

EFFECTS OF ADULT ENTERTAINMENT BUSINESSES
ON RESIDENTIAL NEIGHBORHOODS

Prepared for
THE OFFICE OF THE CITY ATTORNEY

EL PASO

By
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INTRODUCTION

During the past ten years, El Paso has experienced significant growth in the number and variety of adult entertainment businesses located within its jurisdiction. As of June 1986, there were approximately three (3) adult motion picture theatres, seven (7) adult motion picture theatres/bookstores and twenty-three (23) nude live entertainment clubs. (See Appendix I) The proliferation of these businesses has resulted in numerous community requests for regulation by the City of El Paso. Concern in adult entertainment businesses is increasing nationwide as residents face what they have asserted to be an adverse physical, social, and economic impact on their community.

Reasonable regulations are being used to control adult entertainment businesses proximity to residential areas, churches, parks, schools, and other public facilities. Recent court cases conclude that the regulation of adult entertainment businesses is important to protect property values and a community's quality of life. Zoning restrictions, when used to preserve the character of specific areas in the city, have perhaps been the most effective tool used by local governments to achieve this goal. The necessary reasoning for regulating adult entertainment businesses by zoning is that a land use relationship or impact results from this form of business.

Because of their increasing importance to the public welfare of the community, the Department of Planning, Research and Development, with the assistance of the City Attorney's Office, the Police Department Data Processing Division, and New Mexico State University, has spent over a year studying the impacts that adult entertainment businesses have on their surrounding environment. For the purpose of this study, the term "adult

entertainment business" is a general term used to designate businesses which primarily feature sexually stimulating material and/or performances. These include adult bookstores, adult cabarets, adult drive-in theatres, adult motion picture theatres and arcades, nude live entertainment clubs, and adult service establishments.

The study was undertaken to examine what, if any, negative impacts were created by these uses to the social and land use characteristics of the area in which they are located. Additionally, the study examined the factors of crime incidence to show the deviation from normal rates for this population. Analyses of land use characteristics were made to show any negative performance of the real estate market in areas where adult entertainment is offered. While the study should not be construed as proving that adult entertainment businesses are the causal effect of these negative impacts, the study will show that these uses are an important variable in each instance of comparison.

LEGAL BASIS FOR LAND USE CONTROL

Zoning has traditionally been defined as a process by which a municipality legally controls the use which may be made of property and the physical configuration of the development upon tracts of land within its jurisdiction. This is accomplished by means of zoning ordinances which are locally adopted to divide the city into different districts permitting only certain uses within each district. Zoning regulations not only restrict the use to which buildings or property may be put within designated districts, but also the purpose or object of the use beyond the mere

conditions or circumstances of the use. (1)

While the courts have affirmed that municipalities are properly exercising their police power through zoning regulation, it is generally held that such power is delegated to them by the state legislature through statutory enactment. In the State of Texas, Article 1175 of Vernon's Annotated Statutes provides for the city's zoning enabling legislation. Limitations on the exercise of zoning power are essentially the same as those restricting a police power under the U.S. Constitution. It may not be exercised in an unreasonable, oppressive, arbitrary, or discriminatory manner. Zoning laws must have a real, substantiative relation to the governmental objective for the protection of the public health, safety, morals and general welfare of citizens.

Section 25-3, entitled Purpose, of the El Paso Zoning Ordinance reads: "Zoning regulations and districts are established for the purpose of promoting health, safety, morals, and the general welfare of the City. They have been made with reasonable consideration, and with a view to conserving the value of buildings and encouraging the most appropriate use of the land throughout the City." The public welfare, in this context, means the stabilization of property values, promotion of desirable home surroundings, and the orderly growth of the community. When employing the zoning power to regulate adult entertainment businesses, the courts have held that the following must be shown. First, that the adoptive ordinance must be motivated and founded on sound land use principles, and secondly, that it allow reasonable accommodations for such uses in its jurisdiction.

(1) Cf Loubarado v. City of Dallas, 47 SW2d 495 (Texas Civil Appeals, Dallas, 1932), aff'd, 124 Tex. 1, 73 SW2d 475 (1934).

Both the nature and regulation of the use must be clearly defined in order to avoid the need for subjective interpretation of each proposed use.

