

LOCAL REGULATION OF SEXUALLY ORIENTED BUSINESSES

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LOCAL REGULATION OF SEXUALLY ORIENTED BUSINESSES

1. Introduction

A. What Exactly is a Sexually Oriented Business (SOB)?

Adult businesses in America continuously change their nature and character in an effort to stay a step ahead of governmental regulation. This game of cat and mouse means that cities must periodically review their regulatory schemes so that they are not addressing these issues with antiquated tools.

Precisely because of this chameleon-like quality, one of more difficult tasks cities are faced with is defining an SOB. Unfortunately for cities, they do not have the luxury of knowing SOBs when they see them. Defined too narrowly and unregulated venues fall through the cracks. Defined too broadly and cities run the risk of having their ordinance declared unconstitutionally vague. So what type of establishment constitutes a sexually oriented business?

The Supreme Court has upheld definitions that manage to balance First Amendment combat harmful secondary effects with time, place and manner regulations. A regulation must not be vague so as to require people of (at least) normal intelligence to guess at its meaning, *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); however, the vagueness prohibition does not invalidate every statute which a reviewing court believes could have been drafted with greater precision. *Rose v. Locke*, 423 U.S. 87, 94 (1975).

For example, in *Young v. American Mini-Theatres*, the City of Detroit defined in adult motion picture theater as:

An enclosed building with a capacity of fifty or more persons used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, (as defined below), for observation by patrons therein. *Young*, 427 U.S. 50, at 53, n. 5 (1976).

The plaintiff challenged this definition as vague, claiming that adult motion picture theatre operators would have to guess at when a film would cross the threshold amount of sexual activity to require the theatre showing it to be licensed. The Supreme Court held that the plaintiff adult businesses fell clearly within the definition since they regularly offered adult films.

The definition of nudity in *City of Erie v. Pap's A.M.*:

Nudity means the showing of the human male or female genital, pubic area or buttocks with less than a fully opaque

covering; the showing of the female breasts with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breasts, which device simulates and gives the realistic appearance of nipples and/or areola.@ *Pap=s A.M. 529 U.S. 277, at 289*

This definition has repeatedly been upheld and is used widely in licensing and zoning ordinances across the country as a threshold inquiry for determining whether a business is an SOB. Typically, SOB ordinances are crafted to include establishments like gentlemen=s clubs, cabarets, some massage parlors, escort services, nude or partially nude modeling studios, adult video stores with on and off-site viewing capabilities, peep show parlors, totally nude dancing establishments, and so forth.

B. Why Regulate SOB=s?

Sexually oriented businesses have expanded and grown significantly in the last decade. In 1996, the portion of the entertainment industry that focuses on adult and sexually oriented entertainment grossed approximately \$8,000,000.00. Alan C. Weinstein, *ALicensing Ordinances as an Adjunct to Zoning Regulation of Sexually Oriented Businesses (Part I)*,@ *22 Zoning and Plan. L. Rep. 2* (1999). As these businesses have expanded, cities have attempted to keep pace by imposing locational restrictions and operational standards that prohibit physical contact between performers and customers and impose distance restrictions, and prohibit direct tipping of performers. SOB owners and operators have been aggressive in challenging many of these regulations as unconstitutional prior restraint of free speech.

A variety of substantial governmental interests are arguably advanced by the licensing and regulation of SOBs. For example, communities seeking to avoid criminal activity in an adult business have an interest in ensuring that the persons operating the establishment have not recently been convicted of crimes. Licensing of owners and employees serves to identify participants in the enterprise and helps to prevent the employment of minors. Well-defined interior configuration and lighting standards and prohibitions on certain conduct can help to prevent illicit sexual activity and discourage employees and patrons from prohibited contact. Further, the Supreme Court has recognized that a city=s broad police power to prevent the negative secondary effects includes creating special regulations that aim to curb the transmission of sexually transmitted diseases.

Cities may rely on a number of cases that have found that prostitution, indecent exposure, masturbation and other elicited sexual activity frequently occurs on the premises (and in the vicinity) of sexually oriented businesses. *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82 (5th Cir. 1992). Courts have upheld regulations that require booths to either be visible by persons adjacent to the booth (Aline of sight@ regulations), or an employee who is required to monitor booth activity via

closed circuit television, in spite of privacy and equal protection challenges. These regulations discourage prostitution and unprotected anonymous sex associated with adult theaters, for example. *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991).

C. Types of Local Regulation

Regulation of sexually oriented businesses has evolved into the following general categories:

Zoning (locational regulations), licensing (qualification standards), and operational (protective safeguards).

While completely nude dancing in adult entertainment establishments can be prohibited, complete nudity may not be prohibited in other entertainment venues such as artistic performances in theatres. Therefore a prohibition against any person appearing in a state of nudity in any place where the general public is invited, is void on its face for over breadth. Note, however, that most current regulations require performers to wear pasties and a G-string. *Pap=s A.M. v. City of Erie*, 529 U.S. 277 (2000). In *Pap=s A.M.*, the Supreme Court held that an ordinance prohibiting public nudity did not infringe unnecessarily on the constitutional rights of nude dancers by requiring them to wear pasties and G-strings during their performances. As Justice Rehnquist famously noted, requiring pasties and a G-string does not deprive the dance of whatever erotic message it conveys. *Pap=s A.M. at 571.*

2. General Constitutional Principles

As a constitutional matter, the value of freedom of expression prevails over other democratic values, such as combating negative secondary effects of SOBs. Therefore, if the ordinance in question is not narrowly drawn and content neutral, it will be struck down no matter how noble its aim or how negative the secondary effect it seeks to ameliorate. Unlike other legislative acts where courts defer to the legislative body, ordinances purporting to regulate the time, place and manner of erotic speech are not presumed to be constitutional, and the burden of proving constitutionality of its regulations shifts to the government. It is especially important that a record be developed prior to the adoption of the ordinance or regulation, even if the record is composed only of studies conducted in similar jurisdictions.

