

**DES MOINES
ADULT USE STUDY**

AUGUST 1984

Robert W. Thorpe, AICP

R. W. Thorpe & Associates, Inc.

Seattle / Anchorage

ADMINISTRATION REPORT ADULT USES

I - SUMMARY

June 7, 1984

To: City Council
From: City Manager *OM*

file - 235-8.3

Subject: Recommended Actions - Adult Uses

On October 27, 1983, the City Council conducted Public Hearings on two questions.

1. Should adult businesses be allowed in the Revitalization Area?
2. Should adult businesses which are allowed be grouped or dispersed?

The City Council took testimony and was presented extensive study data and reports on the effects of adult businesses on the Revitalization Area. The Council instructed Administration to prepare a recommendation by June 7, 1984. In the meantime, Council, Administration and consultants have had the entire record available for study.

I have utilized Administrative staff (principally myself, Special Projects Assistant Dave Crow and City Attorney Gorham) to prepare a recommendation as instructed. I also commissioned Robert Thorpe and Associates to conduct an independent evaluation of the same adult use subject as related to the downtown Revitalization area.

This report represents only a brief summary of the entire record and base of facts and studies used by Administration. The Administrative report is also summarized with this memo.

An independent summary report from R.W. Thorpe and Associates is attached. A detailed report from R. W. Thorpe will follow in a few weeks.

Recommended findings and conclusions are contained in the detailed Administrative report. The following recommended actions are summarized for easy reference.

1. Should adult businesses be allowed in the Revitalization area? - - NO.

Recommendation - Schedule a special Public Hearing for the purpose of considering the wording of an ordinance eliminating the showing of adult movies from the Revitalization area and allowing a final opportunity to speak, with a special notice given, to the operator of the Des Moines Theater. The hearing is recommended for September. The proposed Ordinance should also eliminate all other adult uses from locating in the Revitalization area.

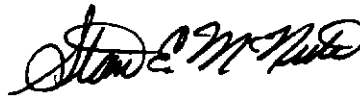
Recommendation - After adoption of the proposed ordinance, order cessation of all adult movies at the Des Moines Theater.

Recommendation - Adopt a policy to promote and fund a cooperative local improvement district in the Revitalization area when the theater has permanently ceased to show adult movies or has moved to another location.

2. Should Adult businesses which are allowed be grouped or dispersed? - -
THE ADULT BUSINESSES SHOULD BE DISPERSED AND SEPARATED.

Recommendation - Adult businesses which locate on Pacific Highway South should be separated by distances of 500 to 1,000 feet from any other adult use, Church, school or public facility.

It is the recommendation of the City Manager and the City Attorney that the City Council take this summary report and detailed report under advisement for individual study and that the Council place the item on an August agenda for the purpose of scheduling a Public Hearing in September to consider the wordage of an Ordinance implementing the above recommended actions.



Stan E. McNutt
City Manager

SEM:do

II. BACKGROUND

The purpose of this report is to summarize the impact of the Des Moines Theater on nearby business and residential areas and on the City of Des Moines as a whole. This report will focus on this adult theater and within the framework of findings previously determined of adult uses in general. This report will especially look at land use impacts associated with adult theaters and make recommendations to mitigate any adverse impacts.

The Des Moines Theater is located at 22333 Marine View Drive in the Central Business District of Des Moines. The structure housing the theater is well over 50 years old, and has been used continuously as a movie theater since its completion. The building consists of a motion picture theater on the first floor with approximately 380 seats, three store fronts with warehouse space below and offices on the second floor.

The theater was first issued a business license in 1960, when the Des Moines business license ordinance went into effect. The theater began showing adult movies in 1971. The present owner, Mr. Richard J. Pappas, has operated the theater since October, 1976. According to community impact statements produced by Mr. Pappas in accordance with City of Des Moines ordinances, adult movies are shown because other types of movies do not produce sufficient ticket sales for a profitable business. The correlation between the amount of business at the theater and the showing of adult movies, however, is difficult for the City of Des Moines to document. The only figures available on tickets sold are on admission tax reports submitted quarterly by the theater. This 5% admission tax, however, was not enacted until 1974, three years after the theater began showing adult movies. Appendix A is a summary of admissions at the Des Moines Theater since the enactment of the admissions tax.

Over the years, there has been a great deal of objection by Des Moines area residents to adult uses and the showing of adult movies in the community. The City has hundreds of letters and petition signature on file objecting to these uses dated from 1974 to the present. These letters and petitions represent over 600 households, and all but two are opposed to adult businesses. Many of these express that they and the people they know or influence will not shop adjacent businesses because the theater creates the image of an adult use zone. Additionally, in the Community Opinion Survey conducted in March, 1978, the adult theater was among the most frequent features of Des Moines that elicited negative responses (Appendix B). The appearance (deterioration) of business establishments was the Number 1 negative comment regarding business in Des Moines. The evidence gathered since the survey clearly shows a correlation between deterioration of business neighborhoods and the presence of adult uses. Taken in combination, the negative responses on the "X-rated theater", "appearance of business establishments", "hippy shops" (drug paraphernalia) and "massage parlors" was 18.3% (This is a tie for first concern among the subjects under City jurisdiction.)

III. HISTORY

The City has been carefully studying impacts related to adult uses including the theater since the enactment of Ordinance No. 464 on April 9, 1979 (copy enclosed as Appendix C). Ordinance No. 464 requires impact studies on all adult business. The City has acquired a great deal of information on adult business and their impact through the application of this ordinance and the resultant Community Impact Statements, studies and testimony. The theater voluntarily complied with the requirements of the ordinance by submitting a Community Impact Statement. Although no final decision has been made on the theater under Ordinance No. 464, the impact studies on the theater and other adult uses have been exhaustive. It is important to note that the Ordinance does not address the morality of any legal business transaction. It does address the "third party" impacts, especially economic, that a particular business may have on the immediate neighborhood and the community at large.

In the Washington Supreme Court decision of October 19, 1978, upholding the City of Seattle's zoning enactments requiring that adult motion pictures be located in certain areas of town, the Court noted "much effort and money have been invested in long-range improvement plans for these areas". The City of Des Moines and its business leaders have spent over \$37,000 on studies and efforts at revitalizing downtown. Another \$20,000 has been budgeted by the City for 1984. Other expenses include many hours of city staff time, volunteer work, and the commissioning of a consultant for an independent follow up study on the specific question of adult uses. A critical question for all of those involved in revitalization is: could the continuing efforts and effectiveness of revitalization be affected by the presence of the adult movie theater and any new adult businesses in the heart of the downtown area?

Although there are federal and state laws that are concerned with adult publications and movies, they do not in any way regulate where adult businesses may locate. The location issue is left to local government.

Besides Ordinance No. 464, the only other local regulations and ordinances directly affecting adult theaters as a use are local zoning regulations. The following inventory itemizes all relevant Zone Code sections pertaining to the location and development standards of theaters in the City:

18.06.010 Purpose of classifications. The basic purpose of this title is to classify uses and to regulate the location of such uses in such manner as to group as nearly as possible those uses which are mutually compatible, and to protect each such group of uses from the intrusion of incompatible uses which would damage the security and stability of land and improvements and which would also prevent the greatest practical convenience and service to the citizens of

Des Moines. It is also recognized that intrusion of uses in one zone upon uses in another lighter zone may also result from effects reaching across boundary lines separating contiguous zones due to noise, smoke, equipment, open air activity or other features. To further accomplish the goal of compatibility, varying degrees of regulations are established for certain uses in the business, commercial and industrial classifications when such uses are contiguous to lighter zones . . . A further purpose of this title is to establish required minimum lot areas, yards and open spaces as a means of providing a suitable environment for living, business and industry, and to maintain reasonable population densities and reasonable intensities of land use, all for the general purpose of conserving public health, safety, morals, convenience and general welfare.

18.24.020 Permitted uses. (B.C. Zone)

(5) Enterprises providing entertainment and recreation;

18.24.030 Limitations on uses. (B.C. Zone)

(9) Establishments . . . providing commercial recreational facilities (except commercial swimming pools) shall not be located closer than five hundred (500) feet to the exterior boundary property line of any school grounds, public park or playground;

(13) If a building site has a boundary line which is a common line with R classified property, a wall or view-obscuring fence or hedge not less than five (5) feet nor more than six (6) feet in height shall be installed and maintained for screening purposes and controlling access. Where the wall of a building is on such common property line, no separate wall or fence need be installed along that portion of the common property line occupied by the wall of the building. . . ;

18.28.020 Permitted uses. (C.G. Zone)

(1) Any use permitted in the B-N and B-C classification . . . (see 18.24.020 above).

Limitations on permitted uses. Only 18.24.030 (13) applies to the General Commercial Zone. The specific citation is 18.28.030 (3).

18.32.030 Uses requiring a conditional use permit.

(3) (G) Open-air theaters,

A conditional use permit is granted by the Board of Adjustment after evaluating potential adverse impacts. Such impacts can be mitigated through conditional approval.

Permitted signs. (Chapter 18.42) No special limitations.

1. Temporary signs not exceeding 32 square feet in area, except as authorized through the granting of a Special Use Permit. Special Use Permits are limited to 2 per year for a 10 day period and may include pennants, banners and other devices of a carnival-like nature.

2. Downtown, if the theater is a single use structure, a 50 foot freestanding sign is permitted in addition to two square feet of sign area for each lineal foot of street frontage, up to a maximum of 150 square feet (building mounted signage). On SR 99 the ratio is 100 square feet of freestanding sign area to 3 square feet per lineal foot of street frontage to a maximum of 300 square feet total sign area.

3. Downtown, if a part of a multiple-tenant building, a portion of a freestanding sign may be used by the theater, or all of it with permission of the property owner, to a maximum of 100 square feet. The property manager divides up the building mounted sign area among tenants from a total allowable sign area, exclusive of freestanding signage, of two hundred and fifty (250) square feet. On SR 99, a freestanding sign may be wholly or partially used by a theater with a maximum of 120 square feet sign area. Total allowable sign area may not exceed three square feet per lineal foot of street frontage.

4. A theater in a multiple building complex, downtown, is permitted part or all of a freestanding sign a maximum of 100 square feet and are allowed building mounted (or painted) signage equivalent to one square foot of signage for each linear foot of wall frontage with a minimum of thirty-two square feet. On SR 99 a freestanding sign may be 200 square feet, though it is assumed that other uses would use the sign as well. Flushed mounted sign use permitted at one square foot of signage per lineal foot of wall frontage.

5. All signs must reflect the City's architectural theme of "Contemporary Northwest Nautical", particularly downtown.

Parking Requirements. Theaters are required to provide one parking space for each three seats or if

fronting on a north south street, must setback 60 feet in lieu of the prescriptive requirement. Note: In effect, only the 60 foot setback would apply given the orientation of streets in the B.C. and C.G. zones potentially creating a severe parking problem.

Design Review. Design review is required of all signage and new theater construction.

IV. IMPACT OF ADULT THEATER

Appendix D is a summary of police activity in Des Moines related to the adult theater as stated in Part I of this report.

Des Moines residents have time and time again expressed their concerns regarding the negative impact of the adult theater on adjacent commercial businesses on and nearby residential properties and on the City in general. Among the concerns expressed are the following:

1. Decreasing property values
2. Refusal to shop in an area in which an "adult" use exists
3. Deterioration of the district, including deferred maintenance
4. Parking and traffic problems
5. Attraction of transients
6. Interference with parental responsibilities for children
7. Increased crime

This perception by the public, based on documented testimony at public hearings and letters to City Officials, is a legitimate impact on the community, regardless of the basis for this perception.

This public perception has led to numerous business failures in the commercial areas near the Des Moines Theater. This is indicated by new business licenses being issued. Business turnovers around the theater is approximately four times the average in other comparable areas of downtown. Comparison blocks were chosen for study because of similar building and business development factors (i.e., all buildings with a zero side yard, similar retail shops, similar traffic orientation, etc). Appendix E is a compilation of business turnover in the area near the theater.

The theater has clearly had these impacts on adjacent businesses:

1. Type: Marginal - often adult uses prior to 464
2. Deterioration: Existing or former businesses, according to public testimony; noticeably deteriorated.
3. High number of business turnovers.

Additionally, according to the previously mentioned public testimony, non-adult businesses are being perceived as adult uses by the public. This "guilt by association" is probably a factor in the high

number of business failures near the theater. The citizen's desire to shop local businesses is vital to those businesses' survival. This perception, then, is creating a substantial negative impact on nearby businesses. The citizens also have a right to safety and security. A business that reasonably bears on a citizen's security or perception of security is a legitimate impact.

Public testimony, staff studies and independent consultant studies all confirm the following findings:

1. The presence of the adult theater deters many people from shopping in the immediate area in particular and in downtown Des Moines in general resulting in serious negative economic impact.
2. Overwhelming public testimony and planning studies conclude that the downtown business area is severely deteriorated due, in part, to the adult movie theater.
3. The benefits of community investment in revitalization and future revitalization efforts may be nullified by the continued presence of the adult theater.

The negative effect of adult businesses is also evidenced in other states and communities by their enormous effort and expense to rid themselves of or at least control adult businesses, including adult movie theaters. Some of these examples include:

North Carolina's "single use law" which allows only one kind of "adult entertainment" in a building. Thus an adult movie theater may not sell adult books or an adult bookstore run automated peep shows. Also in North Carolina, no adult drive-ins may locate within 2,000 feet of residence or within viewing range of juvenile, and no adult films may be shown until after 11:00 p.m.

In Detroit, Michigan, adult uses cannot locate within 1,000 feet of each other or within 500 feet of a residential area unless 51% of the local residents and businesses approve.

In Prince Georges County, Maryland, adult uses are not allowed within 1,000 feet of school and within 500 feet of a church, and doors and windows of all adult enterprises must be blackened.

Significant efforts in controlling adult theaters in Washington will be discussed in Section V.

V. SOLUTION

Based upon the facts brought out in this report and the findings herein established, several conclusions and recommendations can be made regarding adult movie theaters in Des Moines.

Basically, it has been established by the U. S. Supreme Court that every community has a right to protect its values. A 1973 U. S. Supreme Court decision recognized that legitimate community interests are at stake in protecting their values and that these interest may be applied through ordinances and regulations against adult movies and uses. Such interests include the interest of the public in the quality of life and the total community environment, ... and possibly the public safety itself.

As has been seen in Section IV of this report, the negative impact has been found significant. There are two basic questions (asked at public hearings) that must be addressed regarding adult uses.

1. Should adult businesses be allowed in the revitalization area, or relegated to other locations?
2. Should adult businesses which are allowed be grouped or dispersed?

Through the data gathered in community impact studies produced in compliance with Ordinance No. 464 and through public testimony, it must be concluded that it is not in the community's interest to retain an adult movie theater in the downtown area of Des Moines. Findings have shown the following reasons to support this conclusion:

1. The public's perception of existing downtown Des Moines deters business investments, retail sales and building maintenance and improvements because of the presence of the theater.
2. Businesses locating near the theater have a failure or turnover rate approximately four times that of other businesses in other comparable downtown areas.
3. Economic viability of the downtown and community are negatively impacted by the theater and Revitalization efforts will probably fail to produce the desired improvement to the downtown business image overwhelmingly preceived by the public. Such revitalization efforts include renewal, beautification, image promotion, and attraction of new, viable retailing, professional and other compatible establishments.
4. Community goals include a revitalized downtown area that is attractive to pedestrian orientated business and family activities.

The tremendous effort and expense of the City toward improving the downtown is indicative of a large community commitment to the long range improvement of downtown. It has also been seen that other cities have spent a great deal of time, energy, effort and money in establishing ordinances to control adult uses, particularly adult theaters.

Perhaps the effort of most interest in controlling the location of adult theaters is that of the City of Seattle. That City's zoning ordinances restricting adult theaters to a particular part of the City was upheld by the Washington Supreme Court in 1978 (See Appendix F) (Wash., 585 P.2d 1153 Oct. 19, 1989). The Court summarized this case by stating:

The validity of zoning enactments requiring that adult motion picture theaters be located in certain downtown areas was upheld by the Superior Court, King County, Frank J. Eberharter, J., and theater operators appealed. The Supreme Court, Horowitz, J., held that: (1) the ordinance was fully adequate to give operators notice of regulated use, and they had no standing to challenge it for vagueness; (2) the operators had no standing to assert First Amendment rights of others so as to challenge the ordinance for facila overbreadth; (3) the theaters failed to establish that the ordinance was impermissible prior restraint on protected First Amendment Speech, in view of a finding that the ordinance did not have any significant deterrent effect on exhibition or viewing of such films; city's most important interest in regulating use of its property for commercial pur-poses was sufficient to justify such zoning regulation; (4) there was reasonable classification, no violation of equal protection, by the ordinance, and (5) the ordinance was reasonable, not denying due process of law, insofar as terminating all nonconforming theater uses within 90 days, in view of the fact that the theaters were not bound to show adult films as opposed to any other type of film and did not come forward with any clear evidence of economic harm." (Emphasis added).

This zoning of the City of Seattle was the culmination of a long period of study and discussion of the problems of adult movie theaters in other areas of the City.

Similarly, the City of Des Moines has had the opportunity, primarily through its Community Impact Ordinance, Revitalization Study and activities and public testimony to study and discuss and analyze at length the entire question of an adult movie theater in the central business district of the community.

If, then, the City should not allow adult theaters in the downtown, where, if at all, should the City allow such a use? It is quite clear from the Seattle case and other city ordinances and court

findings that banning adult theaters altogether might be successfully challenged as an infringement of the U. S. Constitution's First Amendment. A major factor in the State of Washington's Supreme Court upholding the Seattle Ordinance was the fact that adult theaters were allowed in another part of the City.

