attract "soft targets" (unlikely to call police, often intoxicated)
 - Attract "valuable targets" (most carry CASH not PLASTIC)
 - Located in areas with "low guardianship"
- Ergo ...
 - Unlawful activity likely to increase
 - But sometimes data does not show an increase in "crime"
- Why ?



Audience Participation

- If you lost or had your cell phone stolen at Target, would you report it?
- If somehow you happened to be in Polekatz or Dream Girls and lost or had your cell phone stolen, would you report it?

Secondary Effects – Crime



- Some unlawful activity may not be considered a "crime" for reporting purposes
 - Less serious crimes are misdemeanors
 - Some activities are "petty offenses"
 - Some are only "municipal infractions"
 - Citations often paid without trial and then typically do not show up in crime reports
- Some crimes simply not reported because person would have to admit they were in or near a sex business

Secondary Effects – Crime



- Unlawful activity observed in or around sex businesses
 - Indecent exposure outside business (often male urinating)
 - Public sex acts (often in cars parked nearby)
 - Drunk and disorderly conduct
 - Solicitation for prostitution
 - Extensive sexual contact between performers and customers
- Littering with used condoms, wrappers from sex products in area around neighborhoods

Studies of Negative Effects of SOBs

- "Effects of Concentration of Adult Establishments, Los Angeles, CA, 1977
- "Regulating Adult Entertainment," Amarillo, TX, 1977
- "Effects of Adult Businesses," St. Paul, MN, 1978
- "Adult Business Study," Phoenix, AZ, 1979
- "Adult Entertainment, Crime, and Housing Values," Minneapolis, MN, 1980
- "Regulation of Adult Uses," Beaumont, TX, 1982
- "Analysis of Adult Entertainment Businesses," Indianapolis, IN, 1984
- "Adult Entertainment Businesses Survey of Appraisers," Oklahoma City, OK, 1986
- "Supplement to the 1978 St. Paul Study," St. Paul, MN, 1988
- "Text Amendment-Adult Cabarets," Seattle, WA, 1989

Studies of Negative Effects of SOBs (2)

- "Police Report and Citizens Report regarding Adult Entertainment Ord.," Tucson, AZ, 1990
- "Relationship between Crime and Adult Businesses on Garden Grove Boulevard," Garden Grove, CA, 1991
- "Effects of SOBs which Advertise Live, Semi-Nude Entertainment on Surrounding Properties," Dallas, TX, 1994/1997
- "Slair Report Adult Business Regulations," Whittier, CA, 1994
- "Adult Entertainment Study," New York City, NY, 1994
- "Adult Use Study," Newport News, VA, 1996
- "A Report on Adult Oriented Businesses," Austin, TX, 1996
- "Adult Businesses Studies," Houston, TX, 1983 – 1997

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Studies of Negative Effects of SOBs (3)

- "Adult Entertainment - Supplement to 1987 Study," St. Paul, MN, 1998
- "Secondary Impact of Adult Use Businesses," Denver, CO, 1998
- *Everything You Always Wanted to Know about Regulating Sex Businesses*, Kelly Cooper, Am. Planning Assn., PAS Report, 2000
- "Survey of Appraisers," Rochester-Monroe County, New York, 2000.
- "Survey of DFW Appraisers: Land Use Effects on Property Values," 2004.
- "Summaries of SOB Land Use Studies," National Law Center for Children and Families, 2005
- "Do Peep Shows 'Cause' Crime?" McCleary/Meecker. *Journal of Sex Research*, 43:194-196, 2006.
- "Rural Hotspots: The Case of Adult Businesses," McCleary, *Criminal Justice Policy Review*, 19:153-163, 2008