Regulations that are not facially content neutral are subject to strict scrutiny, and the governmental body must demonstrate a compelling interest to support such regulations. The First Amendment requires that regulations must be no greater than necessary to protect the substantial governmental interest sought to be advanced. Federal court decisions on whether there is an adequate fit between the purpose and the means of the regulations are generally case specific, so each community and its regulations must be carefully crafted. The local government attorney has a great burden in this area of the law to closely examine court opinions and look for principles and results that may apply to a particular regulation.

* The Narrow Specificity Principle - This principle applies to the commercial speech doctrine

and stands for the proposition that a regulation must be no more extensive than is necessary to advance the legitimate governmental interest at stake and must allow ample opportunity for an expressive message to be conveyed.

* The Content Neutrality Principle - The government may not proscribe any expression because of its content, and an otherwise valid regulation violates the First Amendment if it discriminates among different types of expression based upon its content. Under the viewpoint neutrality aspect of the principle, the government cannot regulate expression in such a way as to favor one view over another. Under the category neutrality aspect, the government generally cannot regulate in such a way as to discriminate between different categories of expression. There are two exceptions to this principle, both of which are applicable to land use regulation by local governments. First, in order to deal with undesirable secondary effects resulting from concentration of adult entertainment establishments in a particular area, the government can enact zoning regulations specifically applicable to those establishments. For example, cities may limit (but not wholly exclude) the placement of SOB's to a particular zoning classification, and prohibit them from locating within a certain distance of another SOB, neighborhood, church, school, etc. Second, the governmental body may require licenses for SOB employees, which would otherwise be considered an unconstitutional prior restraint.

The Supreme Court has dealt with governmental licensing of expression by imposing very specific requirements on such licensing.

* The Prior Restraint Doctrine - A prior restraint directly interferes with the ability of the public to receive information and has a freezing effect on expression. Therefore a prior restraint is presumptively unconstitutional and imposes on the government a heavy burden for justification. In *Freedman v. Maryland*, 380 U.S. 51 (1965), the Supreme Court held that Any system of prior restraint bears a heavy presumption against its Constitutional validity. In order for prior restraint to be upheld, the following safeguards must be met: (1) the decision to issue or deny a license must be made within a brief, specified and reasonably prompt period of time; (2) the licensing scheme must provide for prompt judicial review; and (3) the burden of initiating review must be on the government, not on the challenger.

* The Commercial Speech Doctrine - The constitutionality of governmental regulation of commercial speech requires application of a four-part analysis.

1. The commercial speech must concern lawful activity and must not be misleading
2. The government must have a substantial interest to justify the regulation
3. The regulation must directly advance the asserted governmental interest
4. The regulation may not be more extensive than is necessary to serve the asserted interest.

The government will not be given the benefit of the doubt about the constitutionality of a land use regulation, and the burden of sustaining the regulation against a constitutional challenge falls on the local government. The regulation must be carefully tailored to achieve its legitimate,

narrowly stated public purpose. Land use permitting requirements must provide for a specific and speedy decision by the licensing body to avoid being held an invalid prior restraint on speech.

The First Amendment imposes substantial restrictions on the types of land use regulation available to local governments. Clear standards must be provided to guide the discretion of the local official, the time frame for a decision to issue or deny a permit must be brief and specific, the status quo must be preserved during the review period, and the regulation must state and express a prompt judicial review procedure in a case of a denial. Another important effect of the prior restraint doctrine is to discourage conditional use permits in favor of permits issued as a matter of right. This is so because a conditional use permit necessarily requires the application of discretion from the local government agency. It is, therefore, subject to criticism as being vague and over broad.

Courts have routinely invalidated SOB regulations because administrative and judicial review is not sufficiently prompt. Since 1998, this has been one of the most frequent avenues of challenge to local ordinances. *Baby Tam and Company v. Las Vegas*, 154 F.3d 1097 (9th Cir. 1998) (Baby Tam I); *Baby Tam and Company v. Las Vegas*, 199 F.3d 111 (9th Cir. 1999) (Baby Tam II); *Baby Tam and Company v. Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) (Baby Tam III) but see the discussion at 3.D. infra. Also, an alleged failure to leave open reasonable alternatives is another common basis of attack; therefore, most local governments must be sure that land use regulations do not effectively zone out SOBs. *City of Renton v. Play Time Theatres Inc.*, 475 U.S. 41 (1986).

Sexually oriented businesses in a small community - Case law has established that non-obscene adult entertainment is a protected First Amendment activity for which local governments must make sites reasonably available. Arguably, however, the Supreme Court has held open the possibility that not every small jurisdiction must allow a sexually oriented business. *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981). For example, in *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251, n. 2 (11th Cir. 1999), the court determined that the relevant real estate market contained available sites for adult entertainment, including those as far as one and a quarter miles south of the city limits. Previously the same court had noted that the Supreme Court had not decided that every unit of local government entrusted with zoning responsibilities must provide a commercial zone in which protected activities permitted. *Digital Properties, Inc. v. City of Plantation*, 121 F.3d 586, n. 2 (11th Cir. 1997). Nevertheless, if it is possible at all to essentially zone out SOBs, this would apply only to the smallest of communities, and the local government must be prepared to engage in a protracted court fight with a likely well-funded foe.