The only other commercial area in Des Moines in which any kind of movie theater would be compatible with other permitted uses is in the CG zone along Highway 99 (Pacific Highway South). An adult theater on Highway 99 would clearly have less of an impact than in the central business district. Highway 99 is less concentrated with much more parking available.

In addition, over the years Des Moines Comprehensive Plan has distinguished between their two commercial areas. The downtown is perceived as a pedestrian and community-family oriented shopping service area. Because of higher speed limits, more traffic, and lower density, the 99 commercial strip, on the other hand, is seen as automobile oriented shopping of a more regional nature. The current Des Moines sign ordinance distinguishes between these two areas, and the Des Moines City Council is just now beginning discussion on a new zoning district for the downtown.

In its Community Impact Statement, the theater claimed much of its clientele came from the City. The preponderance of administrative and public study and testimony refutes this. It is concluded that the "survey" referred to was either "flawed" or that the clientele changed drastically in the last 3 or 4 years to mostly out of town. Highway 99, from a pure business sense, is a better location for the owner of such a use. Public testimony regarding the theater also reflects the attitude that if adult theaters are to be allowed in Des Moines, they should be on Highway 99.

If, then, the City's zoning code should be amended to allow motion pictures along Highway 99 and not allow them in the downtown area, should they be "concentrated" or dispersed along the highway?

Chief of Police Martin Pratt, in his memo of 1-4 recommends that adult uses be dispersed. He feels that dispersed would greatly reduce the crime and patrol problem:

"If the council decides to zone adult businesses to one geographical area of the City it is my opinion and recommendation that these adult businesses be dispersed rather than grouped together in one small area.

... it is my opinion that if the adult businesses are grouped together in one area, it will place a burden on the police services of the City and will have the potential for many volatile situations. As in the past, I can foresee not only police time being spent on handling numerous complaints at the location, but also many, many hours being spent in monitoring and/or watching these businesses because of the potential for

problems that are associated with these businesses. With regard to potential for volatile situations, I base my opinion on past experiences and/or knowledges. Many times when adult businesses are located in very close proximity to each other, they develop a camaraderie which seems to "join forces" to try and help or protect each other by "obstructing", "hindering", "intruding" or "harrassing" police officers as they try to carry out their duties. Additionally, often times the customers of a business produce the same affect and/or actions mentioned when police are trying to perform their duties at an adjoining or relatively close location. Conversely, though, often times adult businesses develop an "adversary" posture toward other adult businesses rather than the "camaraderie" posture. If the "adversary" posture were to develop, I foresee a far greater potential for more serious problems or situations occurring which would not only place more danger in existence for my officers, but also for citizens who happen to be in the area at the time. Granted, dispersment will not negate police services to these businesses, but I feel our involvement would be at a lesser rate than if they were grouped together.

Not only would the dispersal reduce crime potential, but should lessen its impact. By the same token, in order to safeguard family oriented activities, minimum distances should be established between adult theaters and such uses as churches, schools and public parks.

APPENDIX A

Admissions - Des Moines Theater
 (Interpolated from Theater Revenue Reports)

<u>YEAR</u>	<u>QUARTER</u>	<u>ADMISSIONS</u>
1974	4	1259
1975	1	985
1975	2	954
1975	3	1120
1975	4	2279
1976	1	3784
1976	2	4129
1976	3	4870
1976	4	3191
1977	1	3378
1977	2	3827
1977	3	3840
1977	4	3195
1978	1	3496
1978	2	3453
1978	3	3583
1978	4	3327
1979	1	3468
1979	2	3299
1979	3	3668
1979	4	3837
1980	1	5552
1980	2	4717
1980	3	5135
1980	4	4799
1981	1	5511
1981	2	4889
1981	3	4851
1981	4	5131
1982	1	5066
1982	2	4377
1982	3	4507
1982	4	4557
1983	1	4909
1983	2	5056
1983	3	4409
1983	4	4463
1984	<u>1</u>	<u>5082</u>
	38 QTRS.	147,953 Total Admissions

APPENDIX B

From City of Des Moines Community Opinion Survey March, 27, 1978

Questions 31, 32 and 33

<u>Negative Comments:</u>	<u>No. of Responses</u>	<u>%</u>
1. Airplane Noise	150	21.6
2. Condition of Streets/Sidewalks	127	18.3
3. Appearance of Business Establishments *	78	11.2
4. Apartments	68	9.8
5. Businesses Lack Variety	51	7.3
6. Traffic Congestion/Safety	45	6.5
7. <u>X-rated Theater</u> *	40	5.8
8. (Tie) Police Department	28	4.0
Dogs Running Loose	28	4.0
10. Rundown Housing	17	2.5
11. Metro Bus Service	12	1.7
12. (Tie) <u>"Hippie Shops"</u> *	8	1.2
(was a drug paraphernalia shop)		
Concorde	8	1.2
14. Local Government	7	1.0
15. Marina	6	0.9
16. Trees Obstructing Views	5	0.7
17. Postal Service	4	0.6
18. (Tie) Overhead Wiring	3	0.4
Smell from Dump	3	0.4
20. (Tie) Administration of Water District #54	2	0.3
Mobile Homes	2	0.3
22. (Tie) <u>Massage Parlors - Adult</u> *	1	0.1
Newspaper	1	0.1
	695	100.0%
TOTALS	695	100.0%

* Note - total negative comments directly or indirectly related to adult uses - 18.3%.



R.W. Thorpe & Associates
Planning • Environmental Analysis • Economics

Associates:
Deborah Krouse, APA
Kathryn Figon, ASLA

June 7, 1984

Mr. Stan McNutt
City Manager
City of Des Moines
Des Moines, WA

RE: Independent Planning Consulting Report on Adult Uses in the City of Des Moines

Dear Mr. McNutt:

At your request, we did an independent study for recommendations to the City Council concerning policy directions to be undertaken by the Council relative to adult uses within the City. As you and the Council are aware from our previous efforts on the Revitalization Study, we are familiar with the community, the citizens and the character of its business district.

Our study set forth to look at adult uses and consider the following elements:

1. Zoning Study
2. Land Use Impacts
3. Impacts on the Revitalization Plan

In order to do this we set forth the methodology with steps including the following elements:

1. Reobservation of current land uses within Des Moines, with particular attention to the revitalization area, existing land uses and the potential for additional adult uses within the Revitalization area.
2. Review of studies, reports, and technical documents on adult uses by various communities, professional organizations such as the American Planning Association, Trial Lawyers Association, City Manager's Association, etc.
3. Court cases and case studies on other communities experiences in providing areas for this use within their community while controlling the impacts on certain elements of the citizenry, particularly children.
4. Discussion with other city officials who have been involved in the reviews of this type of use within their communities.
5. A review of the record of the hearings by the City Council on this matter in Des Moines.
6. Site visits of areas that have adult theaters, bookstores, and similar uses in other suburban communities in Western Washington as well as downtown Seattle.

Our efforts have been concentrated in the last couple of weeks to review these items listed above. However, it is complemented by my 8 years of officing at 3rd and University at Seattle, whereby I have observed land use impacts of adult type uses on 1st, 2nd and 3rd Avenues near my office. And the impact on adjacent land uses, signage, street treatment, and the general character of the urban area. This effort was supplemented by a review of

Mr. Stan McNutt
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locations such as Bremerton, Redmond, Renton, Northend Seattle, Aberdeen, etc., to ascertain the general character of land uses and the economic impacts of this type of use in any given area of a community.

Following work efforts, a detailed report shall be provided the Council in the near future. However, some of the conclusions and observations may be appropriate. They are as follows:

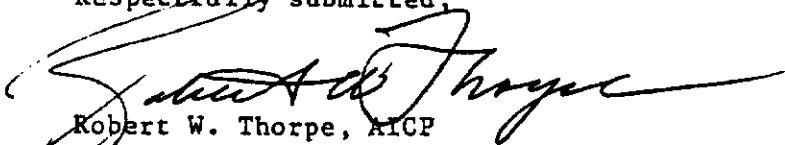
1. There appears to be a definite impact on adjacent uses by adult uses in the Revitalization Area of Des Moines.
2. In terms of Number 1, there are, in my opinion, identifiable impacts on the Entente, goals and long term objectives of the Des Moines Revitalization Study, which may be largely counter purposes.
3. In other communities, there has been an impact on adjacent land uses do to either a single adult use or a concentration of these uses occurring on adjacent properties, land uses and things such as deferred maintenance, and character of the area.
4. A review of the cases such as those involving the cities of Detroit, Boston, New Orleans, Los Angeles in other cases from a laymens standpoint, indicates that a number of communities have approached methods for addressing through the zoning code, or through other methods such as licensing, the need to provide for some locations to respond to the real or perceived demand for this type of use while controlling it, eliminating its exposure to areas that have children, such as parks, schools, residences and other community activity areas.
5. The standards utilized in dispersal of this type of activity by other communities appears to be an appropriate one and more successful than a concentration approach which appears more appropriate for a highly concentrated urbanized area, if at all. However, the distance standard be it 500, 1000, 1500, 2000 or whatever, is a policy decision that appropriately rests with the legislative body of the City of Des Moines. However, some communities are moving towards a 1500 foot standard and it may be just as appropriate as 1000 feet or any other standard.
6. It appears that the dispersal method eliminating two adult uses in any location, with a minimum distance between is the most effective and widely used method of providing some zoning control of these uses.
7. That the area most appropriate in the City of Des Moines for these uses is not the Revitalization area (the business district) which is surrounded in close proximity by schools, residential areas, parks, playfields, etc., but rather Highway 99. This observation is supported not only for the reason of access of children but conversely for more easy access by potential users of these facilities from a state designated highway.

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8. It should be noted that this study is limited in its scope to those work items listed above. There was no review of economic data, vacancy rates, etc., of the area visited for an analysis of the impact, but rather just utilizing a real estate appraisers techniques¹ to observe functional obsolescence, deferred maintenance, etc., in areas immediately adjacent to the study areas.
9. And the study's observations and conclusions are not based on moral or obscenity issues, that is they are specifically excluded from consideration, but rather the study focuses on impacts of land use, economic or urban design nature related to public health, safety and welfare.

I hope this Memorandum is helpful to the Council as a status report of my study observations and conclusions. A full report will follow.

Respectfully submitted,



Robert W. Thorpe, AICP

RWT:mc

¹ Report writer is an appraiser (MAI) candidate as well as a certified planner.

AN ORDINANCE OF THE CITY OF DES MOINES requiring a study of the impact certain types of business will have on the Des Moines community if they are issued a license, authorizing denial of a business license on a finding of significant adverse community impact, and providing appellate procedures.

WHEREAS, the City of Des Moines is primarily a residential community providing a labor force for nearby industrial areas; and,

WHEREAS, the traditional orientation of the community, and that which is planned for the future, is for family commerce, recreation, education and worship; and businesses and activities which are not family oriented are inconsistent with the existing development and future plans for the Des Moines community, and may have an adverse impact upon the same; and,

WHEREAS, such businesses have been found to appeal to special populations and often bring outside influences into the community which increase the crime rate and undermine the moral and social values of the family members; and,

WHEREAS, existing businesses find that as the character of the commercial environment changes, their business drops off, property values decrease and merchants serving the general community are forced to move out of the central business district, leaving it in a vacant and deteriorating condition; and,

WHEREAS, businesses which are not family oriented, and which would contribute to this adverse situation, should be encouraged to locate in other communities where their patronage would be more probable and profitable, and where their impact would be more acceptable; now, therefore:

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Section 1. The City of Des Moines shall require a study and review of the probable impact on the community of any proposed business activity oriented towards serving or attracting a special population of customers, and not oriented toward activities reasonably related to the health, education and welfare of the family.

Section 2. No business license or renewal of business license shall be issued to any business which is determined by the City Manager to be oriented toward serving or attracting a special population of customers, and not oriented towards activities reasonably related to the health, education and welfare of the family, until such proposed business has first prepared and submitted to the City Manager a Community Impact Statement, as described in Section 3 below; provided that the following businesses shall be exempt from this requirement:

- (1) Businesses regulated and/or licensed by special legislation of the State or Federal Government.
- (2) Businesses which the City Manager determines would have an insignificant adverse impact on the community, and which are not significantly inconsistent with the purposes of this Ordinance, as stated in the preamble hereof.

Section 3. A Community Impact Statement shall contain, at a minimum, the following elements:

- (1) Detailed description of proposed business; names and addresses of all owners thereof; proposed location; description of building and facilities; description of merchandise or services to be sold; proposed hours of operation; profile of expected customers; projected market area; references to other similar business operations.
- (2) Analysis of existing business community within 300 feet of proposed location, including the following factors, at a minimum:
 - a) Type of businesses;
 - b) Profile of customers;
 - c) Market area;
 - d) Economic growth/deterioration
 - e) Property values;
 - f) Proximity of residential neighborhoods;
 - g) Proximity of schools, churches and public facilities.

- (3) Impact of proposed business upon the factors described in sub-paragraph 2 above.
- (4) Impact of proposed business upon the social environment of the Des Moines community.
- (5) Alternative locations for the proposed business; and/or alternative business for the proposed location.

Section 4. A completed Community Impact Statement shall be filed by the applicant with the City Clerk. Copies of the same shall be distributed by the Clerk to all Council members, all City facilities, Secretary of the Highline School District, Secretary of the Des Moines Chamber of Commerce, and to any other parties requesting the same. The City Clerk may assess a charge for the cost of copying any statements issued to private parties. Within thirty days of the date the statement is filed with the Clerk, the City Manager shall either grant the business license, or shall call a hearing for the purpose of considering the same. At the conclusion of the hearing, and any continuances thereof, the City Manager shall either grant or deny the business license, entering written findings of fact supporting his decision should such decision be to deny the business license. It shall be valid grounds for denial of a business license if the City Manager finds that a proposed business will have a significant adverse impact upon the community and will be significantly inconsistent with the purposes of this Ordinance, as stated in the preamble hereof. The possibility of mitigating measures shall be taken into account. If a denial is ruled, the applicant may appeal the decision to the City Council by filing an appeal request within ten days of the date of such written decision with the City Clerk. The Council must schedule a Public Hearing to consider the appeal no later than ninety days after the filing of the appeal request. After hearing the appeal, the decision of the Council shall be final.

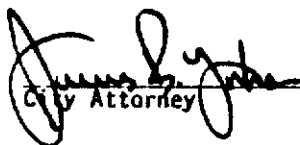
Section 5. All procedural elements of this Ordinance shall have retroactive as well as prospective application to any and all businesses that have not received a final and unconditional business license on the date of enactment hereof. The substantive elements of this ordinance are deemed to be necessary for the immediate protection of the public health, safety, and welfare, and shall also apply to said businesses.

Section 6. If any provision of this Ordinance, or its application to any person or circumstances is held by a Court of competent jurisdiction to be invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances, shall not be affected and shall remain enforceable as originally enacted.

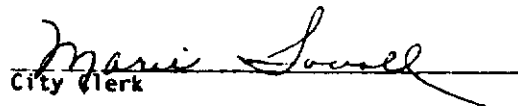
PASSED BY the City Council of the City of Des Moines this 9th day of April, 1979 and signed in authentication thereof this 9th day of April, 1979.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: April 13, 1979

CITY OF DES MOINES,

BUSINESS LICENSE CHECKLIST

Ord. 39, 454, 460, 463

and 464

Name of Applicant _____ Date _____

Name of Business _____

Location _____

Description of Business Activity :

Review Checklist: (Please comment and initial)

Zoning _____ Planning Dept

Building Code _____ Eng. Dept.

Parking _____ Eng. Dept.

Traffic _____ Eng. Dept.

Fire _____ Fire Dept.

Health _____ Health Dept.

(if applicable)

Police _____ Police

Ordinance #464 "Threshold" determination (check one)

Business is found to be oriented towards activities reasonably related to the health, education and welfare of the family. (exempt from Ordinance #464)

Business is regulated and/or licensed by special legislation of the State or Federal government. (exempt from Ordinance #464)

Business is found to have an insignificant adverse impact on the community and is not significantly inconsistent with the purposes of Ordinance #464. (exempt from Ordinance #464)

Business is found to be oriented towards serving or attracting a special population of customers and not oriented towards activities reasonably related to the health, education and welfare of the family. (Community Impact Statement required)

Ordinance #464 threshold determination made on _____ date

By: _____ signature



City of Des Moines

THE "Waterland" CITY
DES MOINES, WASHINGTON, 99188



ORDINANCE NO. 464

HOW DOES THE CITIZEN PARTICIPATE?

READ THE ORDINANCE.

Copies are available at City Hall. The City will mail copies on request and provide copies when invited to give briefings at group or community meetings. The City will be happy to explain any and all details of the Ordinance to all parties pro or con.

UNDERSTAND THE ORDINANCE.

Ordinance 464 does not address the morality of first and second party transactions in legal business operations. The Ordinance is concerned with third party (innocent-nonconsenting) impacts only.

AVOID THE FRUSTRATION OF UNPRODUCTIVE ACTIVITY.

Anonymous letters, petitions and even political pressures are totally ineffective during the time a specific business license is being considered under Ordinance 464. All decisions must be made solely on the basis of the accumulated information as provided in the Ordinance. Confine your activities where possible to documenting the impact or potential impact to you or your family or business. When others are impacted, have them provide the information.

PROVIDE SPECIFIC INFORMATION.

If a hearing is called provide testimony as to how the proposed business would effect you.

1. What is your opinion of the business area or location?
2. Have you shopped there in the past?
3. Would you shop there if the proposed business license were granted?
4. Would the proposed business affect you in any other manner; that is your concept of this community, your social and recreational expectations, your feeling of security, and the like? If so, how?