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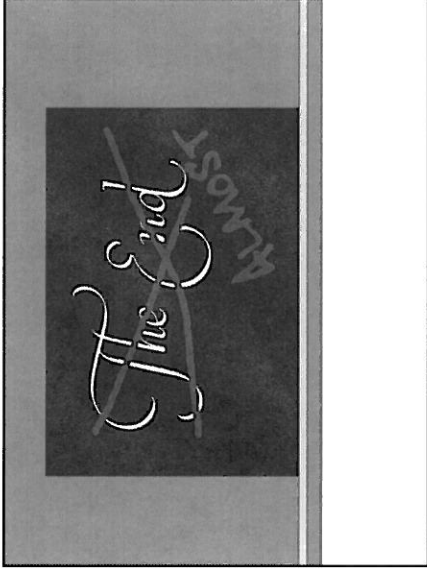
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Studies of Negative Effects of SOBs (4)

- "Survey of Florida Appraisers: Effects of Land Uses on Market Values," Kelly and Cooper, 2008
- "Survey of Texas Appraisers: Secondary Effects of Sexually-Oriented Businesses on Market Values," Kelly and Cooper, 2008
- "Crime-Related Secondary Effects of Off-Site Sexually-Oriented Businesses," McCleary, 2008
- "Do 'off-Site' Adult Businesses Have Secondary Effects?" McCleary/Weinstein. *Law and Policy*, 31:217-235, 2009
- "Female Patrons of Porn," McCleary and Tewksbury. *Deviant Behavior*, 31:208-223, 2010

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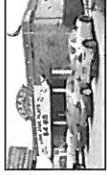


Summary – General Land Use Impacts

- SOBs have negative effects on surrounding properties.
- SOBs have the highest, negative effect on residential and family-oriented land uses.
- SOBs have a negative effect on value of non-residential land uses but not as much as on residential land uses.
- Separation between incompatible land uses reduces negative effects
- Higher concentrations of SOBs increase negative effects

Strategy – Restrict Time, Place & Manner

- Techniques for regulating time, manner or place regulation
 - Location (by zoning district)
 - Separation requirements from sensitive uses
 - Prohibit performances or videos in small rooms
 - Require clear visibility of all areas open to customers
 - Keep performers on stage, customers down below



More Strategies



- Prohibit or substantially limit unlicensed massage parlors and other sexually oriented businesses with no First Amendment protection
- Limit locations of other sexually oriented businesses through zoning to reduce "negative secondary effects" ("time, place and manner" regulations)
- Use "behavior [licensing] ordinance – on agenda tonight – to control activities in lawful businesses, also to reduce negative secondary effects (also "time, place and manner")

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Finally, Remember ...



- If you've only seen one sex business you have NOT seen them all ...
- And you should not regulate them as though you have

Lafayette County, IN

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Kassandra Gray

From: Eric Kelly <eric@duncanassociates.com>
Sent: Tuesday, October 30, 2012 10:37 AM
To: Kassandra Gray
Subject: RE: Section 14.09(a) Revised
Attachments: LaPorte SOB Presentation_Oct 2012.pdf

Kassandra,

Attached is a hand-out version of the Powerpoint presentation for use tonight. In many ways I would prefer that members of the commission and the board refer to our report -- but if Doug wants them to have this -- and he probably will want it at least for the record -- you have it available.

Thanks for your help.

From: Kassandra Gray [kgray@dbselaw.com]
Sent: Tuesday, October 30, 2012 11:22 AM
To: gene_jonas@yahoo.com; 'Harold Parker'; minich@csinet.net; Rita Beaty; ahendricks@laportecounty.org; mbernacchi@laportecounty.org; ematzat@purdue.edu; bhuston@laportecounty.org; jpressel@msn.com; wmlsap@laportecounty.org; klayton@laportecounty.org
Cc: apolan@laportecounty.org; Bishop, Mitchell J.; dmhogan@comcast.net; mmischke@laportecounty.org; 'Paul Zona'; 'William (Bill) Eaton'; mmollenhauer@lco.in.gov; david.ambers@amberslaw.com; cvb@braje-nelson.com; Eric Kelly; Ahillmann@khkklaw.com; dhmcain@dbselaw.com; Steven Hale; Don Baugher
Subject: Section 14.09(a) Revised

Ladies and Gentlemen,

Attached please find correspondence from Douglas L. Biege, Esq. as well as Section 14.09(a) of the LaPorte County Joint Zoning Ordinance.

Should you have difficulties opening the attached, please call me.

Very truly yours,

Kassandra L Gray
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