Is the speech or conduct protected? - In order for First Amendment speech protections to apply, there must be some type of speech or expression involved. Questions arise as to whether nudity or nude dancing is a type of protected speech or expression. The U.S. Supreme Court has stated that speech is not limited to the spoken or written word. *Pap=s A.M. v. City of Erie*, 529 U.S. 277 (2000). First Amendment speech protection can extend to conduct, as long as the conduct is accompanied with some type of expression. *Texas v. Johnson*, 491 U.S. 397, 404 (1989). To be considered speech, the conduct also must demonstrate a sufficient amount of expression. Conduct signifying only a small amount of the expression will not be protected under the First Amendment. *Spence v. Washington*, 418 U.S. 405 (1974). In that case, the Supreme Court held that conduct is

protected by the First Amendment when: A(1) an intent to convey a particularized message was present; and (2) the likelihood was great that the message would be understood by those who viewed it.@

Not all adult businesses are entitled to First Amendment protection. Many sexually oriented business ordinances lump together businesses like sexual encounter clubs, escort services, massage parlours, movie theatres, video stores, and cabaret or dance clubs. There is a difference in the type of protection to which such businesses are entitled. In *FW/PBS*, the Supreme Court unequivocally held that adult businesses that do not Apurvey sexually explicit speech,@ such as AAescort agencies and sexual encounters centers@ are not protected by the First Amendment. *FW/PBS Inc. vs. City of Dallas*, 493 U.S. 215. In *Pap=s A.M.*, Justice O=Connor stated that Abeing in a state of nudity is not an inherently expressive condition.@ *Pap=s A.M.* at 289. The Court has implied that certain types of expression, such as offensive or indecent speech, is less deserving of full protection than more traditional types of speech. The Court has decided that this type of Alower value@ speech can be regulated more heavily than Ahigher value@ speech. *Young v. American Mini Theatres*, 427 U.S. 50 (1976). But, the Supreme Court has never held precisely which adult businesses are entitled to heightened constitutional scrutiny.

Even though the Supreme Court has never made this delineation, in *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) the Supreme Court did intimate that the internet is now the principal channel through which most Americans can receive sexually explicit communication. The Court identified the widespread availability of sexually explicit material, including hard core pornography. *Reno*, at 2336. Therefore, as access to the internet expands, local governments may be able to make the argument in the future that additional locational restrictions and permit requirements as they pertain to adult theaters and bookstores are permissible because reasonable alternative avenues to obtain the same material are readily available.

3. Evidence of Harmful Secondary Effects

The plurality of the Supreme Court in the *Pap=s A.M.* decision stated that Aas long as the evidence relied upon is reasonably believed to be relevant to the problem that the City addresses,@ then the City does not have to produce its own evidence, but may rely on evidence of harmful secondary effects. *Pap=s A.M.*, 529 U.S. at 296. In an important 2002 decision, *City of Los Angeles v. Alameda Books*, 535 U.S. 435 (2002), the Supreme Court reaffirmed its holding in *City of Renton* and addressed the relationship between the local government and the evidence upon which it relies for its regulations. The first issue the court addressed was the fact that the study was 25 years old at the time of the decision and had been several years old at the time the city relied on it. The Court stated:

A municipality may rely on any evidence that is reasonably believed to be relevant for demonstrating a connection between speech and a substantial, independent government interest. This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's

rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.

Alameda reaffirms the proposition that a local government retains discretion to make findings from the studies before it and may draw reasonable conclusions about what regulatory techniques will be beneficial in addressing the findings. Also, the municipality should be able to rely on evidence of negative secondary effects from other cities. If the Plaintiff is successful in casting any doubts upon the evidence relied upon by the city, the city should be able to provide additional evidence at trial that renews support for a theory that justifies its ordinance. In 2003, the Fifth Circuit decided *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162, 173 (5th Cir. 2003). It held that in determining content-neutrality, the proper inquiry is whether the predominant concern of the ordinance is addressing secondary effects, versus banning content. It went on to state that a local government can justify the ordinance based on evidence developed prior to the ordinance's enactment, and also that adduced at trial. The *N.W. Enterprises* case supports the analysis in *Alameda* by allowing the local government discretion to draw reasonable conclusions based on the evidence before it prior to enacting the ordinance. *N.W. Enterprises* also supports the notion that a city should be allowed to provide additional evidence at trial of negative secondary effects should plaintiff succeed in its burden of casting doubt on the city's rational for enacting the ordinance. See *Encore* article.

Even though it is not clear how much evidence of secondary effects a government must show to justify its need for the law, it is clear that there must be a reasonable nexus between the regulations and the evidence/studies upon which they are based. See *Encore Video, Inc. v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003). In *Encore*, the plaintiff successfully argued that the City's reliance on studies that did not differentiate between on-premise businesses, and strictly off-premise take home rental stores was no reasonable. While that case may no longer be good law in light of the holding of *N.W. Enterprises*, SOBs will undoubtedly rely on its reasoning to argue that the local government's regulations are not reasonable conclusions based on the evidence of negative secondary effects.

A. Zoning - Major Cases

United States v. O'Brien, 391 U.S. 367 (1968) - is the landmark political speech case establishing the framework for evaluating content neutral regulations of conduct that have incidental impacts on expression. Under *O'Brien*, a regulation is valid if it: 1) is within the constitutional power of the government; 2) is designed to service substantial governmental interest that is unrelated to the suppression of free expression; 3) is narrowly tailored to serve the interest; and 4) leaves open reasonable alternative avenues of communication. Many challenges against zoning ordinances center around the requirement that reasonable alternative avenues of communication be provided.

In *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976) the operators of two adult theatres in Detroit challenged the City's ordinances that required adult theatres (defined or referring to the content of films shown) to be licensed and to be located at least 1,000 feet away from any two other regulated uses (adult theatres, taverns, pool halls, etc.). Based upon the substantial justifications given for the ordinance by Detroit's common counsel, the district court granted summary judgment for the City. The Sixth Circuit reversed, holding that the ordinances were content based prior restraints on speech and were not justified by merely establishing that they were designed to serve a compelling public interest. The U.S. Supreme Court reversed in a 5-4 decision with Justice Stephens writing the majority opinion. The court held that the ordinance was not vague for failure to specify exactly how much of a film must be sexual in nature before the film could say to be characterized by an emphasis on sex, because the theatres regularly featured erotic films and there was no question of the applicability of the ordinance to those activities.

The Plaintiffs were held not to have standing to assert the First Amendment rights of third parties because they did not show that the threat of the ordinance being applied improperly was real and substantial and because any ambiguity could be corrected through a narrowing construction by the state courts.