If you have been witness to something which might have a pro or con bearing on a Community Impact Statement, gather specific information. Write down all details such as dates, times, persons, places, situations and all other circumstances which have a bearing. Be sure your facts are truthful, accurately stated and opinions are represented as opinions. The City will advise you as to protection of privacy in cases where information may be personally delicate.

HELP EDUCATE OTHERS AND URGE THEM TO HELP GATHER INFORMATION IF A HEARING IS CALLED

Ordinance 464 represents a relatively new approach to protection for family communities. If a hearing is called, participate!

CITY HALL
21628 11TH AVE. SE.
878-4886

POLICE DEPT.
21648 11TH AVE. SE.
878-3381

MUNICIPAL COURT
21638 11TH AVE. SE.
878-4887

SEARMA
22287 BUCK AVE. SE.
884-8788

PUBLIC WORKS & BLDG. DEPT.
21688 11TH AVE. SE.
878-4886

APPENDIX D
DES MOINES THEATER

DATE	TIME	INCIDENT #	CASE NUMBER	SUMMARY
04-22-74	2302			Unfounded, subject attempted to get another to purchase liquor, subject agreed, taking money but never returning with liquor
08-07-74			74-0595	Obscene motion picture investigation
08-09-74	1350			Search warrant
08-26-75	2013			Normandy Park Police Department reported possible drug deal tonight, unable to determine if valid
03-13-76	1852			Fight, solved on arrival
05-17-76	2125		76-0597	Assault with a firearm case taken
05-20-76	2309			Follow up to 76-0597
07-01-76	0002		76-0786	Malicious Mischief 3rd
07-18-76	2119			Juvenile disturbance, gone on arrival
01-04-78	1737			Abandon vehicle found to be King County's stolen, no case, vehicle returned
11-02-79	0023			Intoxicated male, gone on arrival
11-04-79	2259			Woman screaming behind theater, solved on arrival
03-03-79	0930	#0818	79-0281	Theft 3rd
03-06-79	0004	#0849		Intoxicated subjects, solved on arrival
04-22-79	2133	#1430	79-0481	Minor in possession of alcohol, one cited
11-22-79	0853	#4968	79-1670	Commercial burglary case taken
11-22-79	2007	#4978	79-1670	Follow up to above case.

BUSINESS ACTIVITY SINCE 1973

22300 Block - West Side of Marine View Drive

ADDRESS	YEAR	NAME OF BUSINESS
22303	1973	Grocery Store
	1974	Empire Marine Service*
	1980	Fo C'sle Inc.
	1981	D'Andrea's*
22307	1978	Des Moines News Office
	1981	Millheisler & Johnson*
	1981	Parker Typing Service
	1982	Des Moines Secretarial Service*
22311	1973	College Typewriter Shop*
22315	1973	Des Moines Furniture
	1975	Des Moines Stereo Center
	1978	La Lanterna Italian Rest.
	1981	Martin's Manor House Rest.
22317	1973	End of the Trail Antiques
22319	1973	Circuit Rider Book Store*
22325	1973	Glen L. Brown & Sons
	1980	Foreign Bird International
	1981	The Clothes Menagerie
	1982	Your Square Dance Shop*
		W & W 2nd Hand Shop
22331	1973	Des Moines Theater*
22333	1973	Dr. Larry Siemon
	1973	Hank's Barber Shop
	1974	Earl's Barber Shop
	1975	Raine's World of Coins
	1976	Des Moines Camera & Sound
	1978	Rebound Records
	1982	Happy Thoughts T-Shirts
1983	Intersound*	
22341	1973	Des Moines Texaco*

* Business is still in operation.

BUSINESS ACTIVITY SINCE 1973

22500 Block - West Side of Marine View Drive

ADDRESS	YEAR	NAME OF BUSINESS
22501	1973	Ranch House Meats (Same Business)
	1975	B & E Meats* (Same Business)
22507	1973	Dale's Appliance
	1978	Alix's Sporting Goods*
22509	1976	Des Moines Auto Parts
22515	1973	C. J.'s Pizza
	1975	Alix's Sporting Goods (Expansion)
22517	1973	Des Moines Realty*
22513	1973	Snure & Gorham (Name Change)
	1973	H. B. Hunting*
	1973	Creative Candlecraft
	1973	Baker Mfg.
	1974	Jack Kniskern*
	1980	Snure & Fleck*
22519	1973	U-Do-Em Laundormat*
22519½	1973	Daro Industries
	1974	J. C. Mfg. Co. *
22525	1973	Dr. Menashe*
	1973	Dr. Wylie
	1973	Dr. Gerla
	1980	Dr. Wilson*
22531	1978	Moby Doug's Seafood*

* Business is still in operation.

APPENDIX F

NORTHEND CINEMA, INC. v. CITY OF SEATTLE Wash. 1153

Cite as, Wash., 585 P.2d 1153

90 Wash.2d 709

NORTHEND CINEMA, INC., and A. M. Mushkin, Appellants,

v.

CITY OF SEATTLE, a Municipal Corporation, Respondent.

GAIETY THEATERS, INC., a Washington Corporation, Appellants,

v.

CITY OF SEATTLE, a Municipal Corporation, Respondent.

APPLE THEATER INC., a Washington Corporation, Appellants,

v.

CITY OF SEATTLE, a Municipal Corporation, Respondent.

No. 45156.

Supreme Court of Washington,
En Banc.

Oct. 19, 1978.

The validity of zoning enactments requiring that adult motion picture theaters be located in certain downtown areas was upheld by the Superior Court, King County, Frank J. Eberharter, J., and theater operators appealed. The Supreme Court, Horowitz, J., held that: (1) the ordinance was fully adequate to give operators notice of regulated use, and they had no standing to challenge it for vagueness; (2) the operators had no standing to assert First Amendment rights of others so as to challenge the ordinance for facial overbreadth; (3) the theaters failed to establish that the ordinance was impermissible prior restraint on protected First Amendment speech, in view of a finding that the ordinance did not have any significant deterrent effect on exhibition or viewing of such films; city's most important interest in regulating use of its property for commercial purposes was sufficient to justify such zoning regulation; (4) there was reasonable classification, not violative of equal protection, by the ordinance, and (5) the ordinance was reasonable, not denying due process of law, insofar as ter-

minating all nonconforming theater uses within 90 days, in view of the fact that the theaters were not bound to show adult films as opposed to any other type of film and did not come forward with any clear evidence of economic harm.

Temporary injunction dissolved, and judgment affirmed.

1. Municipal Corporations ⇐ 121

In action for declaratory judgment, brought to challenge constitutionality of ordinances which required all adult motion picture theaters to be located in certain downtown areas, trial court's refusal to enter plaintiff theaters' proposed findings was not error where the same were either unsupported by the record or were not related to ultimate facts concerning material issue.

2. Constitutional Law ⇐ 18

It was not necessary to construe provisions of State Constitution identically with corresponding provisions of Federal Constitution, but, where appropriate, court would apply general rule that language in State Constitution be given same interpretation as that given federal constitutional provision by the United States Supreme Court. U.S.C.A.Const. Amends. 1, 5, 14.

3. Municipal Corporations ⇐ 594(2)

City ordinance definition of adult theater use, being identical in all relevant respects to definition upheld by United States Supreme Court, was fully adequate to give notice of regulated use, and complaining theaters which showed adult films almost exclusively and claimed no desire to show any other type of film had no standing to challenge ordinance for vagueness. U.S.C.A.Const. Amends. 1, 5, 14.

4. Constitutional Law ⇐ 42.2(1)

Special rule giving standing to one whose own rights are not violated to challenge ordinance for overbreadth applies only if deterrent effect of ordinance on protected First Amendment speech is both real and substantial and if ordinance is not easily susceptible to narrowing construction. U.S.C.A.Const. Amend. 1.

586

5. Municipal Corporations ⇐ 121

Theaters showing adult films had no standing to assert First Amendment rights of others, to challenge city ordinance for official overbreadth, where ordinance, which required location of such theaters in certain downtown areas, was found by trial court not to have any significant deterrent effect on exhibition or viewing of adult motion picture films and where any language in ordinance which was uncertain was readily subject to narrowing and constitutionally sound construction. U.S.C.A. Const. Amend. 1.

6. Constitutional Law ⇐ 90.1(6)

Theaters showing adult films failed to establish that city ordinance restricting location of adult motion picture theaters to certain downtown areas was impermissible prior restraint on protected First Amendment speech, in view of finding that ordinance did not have any significant deterrent effect on exhibition or viewing of such films; city's most important interest in regulating use of its property for commercial purposes was sufficient to justify such zoning regulation. U.S.C.A. Const. Amend. 1.

7. Constitutional Law ⇐ 240(4)

In view of fact that city ordinance regulated only place where adult films could be shown and in view of city's great interest in protecting and preserving quality of its neighborhoods through effective land-use planning, there was reasonable classification, not violative of equal protection, by ordinance which required adult motion picture theaters to be located in certain downtown areas. U.S.C.A. Const. Amends. 1, 14.

8. Municipal Corporations ⇐ 43, 63.1(2)

City's planning efforts must be accorded sufficient degree of flexibility for experimentation and innovation, and court cannot substitute its judgment of what would be most effective method of regulation in such regard.

9. Municipal Corporations ⇐ 594(1)

City's power to regulate location of adult movie theaters was not dependent in any way on existence of possible waiver for existing theater locations, nor was there

any showing that operators of existing theaters were constitutionally entitled to exemptions from zoning restriction in case before the court, and thus no constitutional deficiency in such regard was shown. U.S. C.A. Const. Amends. 1, 14.

10. Zoning ⇐ 231

Calculation of reasonable termination period for zoning purposes depends upon facts and circumstances of particular case, and equal protection analysis does not apply. U.S.C.A. Const. Amend. 14.

11. Constitutional Law ⇐ 296(2)

Ordinance requiring that adult motion picture theaters be located in certain downtown areas was reasonable, not denying due process of law, insofar as terminating all nonconforming theater uses within 90 days, in view of fact that theaters were not bound to show adult films as opposed to any other type of film and did not come forward with any clear evidence of economic harm. U.S.C.A. Const. Amends. 1, 5, 14.

Victor V. Hoff, Charles S. Stixrud, Seattle, for appellants.

Dona M. Cloud, Asst. Corp. Counsel, Seattle, for respondent.

HOROWITZ, Justice.

The issues raised here involve the validity of two Seattle city zoning ordinances which have the effect of requiring all adult motion picture theaters as defined in the ordinances to be located in certain downtown areas, and terminating all nonconforming theater uses within 90 days. The three Seattle theaters prohibited from showing their normal adult fare at their present locations by these ordinances challenge the constitutionality of the zoning enactments in this declaratory judgment action. The court below heard extensive testimony at trial and upheld the validity of the City's action. We affirm.

The amendments to the City's zoning code which are at issue here are the culmination of a long period of study and discus-

tion of the number of adult movie theaters in residential areas of the City. Following local resident protests against the opening of such a theater in the Greenwood district, the City's Department of Community Development made a study of the need for zoning controls of adult theaters at the request of both the City Planning Committee and the City Council Committee on Planning and Urban Development. The study analyzed the City's zoning scheme, comprehensive plan, and land uses around existing adult motion picture theaters. Of the 46 motion picture theaters operating within the City, 13 showed adult motion pictures exclusively, or almost exclusively. Ten of those 13 were located in downtown areas where such uses are now permitted by the challenged ordinances. The other three, the Ridgmont, the Northend, and the Apple Theater, are in areas outside the designated zones which are characterized by residential uses. These three theaters show "x-rated" films almost exclusively and display advertisements indicating the nature of the films on the theater marquees or fronts.¹ The Department's study concluded that zoning action should be taken to confine adult motion picture theaters to downtown Seattle, and recommended that a conditional use approach be adopted for adult theaters in other areas.

The Department's study and recommendation were taken up by the City Planning Commission, which held public meetings and a joint public hearing with the City Council Committee on the subject. At the public hearing Greenwood residents spoke of their concerns regarding the deterioration of residential neighborhoods that accompanies location of adult movie theaters. The concerns expressed were very specific and included the attraction of transients, parking and traffic problems, increased crime, decreasing property values, and in-

terference with parental responsibilities for children. The Planning Commission subsequently voted to recommend that the City zoning code be amended to confine adult theaters to downtown areas and phase out nonconforming uses. The Commission opposed any conditional use plan for other zones.

The neighborhoods in which the three appellant theaters are located have a distinctly residential character.

The Greenwood community, in which the Northend and Ridgmont are located, has been the subject of major development plans for years. Millions of dollars of development funds have been invested to improve the quality and conditions of the community. Ongoing projects include improved sidewalks, lighting, and traffic control, and a new shopping mall. The First Hill Community, in which the Apple Theater is located, has not been the subject of such elaborate development plans, but has received substantial funds for neighborhood improvement and is designated a residential area in the City's long range plans. In short, the goal of the City in amending its zoning code was to preserve the character and quality of residential life in its neighborhoods, as specifically found by the court below. A second and related goal, the court found, was to protect neighborhood children from increased safety hazards and offensive and dehumanizing influence created by location of adult movie theaters in residential areas. These goals are an integral part of the City's long-range land-use planning effort.

Thus in May and June of 1976 the Seattle City Council amended the Zoning Ordinance with Ordinance 105565, enacted on May 28 and effective on or about June 27, 1976, and

The advertisements generated by these theaters and the displays on their marquees and fronts indicate the film fare therein is sexually explicit and exploits a market for the shocking and bizarre sexual experience. The films are one sequence of explicit sexual activity after another, almost completely uninterrupted by any plot.

1. The trial court found: Films rated "X" are identified in the Code of Self Regulation of the Motion Picture Association of America as "pictures submitted to the Code and Rating Administration which are rated X because of the treatment of sex, violence, crime or profanity."

586

Ordinance 105584, enacted June 7 and effective on or about July 7, 1976. The combined effect of the ordinances is to create a land use known as Adult Motion Picture Theater, to prohibit that use in all City zones except zones C-1 (Community Commercial), C-2 (Community Commercial), and C-3 (Community Commercial). The land area comprising the permitted zones is approximately 250 acres. No provision is made in the ordinances for conditional uses in other zones.

[1] At the trial on appellant theaters' declaratory judgment action the court heard extensive testimony regarding the history and purpose of these ordinances.² It heard expert testimony on the adverse effects of the presence of adult motion picture theaters on neighborhood children and community improvement efforts. The court's detailed findings, which include a finding that the location of adult theaters has a harmful effect on the area and contribute to neighborhood blight, are supported by substantial evidence in the record. Its refusal to enter appellant Apple Theater's proposed findings was not error, as these were either unsupported by the record, or not related to ultimate facts concerning a material issue. *In re Kennedy*, 80 Wash.2d 222, 492 P.2d 1364 (1972).

The central question raised is whether, in view of these facts, the action of the City in creating the adult motion picture theater use and confining that use to certain zones within the downtown area is constitutional. A second question is whether the City may constitutionally impose a 90-day termination period on nonconforming uses. We answer both questions affirmatively, for the reasons discussed hereafter. We turn first to the constitutionality of the creation and confinement of the adult motion picture theater use.

2. In view of the extensive record developed at the trial of the City's planning studies, meetings and hearings, we find the City has fully sustained its burden of demonstrating the conditions and need for its zoning action. Appel-

I

Appellants make three constitutional arguments against the Seattle zoning provisions. First, they claim the definition of an adult motion picture theater is so vague as to deny them due process of law. Second, they claim the confinement of such theaters to designated zones is an impermissible prior restraint on protected First Amendment speech. Third, they argue the classification of theaters based on the content of the films shown there violates First Amendment and equal protection guarantees.

[2] In response to these contentions we find the decision of the United States Supreme Court in *Young v. E. Atlantic*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976) (hereinafter referred to as *Young*) dispositive. In that case the court approved the creation and definition of an adult theater zoning use identical in all relevant respects to the Seattle zoning use. It also approved regulation of location for that use. Although appellants argue the Seattle ordinance differs from the Detroit ordinance, those differences do not have constitutional significance, as discussed below. We need not, of course, construe the provisions of our state constitution identically with the corresponding provisions of the federal constitution. *Darrin v. Gould*, 85 Wash.2d 859, 868, 540 P.2d 882 (1975). In this case, however, we find the reasoning of *Young* persuasive. It acknowledges and accommodates the important interest of the state in exercising its police power to protect city neighborhoods against degradation, while preserving the democratic principles the constitutional provisions were designed to protect. We therefore find it appropriate to apply the general rule that language in our state constitution will be given the same interpretation as that given the federal constitutional provision by the United States Supreme

lant Apple Theater's objection to the record in this regard is unfounded. See *Parkridge v. Seattle*, 89 Wash.2d 454, 573 P.2d 359 (1978). See also *Abbenhaus v. Yakima*, 89 Wash.2d 855, 576 P.2d 888 (1978).

NORTHEND CINEMA, INC. v. CITY OF SEATTLE Wash. 1157

Cite as, Wash., 585 P.2d 1153

court. See *Housing Authority v. Saylor*, Wash.2d 732, 739, 557 P.2d 321 (1976).

A. Vagueness

[3] Appellants' first argument is that the definition of Adult Motion Picture Theater (set out in the margin³) is so vague as to deny them due process of law. They do not attack the included definitions of "Specified Sexual Activities" or "Specified Anatomical Areas," but argue they are not adequately informed of (1) how much "depicting, describing, or relating" to the specified areas is necessary before a film is "distinguished or characterized by an emphasis" thereon; (2) what "depicting, describing or relating to" means; or (3) how frequently such films must be shown before a building is "used" for the purpose.