STUDY FORMAT

Methods Used

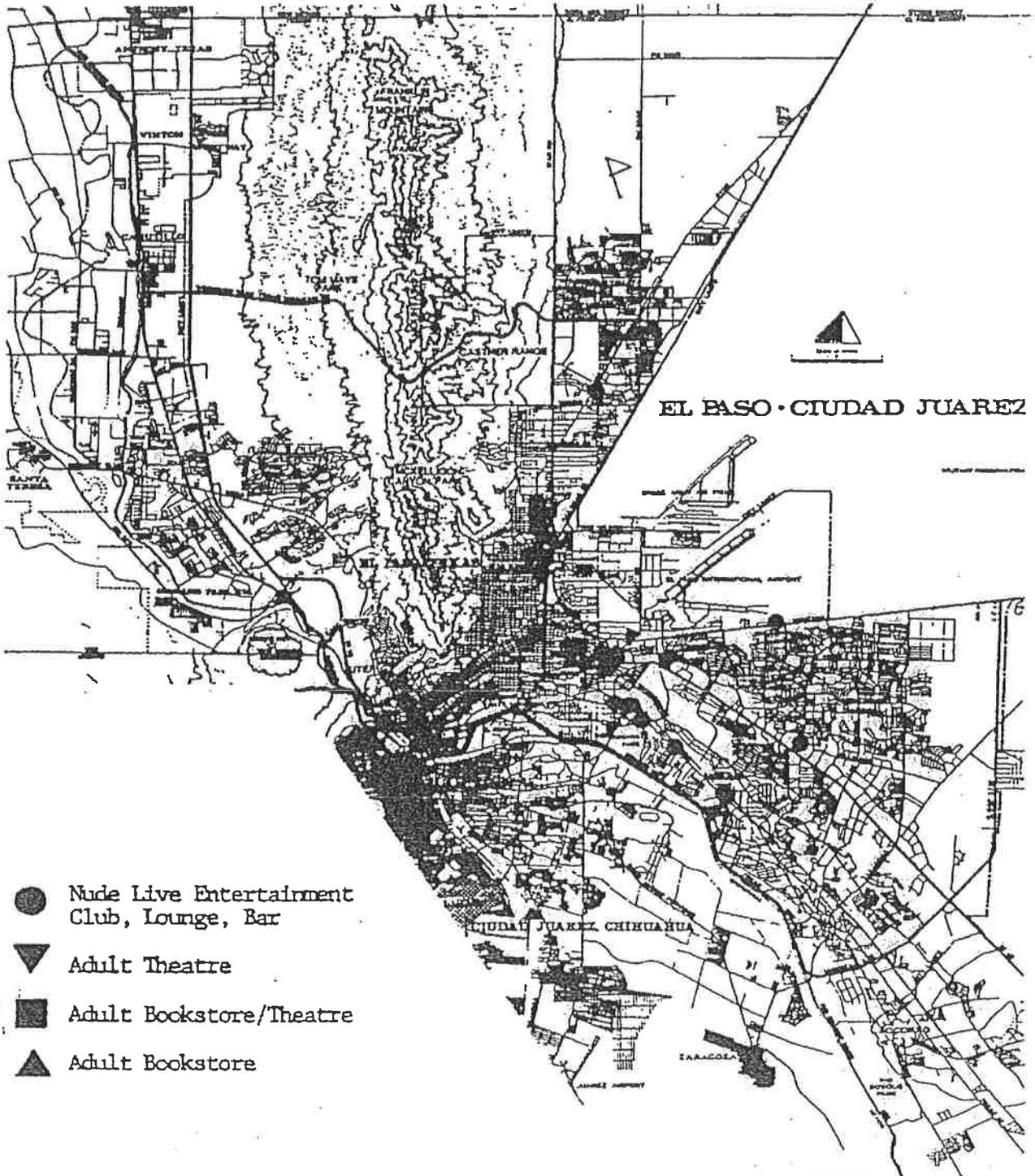
Many zoning ordinances throughout the nation now have provisions for adult entertainment businesses based on one of two basic approaches to control the location of these uses. One approach, commonly called the Detroit Model, divides or prevents the concentration of adult entertainment businesses in one area. El Paso's adult entertainment business regulation is patterned after the Detroit Model. The second approach, or the Boston Model, concentrates the adult entertainment businesses in one area of the city.