The licensing and zoning ordinances in question were determined to be valid means to protect the quality of life and neighborhoods and did not constitute a prior restraint on speech. In this case the Supreme Court broadly sustained the power of local governments to utilize land use regulations in order to protect the quality of life of their citizens. The court recognized that the governmental interest to prevent the adverse effects of adult businesses is important and substantial, and that the governmental interest in stable neighborhoods was unrelated to the suppression of any message. The Supreme Court also held that the impact of the regulations upon erotic expression was incidental, and was no more than necessary to achieve the government's interest in protecting neighborhoods.

City of Renton v. Playtime Theatres, 475 U.S. 41 (1986) was decided ten years after *Young*. The City of Renton adult theatre zoning ordinance was analyzed as a content neutral regulation, with the stated purpose to prevent the secondary effects of sexually oriented businesses upon neighborhoods. The court found that the ordinance served a substantial governmental interest despite the fact that the City of Renton failed to conduct a local study or to demonstrate that the impacts of adult theatres in Renton nullified the claim of substantial governmental interest. The court explicitly held:

AThe First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonable believed to be relevant to the problem that the city addresses.@ *Renton*, 475 U.S. 41, 51-52 (1986).

The City of Renton relied heavily upon the study and experiences of Seattle and the court held that was sufficient, despite the fact that the zoning regulations that Seattle used were different from those used in Renton. Importantly, the court also addressed the issue of whether the zoning regulations allowed for reasonable alternatives of communication. The court held that Renton's ordinance met the standard because more than 5% of the land mass in Renton was opened to adult theatres. The plaintiffs had claimed that practically none of the land was for sale or lease, so that none of the available space was commercially viable. The court held that these factual circumstances, even if true, would not demonstrate a defect in the city's regulation, finding that the adult theatres must fend for themselves in the real estate market on an equal footing with other prospective purchasers and lessees. *Renton*, at 54.

In *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 435 (2002), two adult establishments challenged a city ordinance that prohibited more than one adult business from occupying the same building. In analyzing the ordinance, the majority again relied on *Renton* in determining that the ordinance was content neutral because it was aimed at the secondary effects of the adult businesses rather than at the expression.

Improper interpretation of ordinance terms by regulatory officials can also lead to invalidation of the regulations. In *Tollis v. San Bernardino County*, 827 F.2d 1329 (9th Cir. 1987), a county official interpreted the county's adult use ordinance to apply to mainstream theaters even if the theater showed pornographic films only on one occasion. The district court agreed with the plaintiff that the ordinance was unconstitutionally over broad as applied. The Ninth Circuit affirmed but instead of finding that the ordinance was over broad, concluded that the ordinance was not narrowly tailored to serve a substantial governmental interest because the county presented no evidence that a single showing of an adult movie would have any harmful secondary effects on the community. It is clear that definitions must be interpreted to apply only to a category of establishments that are associated with negative secondary effects, and a one time use of a building for sale or presentation of sexually explicit fare does not bring it within that category.

Local governments are urged to use the term regularly in the definitions of adult theatre, adult cabaret, adult performance or adult performance center to eliminate the possibility of a single use interpretation like the one that led to the invalidation of the ordinance in *Tollis*. As Justice Scalia wrote in his concurring opinion in *FW/PBS, Inc. v. City of Dallas*, regularly features means a continuous presentation of the sexual material as one of the very objectives of the commercial enterprise. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 260 (1990).

The ordinance that was upheld in *Young* defined an adult book store as an establishment having as a substantial or significant portion of its stock in trade distinguished or characterized by their emphasis on matter depicting, describing or related to specified anatomical areas, (as defined below), or an establishment with a segment or section devoted to the sale or display of such material. *Young*, at 53, n. 5. The court rejected a vagueness argument against the phrase characterized by an emphasis. The courts have rejected the argument that a substantial or significant portion is unconstitutionally vague. *ILQ Invs. Inc. v. City of Rochester*, 25 F.3d 1413

(8th Cir. 1994); *Mom N Pop=s, Inc. v. City of Charlotte*, 1998 U.S. App. Lexis 20272 (4th Cir. 1998). Further, the phrases Amajor businesses@ *SDJ, Inc. v. City of Houston*, 636 F.Supp.1359, 1376 (S.D. Texas 1986) and Aprinciple business purpose,@ *Dumas v. City of Dallas*, 648 F. Supp. 1061, 1079 (N.D. Texas 1986), affirmed 837 F.2d 1298 (5th Cir. 1988), reversed on other grounds, *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), have also been upheld.

Cities commonly seek to avoid ambiguity by using percentages of floor space, gross receipts, or other factors to define adult uses. Many of these efforts have failed, due in large part to the fact that these factors frequently require some degree of self-reporting. Further, some of these factors have led to successful challenges for unconstitutional vagueness. *City of New York v. Les Hommes*, 724 NE 2d 368 (NY 1999); *Christy v. City of Ann Arbor*, 824 F.2d 489 (6th Cir. 1987); *World Wide Video v. City of Tukwila*, 816 P.2d 18 (Wash. 1991)

Reasonable alternative avenues of communication - generally a city may not use a zoning ordinance to effectively preclude adult businesses from locating within the city. The Supreme Court has not, however, required every tiny city or village to provide its own Ared light@ district. For example, if areas immediately surrounding a small city are available for adult businesses, that may provide reasonable alternative avenues for communication. Clearly though, this is a very fact specific inquiry, and small local governments should not assume that they can zone out adult businesses just by virtue of the fact that they are lightly populated.

For example, in *Schad v. Borough of Mt. Ephrain*, 452 U.S. 61 (1981) the Supreme Court invalidated a zoning ordinance that prohibited all live entertainment. The Borough suggested that the ordinance was not unconstitutional because live entertainment in the form of nude dancing was available nearby although not within the corporate limits of the city. The court stated Athis may very well be true, but the Borough cannot avail itself of that argument in this case. There is no county wide zoning in Camden County, and Mt. Ephrain is free under state law to impose its own zoning restrictions, within constitutional limits.@ *Schad at 76*.