We note at the outset that the definition of adult theater use contained in the Seattle ordinance is identical in all relevant respects to the definition upheld in *Young*.⁴ Furthermore, as in *Young*, the complaining theaters show adult films almost exclusively. They do not claim they desire to show any other type of film. Therefore, the ordinance is fully adequate to give them notice

3. Ordinance 105565 Definition of Adult Motion Picture Theater (§ 1)

"An enclosed building used for presenting motion picture films distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' as hereinafter defined, for observation by patrons therein:

" 'Specified Sexual Activities' "

"1. Human genitals in a state of sexual stimulation or arousal;

"2. Acts of human masturbation, sexual intercourse or sodomy;

"3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

" 'Specified Anatomical Areas' "

"1. Less than completely and opaquely covered:

"(a) human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola; and

"2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered."

4. Adult Motion Picture Theater

of the regulated use, and they have no standing to challenge it for vagueness. *Young, supra*, 427 U.S. at 59, 96 S.Ct. 2440.

[4, 5] Nor do appellants have standing to assert the First Amendment rights of others and challenge the ordinance for facial overbreadth. The special rule giving standing to one whose own rights are not violated to challenge an ordinance for overbreadth applies only if the ordinance's deterrent effect on protected First Amendment speech is "both real and substantial" and the ordinance is not easily susceptible to a narrowing construction. *Erznoznik v. Jacksonville*, 422 U.S. 205, 216, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975). We are not persuaded those elements are present here. First, there is no evidence that the effect of this ordinance will be a substantial deterrence to protected First Amendment speech.

~~Second, the ordinance does not~~
~~operate to significantly inhibit viewers from~~
gaining access to the films. The court below specifically found the ordinance does not have any "significant deterrent effect on the exhibition or viewing of adult motion picture films."⁵ Second, any language

" 'An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas,' (as defined below) for observation by patrons therein.

"For the purpose of this Section, 'Specified Sexual Activities' is defined as:

"1. Human Genitals in a state of sexual stimulation or

"2. Acts of human masturbation, sexual intercourse or sodomy.

"3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

"And 'Specified Anatomical Areas' is defined as:

"1. Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola; and

"2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered."

5. Since we hold the ordinance does not place a substantial burden on First Amendment

in the ordinance which is uncertain is readily subject to a narrowing and constitutionally sound construction. These conclusions accord with those of the court in *Young* under substantially identical circumstances. Appellants' due process claim must therefore be dismissed for lack of standing.

B. Prior Restraint

[6] Appellants next argue the ordinance is an impermissible prior restraint on protected First Amendment speech because it prohibits the screening of nonobscene films (*i. e.*, protected speech) outside the designated zones.

As pointed out above, appellants make no showing that the market for distribution and exhibition of these films is in fact restrained under the ordinance. ~~There was testimony at trial that adult movie theaters would easily be able to find a location in the designated zones. Furthermore, although potential viewers would be able to see the films only in those downtown areas, there is no evidence that this places any burden on the adult movie market.~~

Under these circumstances, where there is no restraining effect on the market, and no substantial deterrent effect on individual rights of free speech, the City's most important interest in regulating use of its property for commercial purposes is clearly sufficient to justify the zoning regulation here. **We conclude the zoning regulation of location of adult movie theaters is a reasonable regulation of place for First Amendment speech which does not violate First Amendment freedoms.** See *Young*, 427 U.S. at page 63, 96 S.Ct. 2440. The different treatment accorded adult movie theaters as distinguished from other types of movie theaters is a different issue, which we discuss next.

speech, no presumption of unconstitutionality is raised. Appellants' argument the ordinance is presumptively invalid must therefore be rejected. Nor must the City choose the least restrictive alternative available to accomplish its purpose, as alleged by appellants, since there is no substantial burden on free speech.

6. Four of the justices in *Young* reasoned that society has less interest in protecting sexually

C. Classification based on Content

[7] The final objection made to the constitutionality of the zoning scheme is that it classifies theaters on the basis of the content of the films shown, and treats adult movie theaters differently from other theaters showing films protected by the First Amendment. This, appellants claim, violates both the First Amendment and equal protection guarantees.

The United States Supreme Court, considering this argument in *Young*, departed from traditional First Amendment jurisprudence and upheld both the classification of films based on sexually explicit content and the different treatment accorded the theaters showing them. The majority in *Young* did not reach agreement on a rationale for this result, but two elements appear to have been dispositive. We find those elements present here, and are persuaded the Seattle scheme does not deny or infringe on the rights of free speech and equal protection.

The first element is that the ordinance has only a slight and neutral effect on protected speech. No real restraint or deterrent effect is evident. The ordinance regulates only the place where these films can be shown. It demonstrates a reasonable decision that the public welfare is best served by having this particular type of speech take place only in certain areas of the community. The ordinance thus remains neutral regarding the content of the films—it neither approves nor disapproves of that content, and neither promotes nor inhibits exhibition of the films.⁶

The second element is the City's great interest in protecting and preserving the quality of its neighborhoods through effective land-use planning. The record demon-

explicit expression than other types of protected speech. This reasoning is not essential to the result reached, and we do not adopt it as the basis for the result reached here. We note, moreover, that our decision is confined in its effect to regulation by zoning of sexually explicit speech in films under the particular circumstances of this case.

strates the City's sincere and sustained effort to enhance and improve the quality of life in Seattle. Zoning is an extremely important tool for achieving land-use goals in a municipality. See *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974). Thus, "the City's interest in attempting to preserve the quality of urban life is one that must be accorded high respect." *Young, supra*, 427 U.S. at 71, 96 S.Ct. at 2453.

We emphasize that the purpose of the ordinance is not to regulate the content of speech. Contrary to the assertions of the appellants, the ordinance is not a disguised form of censorship. The record is replete with testimony regarding the effects of adult movie theater locations on residential neighborhoods. The evidence is more than adequate to support the finding below that the goal of the ordinance is to preserve the character and quality of residential life in the City.

[8] The choice of methods for locating adult movie theaters, that is to concentrate them in the business areas of the City rather than disperse them (as did the Detroit ordinance), is not of constitutional significance. The City's planning effort must be accorded a sufficient degree of flexibility for experimentation and innovation. *Young, supra* at 71, 73, 96 S.Ct. 2440. We cannot substitute our judgment of what would be the most effective method of regulation in this regard. It should also be noted that the majority in *Young* specifically approved the concentration method. *Young, supra* at 62, 71, 96 S.Ct. 2440.

[9] Nor do we find it significant that the Detroit ordinance upheld in *Young* had a provision allowing waiver of the ordinance restriction while the Seattle ordinance does not. Our conclusion that the City may regulate the location of adult movie theaters is not dependent in any way on the existence of possible waiver for ex-

isting theater locations. The Detroit waiver provision likewise played no part in the reasoning of the majority in *Young*. Nor is there any showing the appellants are constitutionally entitled to exemptions from the zoning restriction in this particular case. Appellants therefore fail to show any constitutional deficiency in this regard.

We conclude the City's paramount interest in protecting, preserving, and improving the character and quality of its residential neighborhoods is sufficient to justify this nondiscriminatory zoning regulation of the location of adult movie theaters. We find no violation of First Amendment or equal protection guarantees.

We therefore turn to the final issue presented, the constitutionality of the provision for termination of nonconforming uses within 90 days.

II

Appellants contend the 90-day termination provision denies them equal protection in that no other nonconforming use must be terminated in such a short period, and denies them due process by creating an economic hardship outweighing the public benefit to be gained by termination.

[10] With regard to the equal protection argument, appellants fail to show they are similarly situated with other nonconforming users. This is particularly evident because the calculation of a reasonable termination period, as discussed below, depends on the facts and circumstances of the particular case. Since each case must be determined on its own merits, the equal protection analysis does not apply.

[11] In *Seattle v. Martin*, 54 Wash.2d 541, 342 P.2d 602 (1959) this court recognized the power of a municipality to require termination of nonconforming uses within a reasonable period of time. We adopted a balancing test to determine the reasonable-

2268, 45 L.Ed.2d 125 (1975). We recognize, however, that the particular needs of children are a significant element in determining the quality of urban residential neighborhoods.

7. The City also asserts an interest in protecting children as a justification for the ordinance. This interest alone will not support a classification based on the content of speech. *Erznoznik v. Jacksonville*, 422 U.S. 205, 213, 95 S.Ct.

ness of the termination period, that is, whether the harm or hardship to the user outweighs the benefit to the public to be gained from termination of the use. *Seattle v. Martin, supra* at 544, 342 P.2d 602. As pointed out above, this test is applied on a case-by-case basis, looking to the circumstances of each nonconforming user. Applying this test to each of the appellants here, we conclude the 90-day termination period is not unreasonable and does not deny appellants due process of law.

Northend Cinema, Inc. has the license to operate the Northend Theater. The evidence at trial showed the owner and lessor of the building is an officer of the corporation.

~~_____ benefit to be gained by termination of these uses within 90 days outweighs the harm to the neighborhood of City and neighborhood as a result of productive land-use planning.~~
 This benefit is well supported by the record.
 We conclude the benefit to the public through termination of these uses within 90 days outweighs the harm appellants will sustain thereby. The termination period is reasonable, and appellants have suffered no violation of due process.
 We are mindful that this ordinance was passed in 1976. A temporary injunction against enforcement of the zoning restrictions pending this appeal has allowed appellants to continue normal business operations in the intervening months. Much more than 90 days' time has elapsed. Appellants have therefore had more than ample time to prepare for the contingency of having to terminate their present adult movie theater use.
 The temporary injunction is dissolved and the judgment below is affirmed.
 WRIGHT, C. J., ROSELLINI, STAFFORD, UTTER, BRACHTENBACH, DOLLIVER and HICKS, JJ., and PRICE, J. pro tem., concur.

parties. Therefore, Northend is not bound by any lease obligation to remain at its present location. Nor is it bound by its lease or its license to show adult films as opposed to any other type of film. Furthermore, whatever costs it has expended for improvements to the building or necessary equipment have either been completely recovered through depreciation or were contemplated to be left as property of the lessor.

Gaiety Theaters, Inc., operator of the Ridgmont Theater, is similarly situated. Its lease is the individual obligation of its president, and does not bind the corporation to remain at its present location. It is not bound by its lease or its license to show adult films. Furthermore, it has expended no funds on physical improvements.

Apple Theater, Inc., is the lessee and operator of the Apple Theater. Apple entered into a new 3-year lease just prior to adoption of the ordinance, and while public hearings were being held on the proposal. It is not obligated by its lease, or by its license, to show adult films. Furthermore, all costs it has expended in improvements to the building or necessary equipment have either been recovered through depreciation or were contemplated to be left as property of the lessor.

In the face of these facts, the court below found appellants had not come forward with any clear evidence of economic harm. The main thrust of their objection, that simply having to move to another location or show a different type of film is substantial economic harm, is unsupported by any clear evidence. The court had a right to conclude that appellants' allegations they will suffer economic harm were speculative at best. The record thus supports the finding of the court below that Northend and Gaiety will incur no economic damage, and Apple will incur no clear economic damage, by enforcement of the ordinance.

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 This benefit is well supported by the record.
 We conclude the benefit to the public through termination of these uses within 90 days outweighs the harm appellants will sustain thereby. The termination period is reasonable, and appellants have suffered no violation of due process.
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 WRIGHT, C. J., ROSELLINI, STAFFORD, UTTER, BRACHTENBACH, DOLLIVER and HICKS, JJ., and PRICE, J. pro tem., concur.



**DES MOINES
ADULT USE STUDY**

AUGUST 1984

**Robert W. Thorpe, AICP
R. W. Thorpe & Associates, Inc.
Seattle / Anchorage**

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R.W. Thorpe & Associates
Planning • Environmental Analysis • Economics

August 1984

Associates:
Deborah Krouse, APA
Kathryn Figon, ASLA

Mr. Stan McNutt
City Manager
City of Des Moines
21630 11th Avenue South
Des Moines, WA 98188

RE: Independent Planning Consulting Report on Adult Uses in the City of
Des Moines, WA

Dear Mr. McNutt:

SUMMARY OF FINDINGS:

At your request, we conducted an independent study for recommendations to the City Council concerning policy directions to be undertaken by the Council relative to adult uses within the City. As you and the Council are aware from our previous efforts on the Revitalization Study, we are familiar with the community, the citizens and the character of its business district.

Our study set forth to look at adult uses and consider the following elements:

1. Zoning Study
2. Land Use Impacts
3. Impacts on the Revitalization Plan

In order to do this we set forth the methodology with steps including the following elements:

1. Reobservation of current land uses within Des Moines, with particular attention to the Revitalization Area, existing land uses and the potential for additional adult uses within the Revitalization area.
2. Review of studies, reports, and technical documents on adult uses by various communities, professional organizations such as the American Planning Association, Trial Lawyers Association, City Manager's Association, etc.
3. Court cases and case studies on other communities experiences in providing areas for this use within their community while controlling the impacts on certain elements of the citizenry, particularly children.
4. Discussion with other city officials who have been involved in the reviews of this type of use within their communities.
5. A review of the record of the hearings by the City Council on this matter in Des Moines.
6. Site visits of areas that have adult theaters, bookstores, and similar uses in other suburban communities in Western Washington as well as downtown Seattle.

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Our efforts were concentrated in May-July to review these items listed above. However, it is complemented by my 8 years of occupying office space at 3rd & University in Seattle, whereby I have observed land use impacts of adult types uses on 1st, 2nd and 3rd Avenues near my office. I also have observed the impact on adjacent land uses, signage, street treatment, and the general character of the urban area. This effort was supplemented by a review of locations such as Bremerton, Redmond, Renton, Northend Seattle, Aberdeen, etc., to ascertain the general character of land uses and the economic impacts of adult entertainment in any given area of a community. Following further work efforts, a detailed report shall be provided the Council in the near future.

However, some of the conclusions and observations may be appropriate. They are as follows:

1. There appears to be a definite impact on adjacent uses by adult uses in the Revitalization Area of Des Moines.
2. In terms of Number 1, there are, in my opinion, identifiable impacts on the intent, goals and long term objectives of the Des Moines Revitalization Plan. Adult uses are acting at largely counter purposes to the objectives of the plan.
3. In other communities, there has been an impact on adjacent land uses do to either a single adult use or a concentration of these uses. The impacts occur on adjacent properties, reflected in deferred maintenance, character of the area, turnover of rental properties, etc.
4. A review of the cases such as those involving the cities of Detroit, Boston, New Orleans, Los Angeles and other cities, from a laymens viewpoint, indicates that a number of communities have approached methods for addressing adult uses through the zoning code, or through other methods such as licensing. Some communities have tried to respond to the need to provide for some locations to respond to the real or perceived demand for this type of use while controlling it, eliminating its exposure to areas that have children, such as parks, schools, residences and other community activity areas, appears to be the most consistent approach.
5. The standards utilized in dispersal of this type of activity by other communities appears to be an appropriate one and more successful than a concentration approach which appears more appropriate for a highly concentrated urbanized area, if at all. However, the distance standard, be it 500 ft., 1000 ft., 1500 ft., 2000 ft., or whatever, is a policy that appropriately rests with the legislative body of the City of Des Moines. However, some communities are moving towards a 1500 feet standard and it may be just as appropriate as 1000 feet or any other standard.
6. It appears that the dispersal method eliminating two adult uses in any location, with a minimum distance between is the most effective and widely used method of providing some zoning control of these uses.
7. That the area most appropriate in the City of Des Moines for these uses is not the Revitalization area (the business district) which is surrounded in close proximity by schools, residential areas, parks,



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playfields, etc., but rather Highway 99. This observation is supported not only for the reason of limited access by children, but conversely for more easy access by potential users of these facilities from a state designated highway.

8. It should be noted that this study is limited in its scope to those work items listed above. There was no review of economic data, vacancy rates, etc., of the area visited for an analysis of the impact, but rather just utilizing a real estate appraisers techniques¹ to observe functional obsolescence, deferred maintenance, etc., in area immediately adjacent to the study areas.
9. And the study's observations and conclusions are not based on moral or obscenity issues, that is they are specifically excluded from consideration, but rather the study focuses on impacts of land use, economic or urban design nature related to public health, safety and welfare.

Respectfully submitted,

Robert W. Thorpe, AICP

RWT:mc

enclosure

¹Writer is Institute of Real Estate Appraisers (MAI) Candidate.

RECOMMENDATIONS
CITY OF DES MOINES ADULT USE
ZONING ANALYSIS

The following study is a review of available literature and analysis of the impact on sites in similar communities throughout Washington and impacts on the Des Moines Central Business District as well as a review of various approaches in other communities. The review of over 600 pages of reference material studies, court cases and transcription of public testimony leads one to the conclusion that adult businesses are both by their actual impact and their perception, distinguishable from other businesses in terms of their land use impacts. They are further distinguished in terms of the character of the product, and the service they are providing. This fact is pointed out through detailed analysis in similar studies by various communities in State of Washington in which this report is largely based, as well as first hand observations. Adult uses may have adverse impacts on surrounding land uses, business turnover, deferred maintenance, quality of environment, and perception of the desire of people to frequent that area.

Various approaches have been utilized by a number of communities throughout the State of Washington as well as throughout the country in cities such as Detroit, New York, New Orleans, Denver, Seattle, etc. Although the experience is mixed in cities nationwide and throughout Washington, zoning has been utilized as one tool in containing, controlling or directing the various impacts which adult uses may have, on a community's viability, its opportunity for revitalization and the quality of lifestyle.

This study is an overview analysis of the regulation of adult uses in the City of Des Moines and their impact on revitalization efforts that are ongoing in the City. The study includes a review of literature and a look at six or more sites in the State of Washington for the impact of adult businesses. It reviews, in brief summary, the impact of ordinances in other communities, zoning alternatives for mitigating the adverse impacts and sets the ground work for analysis by the City Attorney as to adult use law and legal guidelines.

The goals and purposes of the Des Moines CBD Revitalization have been well documented through the Phase I and Phase II Study and completed in 1983 by R.W. Thorpe & Associates, Mundy/Jarvis, the TRANSPO Group, and the Makers with close cooperation of the entire city and business district tenants/owners. The goals and policies of the community are further identified in various planning documents such as the Comprehensive Plan, Shorelines Master Program, Park and Recreation Plan, and other statements of general community intent, direction and purpose. Through the use of Subdivision Ordinances, Capital Improvements Program, and Zoning Codes, these Comprehensive Plan and revitalization studies are implemented. It appears appropriate that some of the adverse land use impacts of adult uses are appropriately addressed through city policies, zoning code requirements, design review and adult use permit approval procedures. It may be summarized that some various approaches may be appropriate for the City Council in its future deliberations on this matter. Some of the alternatives or options may include:

Option

Do-nothing. Maintain existing review of adult uses under Ordinance 464.

Option 2

Allow adult uses to continue or expand in the Revitalization Area along Marine View Drive, and on Highway 99 in commercial zones, which are separated from other uses.

Alternative 3

Allow adult uses only in along Highway 99 where there is a minimum distance setback from residential, religious, educational and recreational environments.

Option 4

Limit adult uses to commercial zones provided that they have a conditional use permit.

Although prohibition of all adult uses altogether, may be perceived by some as an option, the experience of review of all of the literature,

ordinances, court cases and experiences, is that this is not a viable alternative and that some provision needs to be made for their locating somewhere within the community while protecting the goals and policies of the Comprehensive Plan and certain already well-positioned activities for residential, educational, recreational, religious and other pursuits.

In terms of allowing uses, the question then may become one of two approaches or a modification of the two:

- a. Provide for concentration of the uses or;
- b. Dispersal;
- c. Modified concentration or dispersal.

The conclusions of this report is that Alternative C is more appropriate with a standard set for a minimum distance, say 1000 feet (or some other distance standard) from residential zones, churches, parks, schools, etc. In order for this to be implemented, the City Council would need to direct the Planning staff or the City Attorney to develop regulations for amending the zoning code and codeffication of that amendment to the City ordinances. Also, goals and objectives would need to be part of the ordinance and it would be necessary to include the following:

1. A definite distance for separation of uses.
2. Specific zones where the adult business would be permitted (Note: a specific zone may be established for this type of use).
3. Strict definitions of the types of adult uses be set forth in the Code, with fairly specific terminology and definitions.
4. That clarification as to whether establishments serving alcoholic beverages or providing gambling would be permitted in the same zone.
5. Procedures for rezones, conditional use permits or special permits be identified.

INTRODUCTION

The Purpose and Scope of Adult Use Zoning Study.

For the past several years there has been lengthy discussions within the City of Des Moines as to the merits or demerit of inclusion of adult uses within the City of Des Moines. This was particularly brought to light during the recent Revitalization Study where the impacts of these uses were identified and considered as part of the goals and objectives with improving and revitalizing Des Moines Central Business District. In order to review this type of use, the City has set forth certain procedures whereby the review of these uses shall be by an established procedure and public testimony as taken as to their value to the community. Further, the City has requested that a consulting planner, R.W. Thorpe & Associates, Inc., review existing literature, the record of hearings before the City of Des Moines, visit sites of various other adult uses, and provide a summary report as the impact of adult uses on those communities. The Study, as with other communities, past and on-going study efforts establishes that the impact of adult uses is both actual in terms of the impact on adjacent uses and the community, as well as perceived. The focus of this Study is to identify those impacts by site visits, explore how other communities have provided for areas to respond to the demand for this type of use, while at the same time, protecting the health, safety, general welfare of the community and specific land uses devoted to residential, recreational, education and religious purposes. The City of Des Moines has been endeavoring to evaluate its current zoning regulations as to differentiate the adult uses from general business activities.

The purpose of this analysis, the report to the City Council as authorized by the City Manager at the direction of the Des Moines City Council to determine if the testimony being received by the City could be supplemented or complemented by a special study by a consultant planner with appraisal background to ascertain the impact on the Central Business District Revitalization Study, residential neighborhoods, religious uses, and recreational facilities in the community in general. If these effects can be identified, the City may be able to utilize an analysis of those impacts as well as the experience of other communities to devise methods to

offset the adverse land use impacts through regulatory changes. One of the methods utilized is that other alternate zoning approaches of other communities will be considered in their broad range where their potential application to the Kent community.

The scope of the study focuses largely on adult motion picture theaters, and adult bookstores. However, because of the nature of the activities in the Des Moines environment, particularly along Highway 99, north of the city, the study also includes a cursory look at adult motels, massage parlors, body painting studios, "head shops" and other similar uses. The writer in reviewing other reports, particularly the Kent Adult Use Study, has chosen to exclude places where alcoholic beverages are served and gambling establishments.

Although a portion of the testimony given to the City of Des Moines centers on a perception of whether adult entertainment is distasteful, immoral, unethical, or disruptive, it is not within the scope of this study to evaluate adult uses based upon moral or pornographic terms. Clearly this should be left to the advice of the City attorney and the courts. The focus of this study is land use impacts associated with adult uses, not matters of personal discretion and taste or that of one individual choices of services or goods obtained.

In sum, the purpose of this study is to see if these uses can be located where their impact, or be minimal to other elements of the community and further that their impacts of the specific sites can be mitigated through zoning regulations or conditional use approval processes.

REVIEW OF LITERATURE AND ORDINANCES

In order to prepare for this summary report the author has reviewed over 600 pages of documents, transcripts that I have conducted as a basis for public input at the City Council meeting, ordinances, and conducted six "adult uses" site visits. This report is a summary of the writer's observations and conclusions and is written with the intent that the background data is available for public testimony or research information for ordinance writing. The review includes a review of several documents listed in the reference list at the end of this report. A brief review of the State laws, the local laws, information available from American Society of Planning Officials, Presidential Commission on Obscenity and Pornography, Land Use Law, Digest, and ordinances from several cities in the State of Washington as well as review of State and Washington community laws.

State Law

Based on our review of several local ordinances, their citations indicate that regulation of adult businesses through zoning or businesses license is part of the local police power. The federal and state laws address adult publications and films but are not specific in terms of administration of the location of adult businesses. RCW 9.68.050 sets forth requirements for books and films to be labeled as "adults only" attempting to limit the exposure to minors. The definitional section under this is as follows:

"Being patently offensive, upfronting contemporary community standards, appealing to the prudent interests of minors and sex and are utterly without redeeming social value."

Thus, persons under the age of 18 are attempted not be exposed to explicit films and publications. State Law also provides for review of massage parlors, under RCW 18.108 and topless dancing under the Washington Criminal Code RCW Title 9A. Massage parlors prohibit minors working in such activities and topless dancing and nude entertainment cover such illegal

acts such as prostitution, indecent liberties, or public indecency.

Washington State Communities Laws

A review of approximately 8 regulations within the State of Washington shows that various approaches are used in regulating. The primary one appears to be the zoning approach whereby the businesses are 1) concentrated, 2) dispersed or 3) in a modified dispersal pattern at specific areas designated on a zoning map. In addition, several communities have used licensing requirements, conditional use permits, or general welfare provisions to regulate these matters. In summary, it appears that most communities have taken slightly different directions based upon public testimony, their advice of their City Attorney, and Planning staffs recommendations as to the regulation of adult uses and their location.

Most of the adult use ordinances have been adopted in the last eight to ten years following public response and demonstration over the inclusion of these land uses in various communities. Noteworthy examples are the North End Cinema in Seattle (Greenwood), the Forbes Theater in Redmond, the Forbes Theater in Renton, and the adult movie theaters in Bremerton and Aberdeen. However, each communities zoning regulations differ somewhat and those in Washington differ from national examples of Boston, New Orleans, Detroit, etc. Seattle follows the Boston example of concentrating adult uses throughout the commercial areas of downtown. The City of Redmond has utilized an approach based upon the combinations of the court cases from Detroit and Boston which sets up specific distance requirements in designated commercial areas. The City of Renton is following a similar pattern in their ongoing court action with Forbes Theaters, use of the Roxy Theater in downtown Renton.

Two key examples are Boston, which concentrates adult businesses in a small zoning district located in the commercial core, and conversely, Detroit. The latter allows adult uses in designated commercial zones as long as a 1000 ft. distance between each individual use is maintained.

The North End Cinema - City of Seattle (Wa 585 p.2d 1153) case provides

some guidelines for zoning standards and the regulation of the adult theaters. The Supreme Court of Washington in October of 1978 set forth the following points:

1. "That the ordinance was fully adequate to give operators notice of regular use and they had no standing to challenge for vagueness;
2. The operators had no standing to assert the First Amendment rights of others so as to challenge the ordinance for facial overbreadth;
3. The theaters failed to establish that the ordinance was impermissible prior restraint on protected First Amendment speech. In view of the finding, the ordinance did not have any significant deterrent effect on exhibit or viewing of such films; the city's most important interest in regulating use of its property for commercial purposes was sufficient to justify such zoning regulation;
4. There was reasonable classification, not violative of equal protection by the ordinance; and
5. The ordinance was reasonable, not denying due process law, insofar as determinating all non-conforming uses within 90 days, in view of the fact that the theaters were not bound to show adult films, as opposed to any other types of films, it did not come forth with any clear evidence of any economic harm."

The City of Blaine, Washington includes in its ordinance adult bookstores, adult motion theaters, adult mini-motion picture theaters, and shoeshine parlors, and sets forth the standard of minimum distance of 1000 ft., between each use and 500 ft., from any residential dwelling or rooming unit.

The City of Kirkland sets up a specific zone by an overlay district and performance standards can be reviewed in a public hearing process. First the property owner must apply for a rezone to place an "AE" designation on the zoning map for the subject property. This requires a public hearing

before the Planning Commission and final action by the City Council. Requests must correspond to one of the City's commercial zones. The City of Kirkland utilizes a standard of 1500 ft., away from the school, park, or other establishments which caters primarily to minors. It can be proven only if the City Council has the final action taken before them. This approach places the burden of application and proof on the individual proponent and provides protection for those places where young people congregate such as schools, parks, and youth clubs.

The City of New Orleans utilizes a historic landmark district and ascertains the impact on adjacent uses and the character of the area, particularly as it applies to the French Quarter in New Orleans which has a specific planned area with special development standards as does the Revitalization Area in Des Moines.

It appears that the City of Des Moines zoning policies are being prepared to differentiate adult uses from similar business establishments and activities. That is, an adult movie theater would be distinguished from simply a movie theater as far as existing zoning regulations are permitted. This would be a step away from allowing adult bookstores to be treated as general bookstores and, adult movie theaters as movie theaters as far as the Zoning Code is concerned.

This type of adult use is concentrated on Des Moines Way in the adult movie theater and the adult movie bookstore, and in the past some small shops selling materials that may be utilized in some people's viewpoint as drug paraphernalia. The other area that appears that this use might occur is along Highway 99.

SITE VISITATIONS TO OTHER AREAS
TO VISUALLY ASSESS THE IMPACT OF THE
INCLUSION OF ADULT USES IN OTHER COMMUNITIES

1. North Seattle.

A review of the record of testimony by individuals involved in the North End Cinema indicated that the property owners sited noise, late hour use, vandalism, increased crime, and other factors in their concern about the nuisance element of this theater. Since the removal of this theater, the intent to preserve the quality of the neighborhood through effective land use planning appears to have been achieved. Discussions with City of Seattle staff indicate that no complaints of the nature previously received have occurred within the area of this theater.

2. Seattle: First Avenue and 3rd Avenue & Union Sites - Adult Cinemas.

Most of these uses are concentrated in approximately a six square block area between Seneca Street on the South and Pike Street on the North, and between 1st and 3rd Avenues in downtown Seattle. At the time of this report, there were discussions to revise the 3rd Avenue Cinema to remove the adult pictures and revise this into "legitimate theater" and restaurant use. Conversations with Carma Developers concerning their use and other developers along 1st Avenue (at Union) indicated that the number of those uses would be phased out as those buildings were rehabilitated. The general observation of these buildings is that these buildings and their uses create deferred maintenance, functional obsolescence and some general decline in upkeep and visual appearance of the existing buildings and adjacent uses.

A discussion with a Seattle police officer assigned to this area indicated that the highest incidents of crime (evening hours) in Seattle occur on 1st and 2nd Avenues in this area, particularly among teenagers.

Some associated decline in contributory value may be able to be ascertained by a review of rents of these facilities. These Seattle

areas are frequented by heavy foot traffic due to the desire of people to go from the office areas of 3rd through 6th Avenues to the Pike Place Market and the Waterfront, therefore people pass through these areas. However, people passing through do not appear to be those frequenting the establishments. The image of these streets is far different in the minds of people of Seattle than that of 4th, 5th and 6th Avenues in terms of cleanliness, quality of shops, safety and economic return for these types of uses in the building.

3. Renton.

Renton has two theaters located across the street from each other on 4th Avenue in the downtown area -- the Renton and the Roxy. One theater was converted to an adult theater use. Litigation by the City against Robert Forbes for the use of this theater for adult movies is pending at the time of this report. Contact with Dave Clemons, Policy Planning Director and Roger Blaylock, provided a review of the history of the development with Renton's Ordinance and their legal argument. This information has been available to the Des Moines City Attorney. Renton is attempting to utilize a modified diversion method to locate theaters away from schools, housing and recreational areas. This subject theater is located approximately 3 1/2 blocks from the Renton High School, 3 blocks from the Catholic grade school, and is close to several parks. The City of Renton is attempting to base their case upon their new ordinance for dispersion of use, minimum setbacks from schools and residents and establishing a standard abatement schedule time period.

4. Bremerton.

This theater located on Calisan Street, in the Charleston area of Bremerton outside of the Central Business District, has, due to the adult theater nature, encouraged adult bookstores and similar uses on the west side of the block in the area. The east side is occupied by two strong neighborhood "anchor" tenants, an appliance store and a shoe store. There is a marked difference in the maintenance and general character of the two sides of the street. At the time of the writing of this report, there was some understanding by City officials that this theater would be converted to non-adult theater, family motion picture use.

5. Aberdeen.

Discussions with the City Planner reviewed the history of their attempts to remove an adult theater use from downtown Aberdeen. The City Planner cited increased instance of crime, negative impact on adjacent land uses, increases vacancy in adjacent shops and that the use was counter to the general purposes and objectives of the comprehensive plan in their reasons for seeking abatement of that use.

6. Redmond.

This site like Renton was in the process of being reviewed by the City. Discussions with members of the City Planning Staff indicate that problems similar to the North End Cinema were cited related to crime, late night disturbances, and impact on adjacent uses in terms of desirability of tenants to remain in the area.

7. Adult Uses in Des Moines.

The primary adult use in Des Moines is the adult theater on Marine View Drive, (and previously a "Head Shop") in the heart of the Des Moines revitalization district. Review of the public testimony indicates that a significant percentage of the community reduces their shopping trips to the business district area to avoid these uses. Due to the turnover in shops adjacent to these uses in the same block, some difficulty was encountered by the consultants on the Revitalization Study as to the future use of this block. The uses not only provide a perceptual problem with people desiring to shop in the area, they provide somewhat of a "deadhand" in the planning process for the upgrading of this area and the revitalization of the Des Moines Business District.

The police record provides a review of various other adult type uses such as the selling of drug paraphernalia, at a "head shop" and other historic uses in both the Business District area and along Highway 99 that have provided complaints and requirements for increased police activity.

IMPACTS

Based upon my review of the literature from various communities and visual observations of several other sites, as well as an in-depth understanding of the Des Moines Business District through the Revitalization Study, some overview summary comments as a basis for public testimony can be set forth here as to the special impacts of adult uses. In order for the City Council to better plan for the regulation and location of adult uses, these special impacts provide certain insights. Although only part of the data is taken from the City of Des Moines, the majority of the information comes from other communities in Western Washington that provides some basis for policy direction by the City of Des Moines.

1. Crime.

The City of Kent Adult Use Zoning Study has a thorough discussion of the incidence of crime in several other communities and is a good reference for the City Council in their review.

2. Land Uses.

The writer of this report is a certified planner (AICP) with educational and work experience in the real estate appraisal field, and presently is a candidate for the MAI appraisal designation. Utilizing this combined background in my visits to various other sites, some general observations concerning land use, social impacts and land economics can be made of most of the sites. There appears to be a definite impact on adjacent land uses, the turnover of tenants, deferred maintenance, functional obsolescence, maintenance of access areas such as streets and parking lots surrounding these uses. The improvement or decline of business areas or neighborhoods has been well documented in many planning studies as having both physical and "perceived" elements. That is, if people perceive an area as improving, they may work to invest money and improve the overall area. That is, a strong new anchor tenant that comes in and improves a key piece of property encourages other owners and tenants to do the same. Conversely, a tenant that in other peoples perception is creating a

decline in property values or "image", contributes to their management decisions to defer maintenance, defer upgrading of buildings and put less emphasis on that piece of property as an investment part of their portfolio. This secondary impact appears to be occurring in several communities where this type of location has occurred. Noteworthy are Bremerton, Seattle, and Aberdeen. Some small impact appears to be occurring in Des Moines in a similar vein.

3. Economic Impact.

There appears to be some increased turnover in tenants adjacent and near these uses. And further, a location of similar type of uses in the area. My discussion with some seven real estate appraisers leads to some different conclusions that that of the survey of the City of Kent. The appraisers perception of various communities of which they are located, (Renton, Bremerton, Seattle, Redmond) indicates that they feel that this type of use when included next door to other healthy businesses may result in a reduction of property values and/or rental income stream. Most appraisers felt that there is a negative impact on residential property values as well as an impact on business property values. Several felt that the change in key anchor tenants on 3rd, 2nd and 1st Avenues in downtown Seattle would possibly induce these areas to upgrade and provide stronger office use on upper floors and comparison shopping on retail floors that had street access. Therefore, my discussions and interviews arrived at a slightly different conclusion that that of the Kent Land Use Study.