The question whether every community, regardless of size or proximity to other available venues, must provide a zone for adult businesses is undecided. In *Keego Harbor Company v. City of Keego Harbor*, the Sixth Circuit cited the *Schad* decision and did not find that all municipalities must provide an area for adult entertainment. Still, the ordinance in question passed by a city of only 3000 was invalidated because it had the effect of totally prohibiting adult uses in the city. *Keego Harbor Company v. City of Keego Harbor*, 657 F.2d 94 (6th Cir. 1981).

On the other hand, the New Jersey Supreme Court upheld a state statute that prohibited SOB's from locating within a 1,000 feet of another SOB or other defined land uses, despite the fact that the effect of the statute was to prohibit adult businesses from locating within the township of Saddlebrook. The court concluded that the available sites for adult businesses existed within the surrounding vicinity. *Township of Saddlebrook v. AB Family Ctr.*, 722 A.2d 530 (NJ 1999). Furthermore, certain Texas cities (Plano, Texas, for example) have even more stringent locational restrictions (3,000 feet) that have yet to be challenged. These legislative decisions ultimately depend on the standards that a particular community wishes to govern by. Local governments that wish to

push the regulation envelope must be cognizant of the possibility that these decisions can lead to litigation, and should plan accordingly before embarking on robust changes to their ordinances.

B. Other Venues for Communicating Message

Generally, zoning regulations do not impact the other venues available for dissemination of protected erotic speech. For instance, such messages are widely available in magazines such as Hustler and Penthouse, cable television, telephone services and free internet sites. Ideally, well-crafted zoning regulations prohibit, or at least inhibit, illegal expression of constitutionally unprotected sexual contact including peep show booths, lap dances and couch dances on the grounds of limiting negative secondary effects. Nevertheless, the availability of sexually oriented expression and even pornographic expression in other accessible venues will not justify the preclusion of adult businesses from a particular community.

The most common form of zoning regulation is the dispersal method approved by the Supreme Court in *Young*. This method requires adult businesses to be separated by a distance from each other and from specified land uses, such as churches, schools and residential neighbors, and from each other. Provided the regulation allows for reasonable alternative sites for such businesses, a court will usually uphold such limitations as a valid exercise of a zoning power. If you have a concern about the standards currently applied in your community, refer to the following cases: *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); 955 F.2d 1305 (5th Cir. 1992); 950 F.2d 255 (5th Cir. 1995) - a series of cases. *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), cert. denied 511 U.S. 1030 (1994); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000) cert denied 121 S. Ct. 1189 (2001); *Diamond vs. City of Taft*, 215 F.3d 1052 (9th Cir. 2000). Local governments should recall that their zoning ordinance need not provide a commercially available area for SOBs to locate, but merely the opportunity to locate in specified areas based upon reasonable time, place and manner restrictions. *City of Renton v. Playtime Theatres*, 475 U.S. 41 (1986).

C. Amortization of Non-Conforming Adult Uses

Numerous cases stand for the proposition that the Constitution does not require indefinite grandfathering of SOBs that become nonconforming uses if a new ordinance provides for a reasonable amortization period that provides for recovery of investment. *SDJ v. City of Houston*, 636 F. Supp. 1359, 1370 (SD Tex. 1996), affirmed, 837 F.2d 1268, 1278 (5th Cir. 1988); *Dumas v. City of Dallas*, 648 F. Supp. 1061, 1171 (ND Tex. 1986), affirmed 837 F.2d 1298 (5th Cir. 1988); Rathkopf, *The Law of Zoning and Planning*, Chapter 17B (Clark Boardman Callaghan). In *23 West Washington Street, Inc. v. City of Hagerstown*, 1992 US App Lexis 18014 (4th Cir. 1992), the City did not provide for grandfathering or provide special exceptions for existing uses when a new zoning ordinance was passed that affected SOBs. Nevertheless, the court upheld the ordinance because it contained amortization provisions that allowed investors with vested rights to recoup their investment.

Note that the challenges to ordinances that do not contain amortization provisions, or contain

amortization provisions with short time periods are often challenged as constituting a taking. Challenges to well-crafted amortization schemes often fail because amortization of a nonconforming use does not generally render the property completely worthless under the federal constitutional analysis. *Ranchhouse, Inc. v. Amerson*, 238 F.3d 1273 (11th Cir. 2001); *NW Enters. v. City of Houston*, 27 F. Supp. 2d 754, 865 (SD Tex. 1998). Nearly all court opinions talk about the reasonableness of the amortization period in determining whether the amortization clause should be upheld. To determine the appropriate length of an amortization period in a particular community, the City must balance the substantial governmental interests advanced by the ordinance with the need to provide a business a fair amount of time to recoup its investment. *Northend Cinema, Inc. v. City of Seattle*, 585 P.2d 1153 (1978), cert. denied 441 U.S. 946 (1979). Note that the courts require an SOB to exhaust all administrative remedies before seeking relief in state or federal court. See *Stringfellow's of New York Ltd. v. City of New York*, 694 NE 2d 407, 420 (NY 1998).

Typically conditional use ordinances operate as licensing schemes and allow the denial of a use permit based on the zoning board's finding that the proposed use will have adverse effects upon adjacent and surrounding uses. Since the negative secondary effects of adult businesses constitute the very reason for regulating them more stringently than other land uses, some courts have invalidated conditional use permitting schemes as applying to adult businesses. *Landover Books, Inc. v. Prince George's County*, 566 A.2d 792 (Maryland App. 1989); *Smith v. County of Los Angeles*, 29 Cal. Rptr. 2nd 680 (Cal. Ct. App. 1994); *Dease v. City of Anaheim*, 826 F.Supp. 336 (C.D. Cal. 1993). These cases do not stand for the proposition that the cities may never place special requirements on adult uses, but when they do, objective standards and guidelines for the zoning board to follow must be expressly established. *801 Conklin Street Ltd. v. Town of Babylon*, 38 F.Supp.2d 228, 244 (E.D.N.Y. 1999).