4. Community Impact.

The proliferation of adult uses has occurred in the Puget Sound area in the last six to ten years. City staffs, Planning Commissions, and City Councils have been wrestling with zoning and comprehensive planning approaches to address these uses and the perceptions of residences as to their impacts. A number of communities have reviewed these matters and there is on-going discussions by the association of suburban mayors, city attorneys, city planners and other groups.

The general consensus appears to be that adult uses are incompatible with residential, religious, educational and recreational uses where minors may meet collectively. As cited in several other studies, and in particular in the Kent study, the Greenwood area at 85th Avenue, N.E., was impacted in 1975 and 1976 when a local theater began showing x-rated films. The record shows that the residents discussed crime, traffic, and undesirable patrons, litter, maintenance and potential impact on small shops, businesses and residences in the area. In response to this outcry, the City of Seattle Council adopted an ordinance that provided for concentration of these uses in downtown Seattle area and not in outlying neighborhoods, and set an abatement schedule. The owner sued the City and through a series of court appeals, from the Superior Court to the Court of Appeals, and finally to the Supreme Court of Washington in 1978, the City was able to demonstrate by a well documented public record that the adult theater had a harmful effect on the Greenwood area business district, religious areas, residential and recreational areas. The Washington State Supreme Court agreed that the goal of preserving the quality of residential neighborhoods including their supporting business districts by prohibiting disruptive of adult uses, was a valid and substantial public interest.

5. Compatibility with Other Uses.

Much of the public testimony comes from church organizations and recreational proponents and residents. It appears that these three user groups have testified as to the incompatibility of adult uses with residences, schools, churches and park areas. Residents of the area testified as to the adverse affects of such uses on family orientation of the neighborhood. These findings were made part of the court record in the Greenwood case and helped form the basis for a decision in favor of the City. A similar line of testimony appears in the Des Moines transcripts.

APPROACHES

As previously cited, several examples have been utilized. Seattle concentrates adult uses as does Boston. Redmond and Renton have used a modified dispersal approach. Detroit utilizes a dispersal approach. Kent is considering a modified dispersal approach. Blaine utilizes a dispersal approach, and Aberdeen, a concentration approach. Although there is no precise standard that applies to every city, in each city's approach must be based upon the City Council's and Planning Commission's perception of the community's desires, it must be based on a clear public record on the impacts of these uses and not be based on moral or personal preference grounds. A combination of licensing, special permits and zoning practices to mitigate impacts appears appropriate.

As noted in other cities, studies such as Renton, Redmond, Seattle and Kent, there appear to be four generalized approaches to land use regulations which are in common use:

1. Dispersal ordinances; (zoning)
2. Concentration ordinances; (zoning)
3. Modified dispersal concentration ordinances and; (zoning)
4. Special ordinances including licensing and special use permit approaches. (zoning and licensing)

These approaches have been discussed previously but are summarized briefly below:

1. Dispersal Ordinances.

Seeks to spread adult uses throughout the city as opposed to concentrating the minimum standards of 1000 to 1500 feet have been utilized in various communities. It does not appear that anyone other than Blaine is utilizing a total dispersion type approach. Kirkland is using a modified dispersion approach with a special use permit and rezone approach.

2. Concentration Approaches.

These seek to cluster or concentrate adult uses in certain uses and similar to the Boston approach. The idea here is that by confining impacts to small areas, this insulates the balance of the community. The City of Seattle utilizes this approach as well as the City of Lynnwood. In terms of the City of Des Moines, this concentration approach that if the theater was located on Highway 99 might be more appropriate than the present situation.

3. Modified Dispersion Concentration Approaches.

Most communities utilize one of these approaches. According to several sources and by review of the court activities, the courts in the State of Washington have allowed a variety of regulatory approaches as long as the regulations are valid. The City of Tukwila and Renton have similar ordinances that employ a modified dispersion approach of adult theaters. The City of Redmond followed their suit in 1982 of modified dispersion in certain commercial districts.

4. Special Approaches.

The City of Kirkland is an example of the special approach which appears to me to be one of the best examples of any community. The City Planning staff has had a long history of developing overlay zones for waterfront districts, sensitive areas, and special use districts which have been implemented by Planning Commission, City Council action. Therefore, their comprehensive plan and implementing legislation provides a strong basis to establish a special zone for adult uses and provide for a rezone and special permit process and clear showing of burden on the applicant.

RECOMMENDATION

From my review of all of the readings, several planning criteria were established in the Kent Study which may be appropriate for the City of Des Moines. These criteria could be developed by the Planning staff, with the assistance of this consultant as a basis for adopting one of the approaches cited in the previous chapter.

I would recommend that the City of Kirkland's approach appears to be the most viable one for the City of Des Moines. The City of Des Moines has established a Special District, that is the CBD Revitalization District. Within this District special zones and uses are set up. An additional zone could be established for this type of use or established for the Highway 99 area. This combined with the "dispersal method" or "modified dispersal method" would provide for location of these uses in certain areas. These sites would need to be 800 to 1000 feet² from residences, schools, playgrounds and/or churches. It would further regulate them by providing a requirement for a rezone for this type of use and conditional use permit with the burden of proof being upon the applicant. This would be an expansion of the present licensing proces that the City now utilizes.

²Note: Report revised in February 1985 to reflect findings of "Cocentric rings/zoning map" study by Des Moines Planning Staff that establishes areas available in the City for Adult uses if different standards (ie: 1500, 1200, 1000, 800, are utilized).

Recommended Steps

1. Review planning staffs zoning map with minimum distance standards available. Establish modified dispersal method.
2. Establish an "AE" - Adult Entertainment Zone.
3. Permit adult use in this zone upon approval of:
 - a. Rezone
 - b. Site plan/conditional use permit approval
 - c. License for adult entertainment business use
 - d. Clear showing of "burden of proof" by applicant that there is a demand for use, the impacts of the use and that these impacts can be reasonably controlled and/or mitigated.
4. Establish procedures for:
 - a. Application/Staff recommendation permit fees
 - b. Planning Commission review
 - c. Final action by City Council

MEMORANDUM

To: City Manager
City Attorney

June 10, 1985

From: Planning Director (PD)

Re: Adult Theater Overlay Map

As requested, the adult theater overlay series has been completed. The objective has been to illustrate where, along Pacific Highway South, adult theaters could situate given a requirement to maintain a distance from churches; schools, through high school; day care centers; libraries; public parks and other adult uses. Two radii were employed:

1. 500 feet (Overlay 2), and
2. 1000 feet (Overlay 3).

By plotting where commercial properties are developed, suitable for redevelopment and vacant, then overlaying these with acetate sheets illustrating the variable radii, properties available become more apparent.

Vacant and redevelopable General Commercial zoned properties along Pacific Highway are depicted on Overlay 1. Redevelopable properties were defined as lots presently supporting a business but by virtue of being a non-conforming use, such as a single family residence or mobile home park or upon which a deteriorating structure is located, are candidates for redevelopment in the foreseeable future. This is a broad category embracing lots with no permanent structure where mobile home sales are occurring to mobile home parks which are non-conforming in the C.G. zone and subject to conversion as development pressures mount. The latter's inclusion into the redevelopable classification stems from an assumption that these maps are to denote potential sites for future application as well as portray present conditions. Conversion of existing structures to theater use was not assessed, however, the particular needs of the theater developer could allow an occupied building to be remodeled.

Whether an adult theater can be practically located on Pacific Highway will be a function of the size of the facility desired and accordingly the amount of parking and landscaping required. My intent has not been to provide a market analysis or potential site survey, but rather to provide a guide to the amount of redevelopable and vacant properties on Pacific Highway, presenting information critical to a determination of which radial variable should apply in regulating adult theaters. Even cursory examination of the overlays demonstrate that application of a 1000 foot radius requirement, removes most of the C.G. zoned property. Given a 500 foot radius, several locations become potential theater sites.

More precise figures for the Pacific Highway South commercial zone were developed as a result of mapping activity. Additionally a breakdown of developed, redevelopable and vacant parcels in square footage has been provided as follows:

	<u>Square Feet</u>	<u>Percentage</u>
Vacant	446,156	15.7%
Developed	926,454	32.5%
Redevelopable	1,474,372	51.8%
Total	2,846,932	100.0%

No detailed mapping and calculation was undertaken to provide data on the square footage remaining after application of the variable radii.

Attachments:

Churches with proximity to Pacific Highway South

Schools with proximity to Pacific Highway South

Public Facilities with proximity to Pacific Highway

Adult Use Survey

CHURCHES

(With proximity to Pacific Highway)

Assembly of God
Church of Des Moines
21650 24th Avenue South

Soundview Baptist Church
2045 South 216th Street

Seacoma Community Baptist Church
24800 Pacific Highway South
Kent WA

Midway Covenant Church
22460 24th Avenue South
Des Moines

South Seattle Foursquare Church
2038 South 222nd St.
Des Moines

Christian Faith Center
21024 24th Avenue South
Seattle (unincorporated King County)

Grace Lutheran Church
22956 24th Avenue South
Des Moines

Eternal Temple of Truth & Light
25040 Pacific Highway South
Kent

Marcus Whitman Church
2130 South 248th St
Des Moines

St. Philamena
1815 South 220th Street
Des Moines

St. Columba Episcopal Church
2031 South 216th Street
Des Moines

First Baptist Church of Des Moines
22421 19th Avenue South
Des Moines

PUBLIC FACILITIES

(With proximity to Pacific Highway)

Des Moines Library
22815 24th Avenue South
Des Moines

King County Fire District #26
2238 South 223rd Street
Des Moines

Des Moines Park (Kiddy Park)
24th Avenue South & Kent-Des Moines Road
Des Moines

Parkside Park (King County)
South 242nd Street & 16th Avenue South
Des Moines

Mount Rainier Swimming Pool
22722 19th Avenue South
Des Moines

215640 - 0203: A. J. French Vacant	41,250 sq. ft.
0201: Callow - Printers, etc. Developed	47,700 sq. ft.
0180: Used Mobile Homes - L. B. Properties Redevelopable	60,372 "

S.W. corner of South 224th and SR 99

250060 - 0005: C.G. only Vacant	42,200 "
0012: Vacant	30,000 "
0011: Vacant	11,190 "
0015: Seatac Auto Sales Redevelopable	19,515 "
0018: Seatac Auto Sales Redevelopable	18.950 "

S.W. corner of South 226th and SR 99

250060 - 0025: Furniture House Redevelopable	32,750 "
0020: Burger Kitchen Developed	29,512 "
0040: Burger Kitchen (parking) and vacant	51,280 "
0050: Shepard & Nelson Redevelopable	8,000 "
0051: Single Family Residence Redevelopable	11,800 "
0052: Single Family Residence Redevelopable	8,750 "
0060: Warehouse and Office Redevelopable	34,248 "
0070: Single Family Residence Redevelopable	17,112 "
0072: Duplex and Shop Redevelopable	7,000 "
0071: Offices Redevelopable	11,700 "

215640 - 0268: Mobile Home Sales
American Cable TV
Redevelopable 19,500 sq. ft.

0262: Single family residence
Redevelopable 23,500 "

0269: Mobile Home Sales
Redevelopable 18,174 "

S.E. corner of South 222nd and SR 99

215640 - 0241: Mobile Home Sales
Redevelopable 37,668 "

0242: Single family residence
Redevelopable 28,595 "

0250: Mobile Home Sales - Redevelop. 19,904 "

0220: Legend Motel
Developed 42,521 "

0202: Hearthside Antiques
Redevelopable 24,576 "

0200: Moongate Motel
Developed 22,304 "

0181: Vacant 15,675 "

S.E. corner of South 224th and SR 99

250060 - 0125: Trailer Sales
Redevelopable 24,748 "

0136: Trailer Sales
Redevelopable 16,500 "

0140: Trailer Sales
Redevelopable 24,750 "

0146: Antique Shop
Redevelopable 12,375 "

0151: Antique Shop
Redevelopable 4,125 "

0152: Antique Shop
Redevelopable 15,750 "

0155: Volkswagon Repair
Redevelopable 22,500 "

South of Kent-Des Moines Rd.

S.W. corner of intersection of Kent-Des Moines Road and SR 99

250060 - 0605:	Picture Frame Shop Redevelopable	25,409 sq. ft.
0611:	Single family residence Redevelopable	15,458 "
0612:	Vacant	15,504 "
0615:	Scott's Appliance Repair Redevelopable	45,588 "
0622:	Auto Parts Store Redevelopable	8,568 "
0625:	Shell Station Developed	
0630:	Shell Station Developed	33,000 "
0641:	Warehouse and SF Redevelopable	15,000 " (C.G. only)
0650:	Canopy Mart Redevelopable	15,000 " (C.G. only)
0655:	Canopy Mart Redevelopable	15,000 " (C.G. only)
0660:	Skippers/Baskin Robbins Developed	27,150 "
0665:	Tool Town Redevelopable	30,313 "
0701:	Kentucky Fried Chicken Developed	38,337 "
0705:	Union Oil Co. Developed	16,393 "
360300 - 0024:	Midway Manor Developed	42,300 "
0030:	Recycling Center Redevelopable	25,680 "

MEMORANDUM

July 28, 1985

TO: Planning Director

FROM: Planning Administrative Aide *JCC*

Re: Adult Entertainment Facilities - Available C.G. Zoned Property
Along Pacific Highway South

The following is the amount of General Commercial (C.G.) zoned property along Pacific Highway South in Des Moines after application of a 500 foot radius from the property lines of churches, schools and public facilities:

	<u>Square Footage</u>	<u>Percentage</u>
Vacant	112,979	6.4 %
Developed	662,250	37.7 %
Redevelopable	981,181	55.9 %
Total	<u>1,756,410</u>	<u>100.0 %</u>

This indicates that 1,094,160 square feet of land along Pacific Highway South is potentially suitable for adult entertainment facilities, even after restricting the location of such businesses to buffer churches, schools and other public facilities.

The attached King County Assessor's Maps cover the length of Pacific Highway South within the Greater Des Moines Planning Area. Together with this data, they should provide a complete description of appropriate and available property for adult entertainment facilities in Des Moines.

Attachments

MEMORANDUM

March 31, 1987

To: Members of the City Council

From: City Attorney *[Signature]*

Re: Request for Final Supplemental Findings, Adult Use Project

The newly adopted Highway Commercial Zoning is found in DMMC 18.29. DMMC 18.29.020(2) lists as one of the permitted uses adult entertainment facilities, provided that such facilities are prohibited within five hundred (500) feet of the property lines of churches, schools, day care centers, public facilities, adult motion picture theaters or other adult entertainment facilities. Adult entertainment facilities means adult book stores, adult cabarets, adult video stores, adult retail stores, adult massage parlors, adult sauna parlors, and adult bath houses. DMMC 18.29.020(55) lists as one of the permitted uses theaters, provided that adult motion picture theaters are prohibited within five hundred (500) feet of the property lines of churches, schools, preschool through high school, public facilities, adult entertainment facilities or other adult motion picture theaters. Adult motion picture theaters are defined as an enclosed building used for presenting motion picture films or video tapes or other visual media distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas [as further defined in the Zoning Code] for observation by patrons therein.

Thus, the approach taken by the City Council in regulating adult entertainment facilities and adult motion picture theaters is the dispersal/concentration approach. It is "concentration" by limiting such uses to the highway commercial area on Highway 99, and it is "dispersal" by requiring the five hundred (500) foot separation from other similar uses. Both the concentration and dispersal methods were approved by the United States Supreme Court in 1986 in the case of City of Renton v. Playtime Theatres, Inc. (hereinafter "Playtime"). In Playtime the court stated: "Cities may regulate adult theaters by dispersing them, as in Detroit, or by effectively concentrating them, as in Renton. It is not our function to appraise the wisdom of the city's decision to regulate adult theaters to be separated rather than concentrated in the same areas. The city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems."

The Renton Ordinance prohibited adult motion picture theaters from locating within one thousand (1,000) feet of any residential zone, single or multi-family dwelling, church, park, or school. The Des Moines Ordinance diminishes the one thousand (1,000) foot separation to a five hundred (500) foot separation, thus being less restrictive than the Renton Ordinance. The reason for the five hundred (500) foot separation in Des Moines was based on an extensive scientific study that a five hundred (500) radius provides adequate real property for an adult motion picture theater to exist on Pacific Highway South, to-wit: 18.13 acres. This conclusion was incorporated in supplemental findings adopted by the City Council on August 22, 1985.

The public hearings and the study engaged in by the City Council, which resulted in the June 13, 1985 and August 22, 1985 findings, were conducted prior to the decision in the Playtime case. Prior to Playtime, the law was unclear as to whether a city must make specific scientific studies of its own community, or whether it could rely on the studies conducted by other cities. The Playtime case resolved that question. In Playtime the Supreme Court stated:

"The Court of Appeals ruled, however, that because the Renton Ordinance was enacted without the benefit of studies specifically relating to 'the particular problems or needs of Renton' the city's justifications for the ordinance were 'conclusory and speculative.' We think the Court of Appeals imposed on the city an unnecessarily rigid burden of proof. The record in this case reveals that Renton relied heavily on the experience of, and studies produced by, the city of Seattle. In Seattle, as in Renton, the adult theater zoning ordinance was aimed at preventing the secondary effects caused by the presence of even one such theater in a given neighborhood."

The Supreme Court went on to say that the Renton City Council had the Northend Cinema case before it when it enacted the ordinance in question. The Northend Cinema case detailed Seattle's experience as follows:

"The amendments to the City's zoning code which are at issue here are the culmination of a long period of study and discussion of the problems of adult movie theaters in residential areas of the City. . . . [T]he City's Department of Community Development made a study of the need for zoning controls of adult theaters . . . The study analyzed the City's zoning scheme, comprehensive plan, and land uses around existing adult motion picture theaters. . . ."

"[T]he trial court heard extensive testimony regarding the history and purpose of these ordinances. It heard expert testimony on the adverse effects of the presence of adult motion picture theaters on neighborhood children and community improvement efforts. The court's detailed findings, which include a finding that the location of adult theaters has a harmful effect on the area and contribute to neighborhood blight, are supported by substantial evidence in the record."

The record is replete with testimony regarding the effects of adult movie theater locations on residential neighborhoods." *Id.*, at 719, 585 P. 2d, at 1159

The Supreme Court then went on to say that Renton was entitled to rely upon the experience of Seattle and other cities, and in particular on the "detailed findings" summarized in the Washington Supreme Court's Northend Cinema opinion, in enacting its adult theater zoning ordinance. The Supreme Court stated that a city is not required, 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 reasonably believed to be relevant to the problem that the city addresses.

The minutes of the City Council meeting of June 13, 1985 contain the initial set of findings adopted by the City Council with respect to adult uses. One of the items of "evidence presented" was "a photocopy of the leading Washington Supreme Court case on the subject of adult use zoning, Northend Cinema, Inc. v. City of Seattle." There are an additional twelve other items under the heading of "Evidence Presented". To refresh the Council's recollection, I am attaching a copy of the minutes of the June 13, 1985 meeting.

While it is clear from the findings of the City Council that the City Council did rely upon experience and studies in other cities, along with specific studies relative to the City of Des Moines, I think it may be appropriate to enter some final supplemental findings in accordance with the new direction given to municipalities by the Playtime case. Accordingly, I request that the City Council enter the following:

Final Supplemental Findings

Based on all the materials presented to the City Council at the numerous public hearings on adult uses, professional evaluations and materials, and the findings of the City Council previously entered, along with the direction given to municipalities by the United States Supreme Court in the case of Renton v. Playtime Theatres, Inc., the City Council makes the following Final Supplemental Findings:

1. The approach to control of adult uses through zoning adopted by the City Council of the City of Des Moines can be characterized as a "concentration/dispersal" method.
2. The "concentration" aspect limits adult uses, including adult motion picture theaters, to the Pacific Highway South (or SR 99) area of the City of Des Moines.
3. The "dispersal" aspect requires separation of adult uses from each other by a minimum of five hundred feet (500').
4. In adopting the "concentration" aspect, the City Council relies upon all studies and public hearings described in previous Findings, and further upon the experience and findings of the City of Renton and the City of Seattle, described respectively in City of Renton v. Playtime Theaters, Inc. (the United States Supreme Court Case) and Northend Cinema, Inc. v. City of Seattle.
5. In adopting the "dispersal" aspect, the City Council relies upon all studies and public hearings described in previous Findings, and further upon the experience and findings of the Detroit Common Council described in Young v. American Mini Theaters.
6. In adopting the five hundred foot (500') setback from the property lines of churches, schools, (pre-school through high school) and public facilities, the City Council relies upon all studies and public hearings described in previous Findings and the experience and studies of Renton and Seattle described in City of Renton v. Playtime Theaters, Inc. (The United States Supreme Court case).

JBG:ds

cc: City Manager

MOTION Motion was made by Councilman Mannard, seconded by Councilman Clement, that Administration hold in abeyance enforcement of the contract provision requiring the building of a berm to inhibit traffic from using South 234th Street. Motion passed unanimously by voice vote.

BOARD & COMMITTEE REPORTS

Marina Committee, Chairman Davis informed Council that City Manager will be conducting a biological survey for the Diver's reef in July and August. This is necessary before the Dept. of Fisheries will approve the dumping of rocks.

Public Safety & Transportation Committee, Chairman Clement advised Council that they are continuing discussion as to the potential need for a fund to finance long range improvements in the transportation area.

Environmental Committee - Councilman Root informed Council he will be pursuing contact with outside agencies, ie. Fisheries, Metro, regarding environmental enhancement of City's streams.

ADMINISTRATION REPORTS

City Service Center Roofing Problems - Acting City Manager Hayes related that Architect Kniskern has received another estimate and requests more time to study the conflicting estimates.

Marina Restroom Bids - Acting City Manager reported bid opening for Marina restroom addition yesterday. Requested item be placed on agenda under Old Business. Request granted.

APPROVAL OF WARRANTS

MOTION Motion was made by Councilman Davis, seconded by Councilman Root and passed, that the following warrants be approved for payment:

Payroll Warrants #13061 through #13141 in the amount of	\$69,007.65
Claim Warrants #11954 through #12957 in the amount of	52,002.35
Marina Warrants #10435 through #10472 in the amount of	20,822.26

OLD BUSINESS

Proposed Ordinance No. 630 - Washington Natural Gas Franchise Agreement

City Attorney Gorham informed Council that the proposed ordinance has been reviewed by staff members and is recommended to be approved.

Councilman Clement noted he was pleased with the portion that held the City harmless.

MOTION Motion was made by Councilman Mannard, seconded by Councilman Root, to suspend the rules and act on the proposed ordinance on first reading. Motion passed.

MOTION Motion was made by Councilman Mannard, seconded by Councilman Root, to approve Ordinance No. 630. Motion passed unanimously by voice vote.

Proposed Ordinance - Approving Street Vacation So. 244th Between 20th Ave. South and 22nd Place South - File #269-85 - 1st Reading

City Attorney noted that the ordinance has been prepared at Council's direction. He read the ordinance by title.

MOTION Motion was made by Councilman Clement, seconded by Councilman Mannard and passed, that the proposed ordinance be passed onto a second reading.

Presentation of Adult Use Zoning Findings

City Attorney Gorham directed Council's attention to his memo of June 13, 1985, suggesting a change in wording in the previously prepared Adult Use Findings.

MOTION Motion was made by Councilman Root, seconded by Councilman Carter, that the Adult Use Findings, including the wordage change as noted in Attorney's memo of 6-13-85, be adopted.

Discussion:

Councilman Root questioned the advisability of using the word "religious", in the second paragraph on page 8. City Attorney noted that it is used in the context of zoning and the implication is "what the public" thinks.

Councilman Davis noted that the word religious is a category listed in Zoning Code as acceptable land use.

VOTE ON MOTION Motion passed unanimously by voice vote. (Findings as adopted are attached as part of these minutes.)

The Des Moines City Council considered the following evidence:

1. Comments from the public at five public hearings occurring between October 27, 1983 to March 14, 1984. Verbatim typed transcripts of of such hearings.
2. Written comments from the public received by the City Council during the same time frame.
3. A general administration report dated June 7, 1984, prepared by the Des Moines City Manager and his staff. Included in this report were the following appendices: Des Moines Theater admission data, community opinion survey, Community Impact Ordinance (Ordinance No. 464) background and information, Des Moines Police Department Incident Reports, a complete list of business activity and failures in the area in close proximity to the Des Moines Theater over a ten year period, and a photocopy of the leading Washington Supreme Court case on the subject of adult use zoning, Northend Cinema, Inc. v. City of Seattle.
4. A legal memorandum from the Des Moines City Attorney, dated March 14, 1985, and entitled Control of Adult Uses Through Zoning.
5. Reports by R. W. Thorpe & Associates. The preliminary report dated June 7, 1984 and the final study rendered in August 1984.
6. Reports by the City of Des Moines Planning Department.
7. A report by Chief Pratt of the Des Moines Police Department, dated January 4, 1984.
8. The Greater Des Moines Comprehensive Plan, 1981-1990.
9. The Des Moines Revitalization Study, Phase I, dated October 30, 1982, prepared by R. W. Thorpe & Associates and the City of Des Moines Business Area Improvements, Phase Two Report, dated December 1982, prepared by Makers.
10. The City of Kent Adult Use Zoning Study, dated November, 1982.
11. The state and federal court decisions in the litigation between the City of Renton and Playtime Theaters, Inc.
12. Ordinances and proposed ordinances of several municipalities in the State of Washington relative to the control of adult uses through zoning.
13. National studies, including a study by the Planning Advisory Service, a study by the Zoning and Planning Law Report, and psychological studies.

FINDINGS OF FACT

Based on the totality of evidence presented and material compiled in the public hearing file, the City Council makes the following Findings of Fact:

Revitalization and Land Use Planning

The area of the City of Des Moines encompassing Marine View Drive and West of Marina View Drive to Puget Sound has been designated the City of Des Moines Revitalization Area. This designation arose out of a Revitalization Study and recommendations which evolved out of the Greater Des Moines Comprehensive Plan 1981-1990, adopted September, 1981. At the Comprehensive Plan public hearings before the Planning Commission there was a call for a study of the area later to be designated the Revitalization Area. The specific language of the Comprehensive Plan is as follows:

- The City of Des Moines and its business community shall explore the redevelopment or revitalization of the downtown area. Studies should embrace:
- a. Creating incentives for stimulating new business development and enhancing existing businesses;
 - b. Enhancing pedestrian facilities through sidewalk & walkway improvements;

- c. Formulating a downtown design plan reflecting the unique marina atmosphere present in our city;
- d. Exploring the possibility of providing transportation to and from neighborhoods to our business district.

A great effort was mounted in the business community to raise funds for the Revitalization Study, and the business community through the Chamber of Commerce requested the City of Des Moines to contribute matching funds. Ultimately, \$30,000.00 in public funds and \$6,500.00 in funds raised by the business community were contributed to the Revitalization Study. This study was done by R. W. Thorpe and Associates and The Makers. Phase I of the Revitalization Study was rendered to the Des Moines Revitalization Steering Committee and the City of Des Moines on October 30, 1982. The study dealt with a number of subjects related to land use in the Revitalization Area, and the study placed strong emphasis on developing the Revitalization Area as a pedestrian-oriented business community. Phase II of the Revitalization Study was rendered in December, 1982. It concentrated on the need for and the building of a identity for the Revitalization Area. Phase II of the Revitalization Study also emphasized a pedestrian-oriented business community for the Revitalization Study. Public hearings were held before the Des Moines Planning Commission and the Des Moines City Council with respect to adoption of the Revitalization Study. These studies were ultimately adopted as policy by the Des Moines City Council on June 7, 1984. Goals of the Revitalization Study were the development of a viable and centralized downtown business district, development and encouragement of growth of a downtown business district which is expressive of its waterfront location, and providing a more pleasant visual and functional shopping and business district. In connection with the Revitalization Report the City of Des Moines embarked upon a number of projects to implement the recommendations. As of this date these projects are in various stages of development, and include design review process, a new parking code, a landscaping code, a comprehensive sign code, a revision of the permitted uses through a "community commercial" zoning, a revision of BC zone uses, traffic revision projects, and public hearings to determine whether or not adult uses were compatible with the recommendations of the Revitalization Study.

Public Comment Relative to Adult Uses in the Revitalization Area.

The City Council began public hearings on October 27, 1983 and held additional public hearings on January 12, 1984, February 23, 1984, March 8, 1984, and March 14, 1985. Large numbers of the public testified that the presence of the adult movie theater deterred them from shopping in the Revitalization Area, which they conceived to be a community-oriented and family-oriented pedestrian shopping area. These opinions were based on perceptions of the public that the present use of the theater is a threat to public safety and a threat to family-oriented values. Whether the presence of adult theater constitutes such a threat is immaterial. The important consideration is that the evidence shows that a significant portion of the public is avoiding the Revitalization Area in its shopping habits because of the existence of the adult movie theater. The public views the Revitalization Area as "downtown" Des Moines, which is the "walking" part of town. Many parents testified that children were forbidden to walk in the Revitalization Area as long as the adult movie theater was there. As pointed out by one City Councilman, whether the public is right or wrong in this regard is immaterial, for the consuming public is not going to do what it doesn't want to do. Members of the public stepped forward to point out that in parts of the state as distant as Eastern Washington the existence of the adult theater in the City of Des Moines is known and is the subject of substantial derisive comment.

The public, furthermore, expressed itself in a substantial amount of correspondence to the Des Moines City Council. This correspondence was entered into the public record and expresses an overwhelming public attitude that the presence of the adult movie theater deters individuals from shopping in the Revitalization Area. The following samples of public comment are representative of attitudes expressed in this massive correspondence:

1. Ruth E. Stewart (1-11-84) "... I will never venture into the down town area to patronize a business establishment in its [Des Moines Theater] proximity."

2. Richard T. Kennedy (10-24-83) "Adult use business activities should be prohibited in the central business district of Des Moines. This area is the economic heart of our city. It is in everyone's best interest to only allow business activities that promote economic health and consumer acceptance. Adult use business activities do not meet these criteria."

3. Mr. & Mrs. Herb Dieterich (2-21-84) "We find the posters and general theme of the theater so offensive and vulgar that we go to Burien to shop instead of patronizing the Circuit Rider Bookstore and the typewriter shop."

4. Mrs. B. A. Serfling (2-20-84) "... I will not go farther South than that because I refuse to walk past the movie building. As an elderly woman, I would feel very insecure in the vicinity of that movie house."

5. Ellena Watson (1-27-84) "I think it is a blight on our community being in the location where it is [The Des Moines Theater]. That block where it is located is one of the most important blocks in our city and it will never be upgraded or revitalized while that theater is there."

6. Judy C. Taylor (2-20-84) "... In the almost eight years my husband and I and our four children have lived in this area I have not once shopped or used any business in the block that the theater occupies. In fact, I have avoided the entire area around the theater. I did this without thought simply because the theater and its advertisements offended me and I did not wish to view them."

7. Hellen H. Johnson (2-21-84) "I am uncomfortable, as a women walking or shopping in the area though I have done it at times. I hesitate to take visitors that far on our main street as it gives a sleazy and unsavory impression to strangers."

8. H. C. Christopher, M.D., Resident of Wesley Gardens (3-1-84) "Many of us residents are reluctant to pass adult entertainment sites or to do business in close proximity to one, so feel they should be located in out of the way places and not on main streets."

9. Margaret Christopher (3-1-84) "I avoid that block whenever possible and only go there when it can't be avoided."

10. Mr. & Mrs. Robert K. McGuire (2-20-84) "We thought it would be fun to browse through the little shops further down the street until we noticed the movie titles at the theater. We skip that area now and shop in a more 'family' oriented area. Until a recent Council meeting, we didn't realize that the bookstore close to the theater was not an 'adult' bookstore."

11. Mrs. Julia Neal (3-4-84) "... My shopping habits in Downtown Des Moines are definitely curtailed by the presence of the Des Moines pornographic theater."

12. Bob Roach, President, Des Moines Chamber of Commerce (4-18-84) "The Board of Directors of the Des Moines - Midway Chamber of Commerce voted unanimous disapproval of the Des Moines Theatre being located in the downtown area of Des Moines."

The Board felt that the theatre does not lend itself to the quality of life in Des Moines for its young people, senior citizens and families living here. The subject of sex illustrated on posters on the main street of our city does not give Des Moines the type of image that is being pursued by the City of Des Moines and the Board of Directors of the Chamber of Commerce.

The Des Moines Theatre is not consistent with the Des Moines Downtown Revitalization Program. With our long range plans of uniform signage, landscaping, zoning and beautification, the theatre does not blend itself in with our total program. Thousands of dollars have already been spent in the planning stages of our revitalization efforts.

The Des Moines-Midway Chamber of Commerce encourages the City of Des Moines City-Council to take the necessary steps to solve this issue."

Studies of Business Activity in the 22300 block of Marine View Drive.

Through its business license records the City Clerk presented to Council a summary of business activity since 1973 in the area of Marine View Drive in close proximity to the adult theater. The adult theater is located at 22331 Marine View Drive. At 22333 Marine View Drive there have been eight (8) different businesses between 1973 and 1983. On the other side of the adult theater at 22325 Marine View Drive there have been four (4) separate businesses during that period of time. A similar pattern exists throughout the entire West side of the 22300 block of Marine View Drive. At 22303 there have been four (4) businesses, at 22307 there have been four (4) businesses, at 22315 there have been four (4) businesses during this period of time.

Independent Professional Studies

In addition to the general Revitalization Area Study, the City Council commissioned a separate study by R. W. Thorpe and Associates, Inc. to report specifically on the impact of adult uses in the Revitalization Area. This report was based on a number of sources, including general planning literature with respect to the impact of adult uses on land use planning, studies and ordinances from other communities, some of which were in close proximity to the City of Des Moines and others national in scope, site visitations to communities experiencing land use issues as related to adult uses, and professional evaluations, conclusions and recommendations. This study suggests that there appears to be a definite impact of adult uses on adjacent land uses, including turnover of tenants, deferred maintenance, and functional obsolescence. The report states that the improvement or decline of business areas or neighborhoods has been well documented in many planning studies as having both physical and "perceived" elements. If there is a perception that an area is improving a tendency exists on the part of other owners and tenants to participate in such revitalization, and conversely if the perception exists that an anchor use is creating a decline in property values or image, there is a tendency to defer maintenance, defer upgrading of building, and less emphasis is placed on adjacent properties as they relate to a general investment portfolio. Turnover of tenants and decline of real estate values occur in uses in close proximity to adult uses.

The perception of the public is that adult uses are incompatible with residential, religious, educational and recreational uses where minors may meet collectively.

City of Des Moines Staff Studies Revitalization Area History

Through implementation of Ordinance No. 464 (Community Impact Studies) City staff has acquired substantial planning information on the impact of adult businesses on adjacent "family-oriented" business activities. These studies suggest a general incompatibility of the two, especially in a pedestrian-oriented setting.