D. Licensing

The term prior restraint is used to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur. *Alexander v. United States*, 509 U.S. 544, 550 (1993). The purpose of the prior restraint doctrine is to prevent government censorship. *O'Connor v. City and County of Denver*, 894 F.2d 1210, 1220 (10th Cir. 1990). Prior restraint must take place under procedural safeguards designed to obviate the dangers of a censorship system. *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546 (1975). *Freedman v. Maryland*, 380 U.S. 51 (1965) illustrates the classic example of unconstitutional prior restraint censorship. In *Freedman*, the state passed a statute stating that it was unlawful to sell, lend, lease or exhibit a motion picture or film unless the film had been submitted to the state board of censors, who would examine the film for objectionable content including obscenity. In a unanimous decision, the Supreme Court found the statute unconstitutional.

While *Freedman* might be an easy call, especially with 40 years of hindsight, local governments today are faced with a much more pervasive adult industry than that which the *Freedman* court faced. In *FW/PBS Inc. v. City of Dallas*, 493 U.S. 215 (1990), the Supreme Court gave cities some guidance regarding what to avoid in licensing ordinances. While prior restraints are not unconstitutional per se, any scheme that focuses on subjective discretion versus objective,

clearly defined criteria will be unconstitutional. Further, any licensing ordinance absolutely must provide strict administrative time limits on the decision making process, and it must provide for the possibility of prompt judicial review in the event a license is erroneously denied. See *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 781 (2004).

Not only must the administrative requirements be sufficiently well defined, but the Constitution requires any substantive hurdles to be defined by narrow, definite, and objective criteria in order to avoid prior restraint problems. *City of Lakewood v. Plain Dealer Publ=g Company*, 486 U.S. 750 (1988). Unbridled discretion in the hands of a government official to deny a license constitutes censorship. The ordinance must be specific in spelling out what sexual acts, exposed parts of the human body, or what criminal convictions constitute the basis for denial of a permit. If drafted with sufficient care, the ordinance can be upheld under the constitutional challenge because it has been recognized by the Courts that a Modicum of judgment@ must be exercised by the regulators. *Baby Tam and Company, Inc. v. City of Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) (Baby Tam III).

Unfortunately, because permitting requirements are some of the most technical and easily challenged SOB regulations, some cities have abandoned permitting and licensing schemes altogether and allow SOBs to open as a matter of right (as a permitted use). These criteria often include the distance restriction and basic operational standards such as building code requirements. One problem with this approach is that the license or permit suspension and revocation process is no longer available as an enforcement tool. Instead, local governments are typically left only with the option of civil and/or criminal proceedings if an SOB violates its ordinances.

This can be problematic. For example, in a nuisance abatement proceeding under Chapter 125 of the Civil Practice and Remedies Code, a local government may seek an injunction against a person who Aknowingly maintains a place to which persons habitually go@ for various purposes, including prostitution, drug crimes, and the commercial exhibition of obscene material. Civ. Prac. Rem. Code ' 125.0015. From a practical standpoint, proving that an SOB proprietor or employee Aknowingly@ allows a premises to be Ahabitually used@ for an illegal purpose can be very difficult. It probably requires numerous criminal convictions for the specified crimes at the location in question, which can be difficult to obtain, and also often requires local governments (such as city attorneys and district attorneys) to work together.

On the other hand, Chapter 243 of the Local Government Code provides that municipalities and counties may adopt regulations regarding SOBs, including a requirement that owners and employees obtain licenses or permits. Loc. Govt. Code ' 243.007. Local governments may sue in the district court for an injunction to prohibit the violation of a regulation adopted under this chapter, and an offense under a regulation adopted pursuant to the chapter is a Class A misdemeanor. Note that there is no requirement that a local government prove that the regulation is knowingly violated, or that the premises is habitually used for an illegal purpose in order to obtain an injunction. Further, a local government may inspect an SOB to ensure compliance, and it may impose fees on applicants, which are based on the cost of processing applications and investigating applicants.

E. Prompt Judicial Review.

Prior to the Supreme Court decision of *City of Littleton v. Z. J. Gifts D-4, L.L.C.*, 541 U.S. 774 (U.S. 2004), the fourth, sixth and ninth circuits held that when a city denies a sexually oriented business license, the ordinance must guarantee a prompt judicial decision on the merits of a challenge to the denial within a brief, specified period of time. *Baltimore Boulevard, Inc. v. Prince George=s County*, 58 F.3d 988 (4th Cir. 1995); *Lounge Management, Inc. v. City of Paducah*, 202 F.3d 884 (6th Cir. 2000); *Baby Tam & Company, Inc. v. City of Las Vegas*, 154 F.3d 1097 (9th Cir. 1998) (Baby Tam 1). The first, fifth, sixth and eleventh circuits held that the prompt judicial review requirement is met if the ordinance allows for prompt access to the courts. See *Jews for Jesus v. Massachusetts Bay Transp. Auth.*, 984 F.2d 1319 (1st Cir. 1993); *T.K.=s Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Graff v. City of Chicago*, 9 F.3d 1309 (7th Cir. 1993) (en banc); *Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251 (11th Cir. 1999).

Obviously, cities lack the authority to make courts issue decisions within a specific period of time. Under *FW/PBS*, it appeared that if a city could not guarantee a prompt judicial decision, the enforcement of its license denial would be stayed until a court upheld the denial. The problem with this approach is that the SOB has no incentive to aggressively pursue an appeal of the denial as it would have the benefit of the permit for an indefinite period until a judicial decision is rendered. There was a split in the circuits over this issue based on Justice O=Connor=s rationale in *FW/PBS*: the city should not have to bear the true burden of either not going to court or not enforcing its ordinance. In 2004, however, the Supreme Court decided *City of Littleton v. Z. J. Gifts D-4, L.L.C.*, 541 U.S. 774, 782 (U.S. 2004), which modified *FW/PBS* by holding that the ordinary procedures of the courts are adequate to satisfy the Constitutional requirements for prompt judicial review. Therefore, so long as prompt access to the courts is required by an ordinance, the license denial can be enforced in the interim while a decision is pending.