Planning studies, the proposed revision of uses in the Revitalization Area, numerous traffic revision experiments and projects and the general trend of development in the Revitalization Area establish conclusively that conditions have substantially changed in the Revitalization Area in the past fifteen years. In 1971 Marine View Drive could be characterized as an underdeveloped, auto-oriented state highway link between Burien and the Midway-Zenith area. In 1971 the area west of Marine View Drive consisted substantially of non-developed areas, under-developed areas, and deteriorating single family non-conforming uses which were clearly in transition to commercial and multi-family uses. In 1971 pedestrian facilities were practically non-existent in the Revitalization Area. Today, through policy of the City Council requiring sidewalks or walkways as a condition of construction, and expenditure of public funds in building walkways, the entire Revitalization Area is linked by pedestrian access. Today, Marine View Drive has become developed to a substantially higher degree and the businesses found there are overwhelmingly of a general population nature. Today, the area west of Marine View Drive contains quality housing, quality general population businesses, and is continuing to develop.

The memorandum of the City Attorney establishes that the type of use found at the Des Moines Theater may be a use protected by the First Amendment. The United States Constitution protects and promotes the free exchange of ideas and artistic expression, and local government is forbidden from suppressing such activities. However, local government is not without authority to protect the character and quality of residential life in its neighborhoods and further a compelling governmental interest through sound land-use policies.

CONCLUSIONS

From the foregoing Findings, the City Council draws the following conclusions:

1. Conditions in the Revitalization Area have substantially changed since 1971.
2. The presence of the adult move theater at its present location is substantially retarding the projected development of the Revitalization Area and substantially contributes to blight, deterioration, deferred maintenance, business failures and a general unwillingness of property owners in its general vicinity to participate financially in upgrading the area.
3. The City Council directs the City Administration to conduct research to determine if areas exist in the City of Des Moines which constitute reasonable and practical alternatives for the location of the adult theater in a manner which does not place any burden on the potential viewer or deter free expression.

Chapter 5.48

ADULT ENTERTAINMENT

Sections

- 5.48.010 Definitions.
- 5.48.020 License for business required – Fee.
- 5.48.030 License for managers and entertainers required – Fee.
- 5.48.040 Due date for license fees.
- 5.48.050 Renewal of license, registration, or permit – Late penalty.
- 5.48.060 License applications.
- 5.48.070 Manager on premises.
- 5.48.080 License nontransferable.
- 5.48.090 License – Posting and display.
- 5.48.100 License – Name of business and place of business.
- 5.48.110 Adult entertainment business license – Revocation.
- 5.48.120 Permit – Revocation or suspension.
- 5.48.130 License – Sale, transfer, or relocation.
- 5.48.140 Standards of conduct and operation.
- 5.48.150 Business hours.
- 5.48.160 Public nuisance.
- 5.48.170 Violation – Penalty.
- 5.48.180 Additional enforcement.
- 5.48.190 Minimum age of patrons – Violation – Penalty.

5.48.010 Definitions.

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) “Adult entertainment” includes adult entertainment facilities defined in the zoning code and an exhibition or dance of any type conducted in premises where the exhibition or dance involves a person who is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals.

(3) “Employee” means all persons, including entertainers and independent contractors, who work in or at or render services directly related to the operation of a public place of amusement, that offers, conducts, or maintains adult entertainment.

(4) “Entertainer” means a person who provides adult entertainment within a public place of amusement as defined in this section whether or not a fee is charged or accepted for the entertainment.

(5) “Entertainment” means an exhibition or dance of any type, pantomime, modeling, or any other performance.

(6) “Manager” means a person appointed by the operation who manages, directs, administers, or is in charge of, the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any place offering adult entertainment.

(7) “Operator” means a person operating, conducting, or maintaining an adult entertainment business.

(8) “Public place of amusement,” “public amusement/entertainment,” and “public entertainment” mean an amusement, diversion, entertainment, show, performance, exhibition, display, or like activity, for the use or benefit of a member or members of the public, or advertised for the use or benefit of a member of the public, held, conducted, operated or maintained for a profit, either direct or indirect. [Ord. 1050 § 1, 1993; Ord. 746 § 2, 1988.]

5.48.020 License for business required – Fee.

(1) No public place of amusement, including but not limited to places which offer adult entertainment, shall be operated or maintained in the city unless the owner or lessee thereof has obtained a license from the city clerk; provided, however, that it is unlawful for an entertainer, employee, or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of an unlicensed public place of amusement/entertainment.

(2) The annual fee for such a license is \$750.00.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) There is no prorating of the fee.

(5) The applicant must be 18 years of age or older. [Ord. 746 § 3, 1988.]

5.48.030 License for managers and entertainers required – Fee.

(1) No person shall work as a manager or entertainer at a public place of amusement offering adult entertainment without having first obtained a manager's or an entertainer's license from the city clerk pursuant to DMMC 5.48.060.

(2) The annual fee for such a license shall be \$200.00.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) There will be no prorating of the fee.

(5) The applicant must be 18 years of age or older. [Ord. 746 § 4, 1988.]

5.48.040 Due date for license fees.

All licenses required by DMMC 5.48.020 must be issued and the applicable fees are due and payable to the city clerk at least 14 calendar days before the opening of the adult entertainment business. [Ord. 746 § 5, 1988.]

5.48.050 Renewal of license, registration, or permit – Late penalty.

A late penalty shall be charged on all applications for renewal of a license, received later than 10 calendar days after the expiration date of such license. The amount of such penalty is fixed as follows:

(1) For a license requiring a fee of \$.50 or more, but less than or equal to \$200.00, 20 percent of the required fee;

(2) For a license requiring a fee of more than \$200.00, 10 percent of the required fee. [Ord. 746 § 6, 1988.]

5.48.060 License applications.

For the purposes of this chapter, the words "license" and "permit" shall be considered coextensive terms.

(1) Public Adult Entertainment License. All applications for a public amusement/entertainment license for places which offer adult entertainment shall be submitted in the name of the person or entity proposing to conduct such public amusement/entertainment on the business premises and shall be signed by such person and notarized or certified as true under

penalty of perjury. All applications shall be submitted on a form supplied by the city clerk, which shall require the following information:

(a) The name, home address, home telephone number, date and place of birth, driver's license number, if any, and Social Security number of the applicant if the applicant is an individual;

(b) The business name, employer identification number, address, and telephone number of the establishment;

(c) The names, addresses, telephone numbers, and Social Security numbers of any partners, including limited partners, corporate officers, shareholders who own 10 percent or more of the business, or other persons who have a substantial interest or management responsibilities in connection with the business, specifying the interest or management responsibility of each. For the purpose of this subsection "substantial interest" means ownership of 10 percent or more of the business, or any other kind of contribution to the business of the same or greater size;

(d) Terms of any loans, leases, secured transactions, and repayments therefor relating to the business;

(e) Addresses of the applicant for the five years immediately prior to the date of application;

(f) A description of the adult entertainment or similar business history of the applicant; whether such person or entity, in previously operating in this or another city, county, state, or country has had a business license revoked or suspended, the reason therefor, and the activity or occupation subsequent to such action, suspension or revocation;

(g) Any and all criminal convictions or forfeitures other than parking offenses or minor traffic violations including dates of conviction, nature of the crime, name and location of court and disposition for each owner, partner or corporation;

(h) A description of the business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(i) Authorization for the city, its agents, and employees to seek information to

confirm any statements set forth in the application;

(j) Supplemental identification and/or information necessary to confirm matters set forth in the application.

(2) **Manager or Entertainer License.** A separate license shall be obtained for each and every establishment at which the applicant will practice. All applications for a manager's or entertainer's license shall be signed by the applicant and notarized or certified to be true under penalty of perjury. All applications shall be submitted on a form supplied by the city clerk, which shall require the following information:

(a) The applicant's name, home address, home telephone number, date and place of birth, fingerprints taken by the city clerk, Social Security number, and any stage names or nicknames used in entertaining;

(b) The name and address of each business at which the applicant intends to work;

(c) The applicant shall present documentation that he or she has attained the age of 18 years. Any of the following shall be accepted as documentation of age:

(i) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth; or

(ii) A state-issued identification card bearing the applicant's photograph and date of birth; or

(iii) A valid passport bearing the applicant's photograph and date of birth;

(d) A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, state, or country, except parking violations or minor traffic infractions;

(e) A description of the applicant's principal activities or service to be rendered;

(f) Resident addresses and telephone numbers for five years immediately prior to the date of application specifying the period of residence at each address;

(g) The name and address of employers or individuals or businesses for whom the applicant was an employee or independent contractor for the three-year period immedi-

ately prior to the date of application, including the period of employment;

(h) Supplemental information and/or identification deemed necessary by the clerk or her or his designee to confirm any statements set forth in the application;

(i) Authorization for the city, its agents and employees to investigate and confirm any statements set forth in the application.

(3) If any person or entity acquires, subsequent to the issuance of a public amusement/entertainment license for places offering adult entertainment, a substantial interest in the licensed premises, immediate notice of such acquisition shall be provided in writing to the city clerk, and in no event, not later than 21 days following such acquisition. Further, the person or entity acquiring such an interest shall furnish to the city clerk such equivalent information as if they were an applicant for an original license under this chapter. The information required to be provided pursuant to this subsection shall be that information required pursuant to subsections (1) and (2) of this section.

(4) Copies of an application shall, within five calendar days of receipt thereof, be referred by the city clerk to the city manager, planning, building, fire district, or other appropriate departments. The departments shall, within 30 business days, inspect the application, the premises proposed to be operated as an adult entertainment place and shall make written verification to the city clerk that such premises complies with the codes of the city. No license may be issued without such verification. The application shall also be referred to the police department for a criminal records check and verification of the information provided by the applicant on the application for a license.

(5) Upon completion of the investigation and review by the departments, a review of the recommendations and verifications, and a determination that all matters contained in the application are true and correct and that this chapter has been complied with, the city clerk shall issue such license applied for in accordance with the provisions of this chapter; provided, however, that the applicable license fee,

together with any delinquent fees that may then be due shall first be paid to the city. [Ord. 746 § 7, 1988.]

5.48.070 Manager on premises.

A licensed manager shall be on the premises of a public place of amusement at all times that adult entertainment is being provided. [Ord. 746 § 8, 1988.]

5.48.080 License nontransferable.

No license or permit shall be transferable. [Ord. 746 § 9, 1988.]

5.48.090 License – Posting and display.

(1) Every adult entertainer shall post his or her permit in his or her work area so it is readily available for public inspection.

(2) Every person, corporation, partnership, or association licensed under this chapter shall display such license in a prominent place. The name of the manager on duty shall be prominently posted during business hours. [Ord. 746 § 10, 1988.]

5.48.100 License – Name of business and place of business.

No person granted a license pursuant to this chapter shall operate the adult entertainment business under a name not specified in his/her license, nor shall he/she conduct business under any designation or location not specified in his/her license. [Ord. 746 § 11, 1988.]

5.48.110 Adult entertainment business license – Revocation.

Any license issued for an adult entertainment business may be revoked or suspended by the city council after notice of not less than 10 calendar days, and a subsequent hearing for good cause, or in any case where any of the provisions of this chapter are violated, or where any employee of the licensee is engaged in any conduct which violates any state or local laws or ordinances at licensee's place of business and of which the licensee has actual or constructive knowledge. Such permit may also be revoked or suspended by the city council after notice and hearing, upon the recommen-

dations of the city health official that such business is being managed, conducted, or maintained without regard to proper sanitation and hygiene. [Ord. 746 § 12, 1988.]

5.48.120 Permit – Revocation or suspension.

An adult entertainment manager or entertainer license issued by the city clerk shall be revoked or suspended where it appears that the holder has procured such license by fraud, material misstatement, or omission or by other deceptive means, or has committed an act in violation of this chapter. [Ord. 746 § 13, 1988.]

5.48.130 License – Sale, transfer, or relocation.

Upon sale, transfer, or relocation of an adult entertainment business, the license therefor shall be null and void; provided, however, that upon the death or incapacity of the licensee or any colicensee, any heir or devisee of a deceased licensee, or any guardian of an heir or devisee of a deceased licensee may continue the adult entertainment for a reasonable period of time not to exceed 60 calendar days to allow for an orderly renewal of the license, if such new licensee fulfills all requirements of this chapter. [Ord. 746 § 14, 1988.]

5.48.140 Standards of conduct and operation.

(1) The following standards of conduct must be adhered to by employees of any public place of amusement which offers, conducts, or maintains adult entertainment:

(a) No employee or entertainer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the breast below the top of the areola or of any portion of the pubic region, anus, buttocks, vulva, or genitals except as provided for in subdivision (e) of this subsection and subsection (3)(c) of this section.

(b) No employee or entertainer mingling with the patrons shall be unclothed or in such attire, costume, or clothing as described in subdivision (1) of this subsection.

(c) No employee or entertainer shall encourage or knowingly permit any person

upon the premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person.

(d) Except as provided in subdivision (e) of this subsection and subsection (3)(c) of this section, employees or entertainers not in conformance with subdivision (a) of this subsection shall not perform acts of or acts which simulate:

(i) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law; or

(ii) The touching, caressing, or fondling of the breasts, buttocks, or genitals; or

(iii) The displaying of the pubic region, anus, buttocks, vulva, or genitals.

(e) No employee or entertainer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the breast below the top of the areola, or any portion of the pubic region, vulva, or genitals, anus and/or buttocks exposed to view except upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

(f) No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.

(g) No employee or entertainer shall remain in or upon the public place of amusement who exposes to public view any portion of his or her genitals or anus except as expressly provided for in subdivision (e) of this subsection and subsection (3)(c) of this section.

(h) No entertainer of any place offering adult entertainment shall be visible from any public place during the hours of his or her employment, or apparent hours of his or her employment, on the premises.

(i) No entertainer at a place offering adult entertainment shall demand or collect all or any portion of a fee from a patron for entertainment before its completion.

(j) A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

**THIS ADULT ENTERTAINMENT
ESTABLISHMENT IS REGULATED
BY THE CITY OF DES MOINES;
ENTERTAINERS ARE:**

a. Not permitted to engage in any type of sexual conduct;

b. Not permitted to be unclothed or in such attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, any portion of the pubic region, buttocks, genitals or vulva and/or anus except upon a stage at least eighteen inches from the immediate floor level and removed at least six feet from the nearest patron; and

c. Not permitted to demand or collect all or any portion of a fee from a patron for entertainment before its completion.

(2) At any public place of amusement which offers, conducts, or maintains adult entertainment, the following are required:

(a) Admission must be restricted to persons of the age of 18 years or more; and

(b) Neither the performance nor any photograph, video, drawing, sketch, or other pictorial or graphic representation thereof displaying any portion of the breasts below the top of the areola or any portion of the pubic hair, buttocks, genitals, and/or anus may be visible outside of the public place of amusement so licensed.

(c) Sufficient lighting shall be provided in and about the parts of the premises which are open to and used by the public so that all objects are plainly visible at all times.

(3) This chapter shall not be construed to prohibit:

(a) Plays, operas, musicals, or other dramatic works which are not obscene;

(b) Classes, seminars, and lectures held for serious scientific or educational purposes; or

(c) Exhibitions or dances which are not obscene.

(4) For purposes of this chapter, an activity is "obscene" if:

(a) Taken as a whole by an average person applying contemporary community standards the activity appeals to a prurient interest in sex;

(b) The activity depicts patently offensive representations according to Des Moines community standards of

(i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) The activity taken as a whole lacks serious literary, artistic, political, or scientific value.

(5) For purposes of this chapter, an activity is "dramatic" if the activity is of, relating to, devoted to, or concerned specifically or professionally with current drama or the contemporary theater. [Ord. 746 § 15, 1988.]

5.48.150 Business hours.

No public entertainment shall be conducted between the hours of 2:30 a.m. and 10:00 a.m. [Ord. 746 § 16, 1988.]

5.48.160 Public nuisance.

An adult entertainment business operated, conducted, or maintained contrary to the provisions of this chapter or a law of the city or state shall be, and the same is, unlawful and a public nuisance and the city attorney may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, for the abatement, removal, and enjoinder thereof, in the manner provided by law; and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such reliefs as will abate or remove such adult entertainment business, and restrain and enjoin any person from operating, conducting, or maintaining an adult entertain-

ment business contrary to the provisions of this chapter. [Ord. 746 § 17, 1988.]

5.48.170 Violation – Penalty.

(1) No person, except those persons who are specifically exempted by this chapter, whether acting as an individual owner, operator, employee, or agent or independent contractor for the owner, employee, or operator, or acting as a participant or worker in any way directly or indirectly who works in or operates an adult entertainment business, or any of the services defined in this chapter shall conduct the same without first obtaining a license or permit, and paying a fee to do so, from the city.

(2) A violation of or failure to comply with this section is a class 1 civil infraction. [Ord. 1009 § 41, 1993: Ord. 746 § 18, 1988.]

5.48.180 Additional enforcement.

Notwithstanding the existence or use of any other remedy, the city may seek legal or equitable relief to enjoin any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulations adopted in this code. [Ord. 746 § 19, 1988.]

5.48.190 Minimum age of patrons – Violation – Penalty.

(1) No person under the age of 18 years shall loiter in or about, or be found in a public place of amusement offering adult entertainment.

(2) No person shall allow a person under the age of 18 years to enter or remain upon the premises where adult entertainment is offered.

(3) A violation of or failure to comply with this section is a class 1 civil infraction.

(4) If a greater minimum age is specified by state law then such provision shall prevail as to enforcement of state law. [Ord. 1009 § 42, 1993: Ord. 746 § 20, 1988.]