In an effort to address this issue, some states have passed legislation mandating short time periods for state courts to resolve administrative appeals. Such efforts have been successful in Nevada, California and Tennessee. This does not appear to be required, though, as the Supreme Court in *Littleton* expressed confidence that state courts understood the constitutional need to avoid undue delay, which would result in the unconstitutional suppression of free speech.

F. Renewal Suspension and Revocation

The power to license necessarily includes the power to revoke a license and the power not to renew a license. Decisions to revoke or deny renewal should also be analyzed under the content neutral steps provided in *O=Brien*, *FW/PBS* and the other major Supreme Court announcements in this area. In other words revocations and suspensions must include strictly enforced definite time limits, the decision to revoke or suspend must not be based on overly subjective criteria, and an appeals process with prompt access to the courts must be part of the scheme.

G. License Fees

License fees charged to adult entertainment businesses must be reasonable and in general must be revenue neutral. *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000). In other words, the fees must be intended only to defray the costs of administering the ordinance. In general, the burden of proving that a license fee is unreasonable is on the applicant for the license. *Worldwide Video, Inc. v. City of Tukwila*, 816 P.2d 18 (Washington 1991); *Adult Entm=t Ctr., Inc. v. Pierce County*, 788 P.2d 1102 (1990). Chapter 243 of the Texas Local Government Code provides that municipalities and counties may impose license fees, and that the cost must be based on the cost of processing the applications and investigating the applicants. Price gouging in this context would be akin to the poll taxes of yesteryear, and would likewise be held as unconstitutional.

Cities should also avoid requiring a bond or license fee that is intended to remunerate victims or the community for expenses for expected prosecutions associated with the operation of the business. Such exactions have been held to excessively burden constitutional rights. *Wendling v. City of Duluth*, 495 F. Supp. 1380 (D. Minn. 1980); *Am. Target Adver., Inc. v. Giani*, 199 F.3d 1241 (10th Cir. 2000).

H. Regulating Persons Involved in the Sexually Oriented Businesses

An application for license to operate a sexually oriented business should require the applicants to disclose information that is reasonably necessary to identify and communicate with the applicant and to determine whether a disqualification in the ordinance applies to the particular applicant. Under the identification factor, courts have upheld requirements forcing applicants to provide their names, addresses, official documents proving identity and official documents that substantiate age. *T.K.=s Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994). Complete identification of SOB managers and employees is essential to preventing prostitution and other illicit sexual activity. *KEV, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986).

Under the disqualification function, courts will uphold the required disclosure of prior criminal conduct if it deems that such conduct is a valid basis for a disqualifying applicant. *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000). In other words, a blanket disqualification of anyone ever convicted of a felony, regardless of its nature, is arguably over broad. Disqualification criteria must still be reasonable time, place and manner restrictions. *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004).

I. Regulating the Interior Premises - Stage and Booth Requirements

Cities have been held to have a substantial interest in regulating the interior configurations of strip bars and dance clubs. The Supreme Court has recognized that such establishments have repeated problems with prostitution and other illegal activities. *Erie v. Pap=s A.M.*, 526 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991). Some cities have enacted ordinances that establish buffer zones or specified distances that must be maintained between entertainers and customers. These have generally been upheld as valid restrictions on the presentation of a striptease. *City of Colorado Springs v. 2,3,5,4, Inc.*, 896 P.2d 272; *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998).

To ensure compliance with configuration standards and other requirements, inspection provisions are often included in SOB ordinances. These have been challenged as violative of the Fourth Amendment's prohibition on unreasonable searches and seizures. Most courts have included there is an obvious need for inspections and that a local government's goal of preventing negative secondary effects could be seriously compromised without the ability to monitor compliance. *New York v. Burger*, 482 U.S. 691; *Allno Enterprises, Inc. v. Baltimore County*, 2001 U.S. App. Lexis 11522 (4th Cir. 2001).

Local governments should also not forget about tried and true building code regulations, which can be an excellent method of combating negative secondary effects. These include minimum lighting standards, no-smoking ordinances, prohibitions against multiple people in video booths, requiring interior signage that the premises are under surveillance, and public health warnings regarding the spread of sexually transmitted diseases. These kinds of regulations can be effective deterrents against many of the negative secondary effects that local governments have the power to combat.

J. Vicarious Liability of Business Operators

Ordinances often impose liability, either in the form of civil license revocation or criminal sanctions, on SOBs for the unlawful acts of employees and customers. In *United States v. Park*, 421 U.S. 658 (1975). The Supreme Court ruled that imposing criminal liability for the acts of another does not necessarily require proof that the responsible party knowingly permitted the illegal conduct. The court has not decided what level of knowledge (actual, constructive, or none) is a constitutional requirement before imprisonment as a penalty could be imposed. *Staples v. United States*, 511 U.S. 600 (1994). It appears, however that there is no constitutional obstacle to imposing a fine upon a business operator for the acts of another on the premises. *Lady J Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999). That court held that *respondeat superior* could be applied to hold business operators responsible for employees under their scope of authority because the regulations involved are meant to deter activity that poses a special risk to public health or safety, and is not a traditional crime.

Nevertheless, local governments should be wary of imposing strict liability on SOBs for the acts of patrons. The better practice would be to require showing at least of negligence before imputing liability to a business owner for the conduct of others not under the owner or operator's control at the business. *Broadway Books, Inc. v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986).

K. Other Types of Regulation

Moratoria - Moratoria, as applied to speech related businesses, constitute a clear restraint on expressive activity and are greatly disfavored. *Homberg v. City of Ramsey*, 12 F.3d 140 (8th Cir. 1994). Moratoria should be avoided for this reason. The better practice is to simply follow normal procedures for granting a zoning permit and to pass a more restrictive ordinance as soon as possible to meet a growing trend in the community. This type of approach generally will not invalidate an

otherwise good ordinance. *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (n.D. Ohio 1998); *DG Restaurant Corp. v. City of Myrtle Beach*, 953 F.2d 140 (4th Cir. 1991).

Some cities have adopted ordinances that restrict advertisement of tobacco products and alcoholic beverages on billboards in areas where children congregate. *Anheuser Busch, Inc. v. Schmoke*, and *Penn Advertising v. Mayor and City Counsel of Baltimore*, 101 F.3d 325 (4th Cir. 1996) cert. denied, 520 U.S. 1204 (1997). Arguably, then, similar restrictions on outdoor advertising of SOBs could be justified. See *Zone D=Erotica v. Nixon*, 2006 U.S. Dist. Lexis 15041 (D. Mo. 2006) (here, a Missouri district court found that a prohibition on outdoor advertising of SOBs within one mile of state highways was narrowly tailored because it did not prohibit all SOB outdoor advertising).

L. Hours of Operation

One of the simplest and most effective ways to regulate and abate the negative secondary effects of SOBs is through the restriction on hours of operation. The United States Supreme Court has not specifically ruled on hours of operation limitations as applied to these businesses but some courts of appeals have upheld them. *Star Satellite, Inc. v. City of Beluxi*, 779 F.2d 1074 (5th Cir. 1986); *Lady Lingerie*, 176 F.3d at 1358. The significant case in this area is *Mitchell v. Commission*, 10 F.3d 123 (3rd Cir. 1993). The court analyzed the Delaware statute regulating hours of operation of adult businesses. The Third Circuit=s analysis in this case applied the *O=Brien* and *Renton* tests and upheld the hours of operations restriction, which prohibited opening of such businesses between 10:00 a.m. and 10:00 p.m. Monday through Saturday. Since the case was decided, five courts of appeals have adopted the third circuit=s approach and have generally upheld the restrictions. *Nat=l Amusements v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Richland Book Mart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Lady Lingerie v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999).

Of course, it is prudent to identify state law closing hours for SOBs that hold liquor licenses in order to avoid potential conflicts. One way to avoid the conflict is to restrict hours of operation and include an exemption for SOBs with liquor licenses to allow them to operate during the hours that their liquor license allows. In drafting such an ordinance, however, great care should be given to specifically identify the secondary effects that a restriction in hours of operation is intended to address. Further, it is possible that a local government would have to show a connection between this kind of time restriction (a spike in crime, for example, during late night hours) and the secondary effect it seeks to curtail. A local government could probably rely on other studies that document this phenomenon, or if its own police force can provide documentation, that would likely suffice as well.

4. Conclusion

As tempting as it may be to employ the NIMBY strategy (ANot In My Back Yard@), local governments must recognize that the First Amendment imposes significant limitations on their power to regulate SOBs and the land upon which they sit. Often, the problem with adult uses does

not become an issue until the adult use attempts to locate itself in proximity to a neighborhood, school, church, etc. At that point, a city attorney scrambles to consult with other city attorneys and other jurisdictions that have dealt with the issue, borrowing studies and copying ordinance language.

The problem is that the SOB industry is well funded and sophisticated, and consciously tries to stay Ahead of the curve@ in First Amendment legal analysis while local governments take a reactionary approach.

Because small communities are least likely to have the resources to try these complex First Amendment issues, SOBs often target them and engage in intimidating litigation tactics hoping to force them to back down and settle rather than engage in a lengthy and costly trial. Therefore, the better prepared the local government is at the outset with a well-crafted ordinance backed up by ample accepted studies, and local data available, the more likely it is that an SOB ordinance will survive the inevitable challenge.

Local governments should not abandon licensing schemes merely because they present drafting challenges. This is an important tool in the fight to control the proliferation of these businesses, and is a valid way of addressing the most dangerous negative secondary effects they cause: drug violations, sex crime violations, organized crime and the spread of sexually transmitted diseases. Further, it is possible for local governments to partner with state agencies such as the Texas Alcoholic Beverage Commission in order to begin building cases against repeat offenders. Stripping a topless bar of its liquor license, so to speak, can in the long run be as effective as obtaining an injunction.

Local government attorneys should also work closely with public health, building inspection and law enforcement departments in order to achieve an ordinance that is not only constitutional, but also workable. A zoning ordinance that restricts topless bars to the industrial zone, for example, is largely meaningless if, merely by the application of an opaque Apasty,@ an SOB can take itself out of the definition of Atopless bar.@ Individuals from these departments can offer invaluable insight in ordinance drafting that lawyers can miss, and they are also excellent resources for providing testimony regarding negative secondary effects relative to their areas of expertise.

Local governments should also consider factoring the internet into the equation in order to demonstrate the availability of alternative avenues of receiving erotic speech. Expert testimony indicating that a certain percentage of homes have access to the internet, and that sexually explicit material makes up a certain percentage of all internet searches, can, and possibly should, be included as part of the evidence the local government considers in enacting the ordinance.

The local government must be thoroughly prepared to support its actions in the event that an SOB challenges the ordinance. The failure to consider ample studies, and elicit ample expert testimony prior to the enactment of the ordinance is a sure recipe for failure, just as is a poorly worded ordinance. There is a high cost involved in litigating First Amendment claims, including damages and attorney=s fees under 42 U.S.C. ' ' 1983 and 1998. Even the most up to date practitioner knows that the law fluctuates in this area, and uncertainties in the law abound. This requires the practitioner to study carefully and keep up with current developments. In that regard, local governments, and the people who run them, should avail themselves of the ample resources to protect the community and its health, safety, welfare and morals.

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APPENDIX A

CASES YOU NEED TO READ

United States v. O'Brien, 391 U.S. 367 (1968)

Young v. American Mini-Theatres, Inc., 427 U.S.50 (1976)

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

FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990)

City of Erie v. Pap's A.M., 529 U.S. 277 (2000)

Alameda Books, Inc. v. City of Los Angeles, 535 U.S. 425 (2002)

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