The El Paso Ordinance is based on two hypotheses: first, that there are direct impacts which uniquely relate to this class of land use; and second, that there are indirect, but equally important, attitudinal concerns which result from proximity to an adult entertainment business. Examples of the former are possible traffic congestion, unusual hours of operation, litter, noise, and criminal activity.

The study methodology employs a comparison of different land areas in El Paso. The two basic areas of comparison are study areas and control areas. They are distinguished by the existence of adult entertainment businesses within their boundary (the study area) or the absence thereof (the control area). In choosing study areas as well as control areas, the

FIGURE 1

Adult Entertainment Business Locations - Citywide



- Nude Live Entertainment Club, Lounge, Bar
- ▼ Adult Theatre
- Adult Bookstore/Theatre
- ▲ Adult Bookstore

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determinant characteristics were zoning mix, population size, age of housing stock, and family income. The selection process was additionally based on the number of establishments located in a given neighborhood. In each case, adult entertainment businesses were operating during the time span of the study.

There were at least nineteen possible distinct sites in El Paso where adult entertainment was offered either singly or in clusters of establishments as seen in Figure 1. For purposes of this study, it was decided to select three of these sites that were representative and three control areas with no adult business. A control area had similar characteristics of a matched study area in terms of land use.

Defining Boundaries

The process of defining the study area boundaries was conducted in the following manner. First, locations of adult entertainment businesses in El Paso were plotted. Secondly, the primary concentration of adult entertainment businesses were identified. Thirdly, a preliminary decision was made to select three study areas based on concentration and geographic isolation from each other. Finally, the boundary of each study area was established so that each was approximately centered and had an area of one-quarter ($\frac{1}{4}$) mile.

In defining the control area boundaries, first the potential control areas were identified based on the absence of adult entertainment businesses. Secondly, possible control areas were delineated in equal size to the study areas. Thirdly, the population and land use characteristics of each possible control area was determined using the same method used for the study areas. Finally, a control area was selected to match each study area as closely as possible in size, number of residents, and all other land use characteristics.

LAND USE CHARACTERISTICS FOR STUDY SITE LOCATIONS

Demographics

Table 1 identifies the percentage of land use for the study and control areas. The percent distribution by race of the population for each area and the family median income is found in Table 2. As can be seen, the areas chosen for the study and control areas have been weighted proportionally using the land use and population characteristics. A more detailed land use for the areas may be found in Appendix III to VIII.

TABLE 1
Percentage of Land Use
 (As of August, 1986)

	<u>Study Area One</u>	<u>Control Area One</u>	<u>Study Area Two</u>	<u>Control Area Two</u>	<u>Study Area Three</u>	<u>Control Area Three</u>
Residential*	.74	.72	.71	.72	.81	.90
Commercial**	.19	.24	.11	.12	.16	.09
Industrial***	.00	.00	.00	.00	.00	.00
Other****	<u>.07</u>	<u>.04</u>	<u>.18</u>	<u>.16</u>	<u>.03</u>	<u>.01</u>
	1.00	1.00	1.00	1.00	1.00	1.00

Notes:

- *Includes Real Estate Codes A1, A2, A3, A4, A6, B1, B2, B3, C1, H1
- **Includes Real Estate Codes C4, F1, F3, F4, F5, F6, F8, F9, F10, C2, F7, I1
- ***Includes Real Estate Codes F2, G1
- ****Includes Real Estate Codes C5, C6, D1, D2, D3, D4, D5, E1, E2, C3, Y9, Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z9

TABLE 2

Population Characteristics
(As of June 1986)

	<u>Study Area One</u>	<u>Control Area One</u>	<u>Study Area Two</u>	<u>Control Area Two</u>	<u>Study Area Three</u>	<u>Control Area Three</u>
<u>1985 Population & Housing Trends</u>						
Population	1,275	1,845	1,971	2,083	2,322	1,422
Housing	509	636	536	525	769	471
Income*	\$20,086	\$14,203	\$19,331	\$19,729	\$15,275	\$19,745
<u>Percent Distribution By Race & Spanish Origin**</u>						
Black	.01	.04	.00	.00	.06	.01
Asian	.01	.00	.00	.00	.01	.01
Spanish	.71	.85	.93	.93	.31	.75

Notes:

*Denotes Median Family Income

**Source: U.S. Bureau of the Census

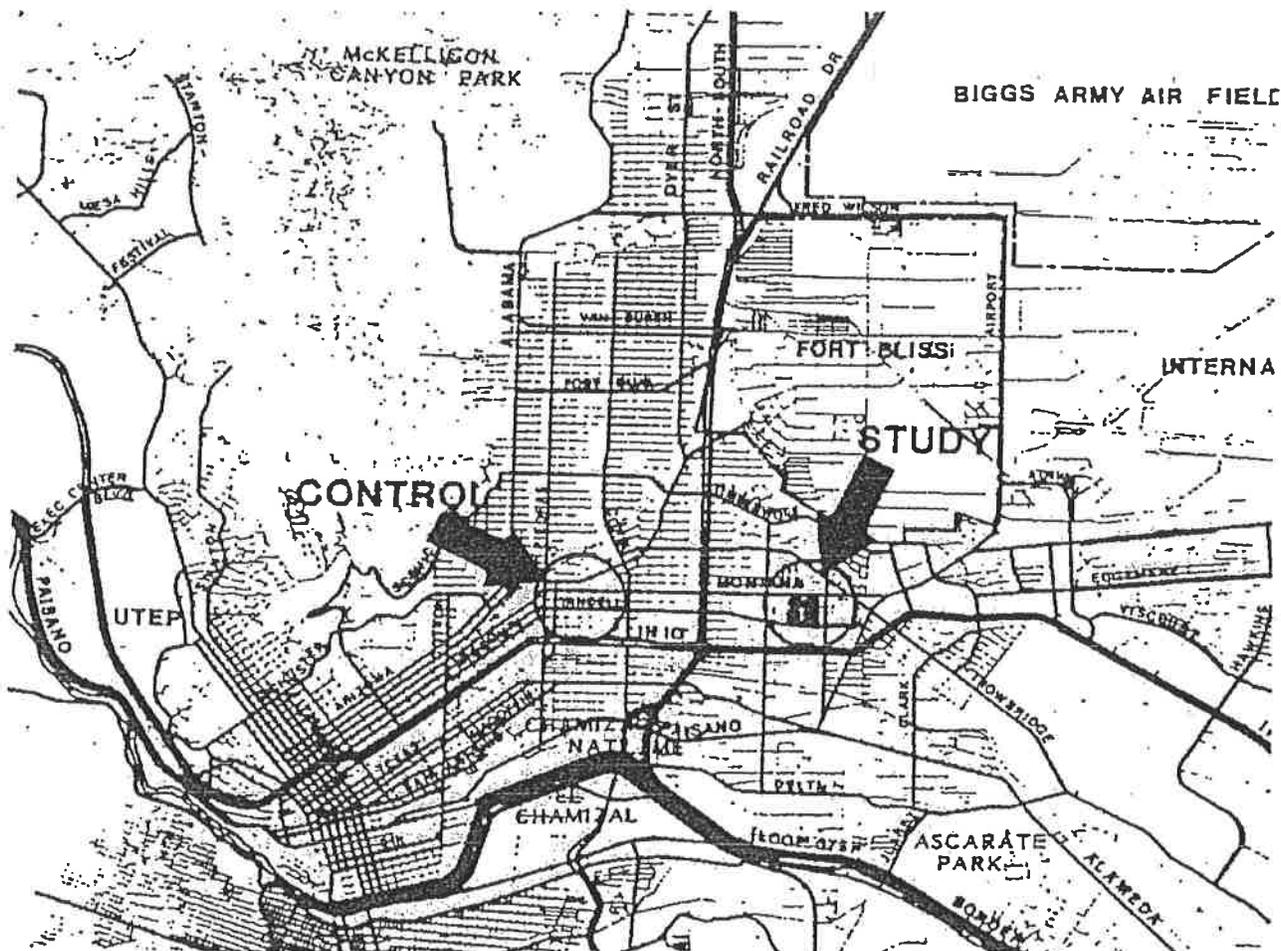
Within Study Area One, two nude live entertainment clubs and two adult book store/theatres are found (Figure 2). One nude live entertainment club is found within Study Area Two (Figure 3) and three nude live entertainment clubs are found in Study Area Three (Figure 4).

Character of Areas

Study Area One has approximately 509 single-family dwellings, and was platted as Loretto Place Subdivision in 1947. Heavy commercialization exists along Montana Street. The commercial activities include retail

FIGURE 2

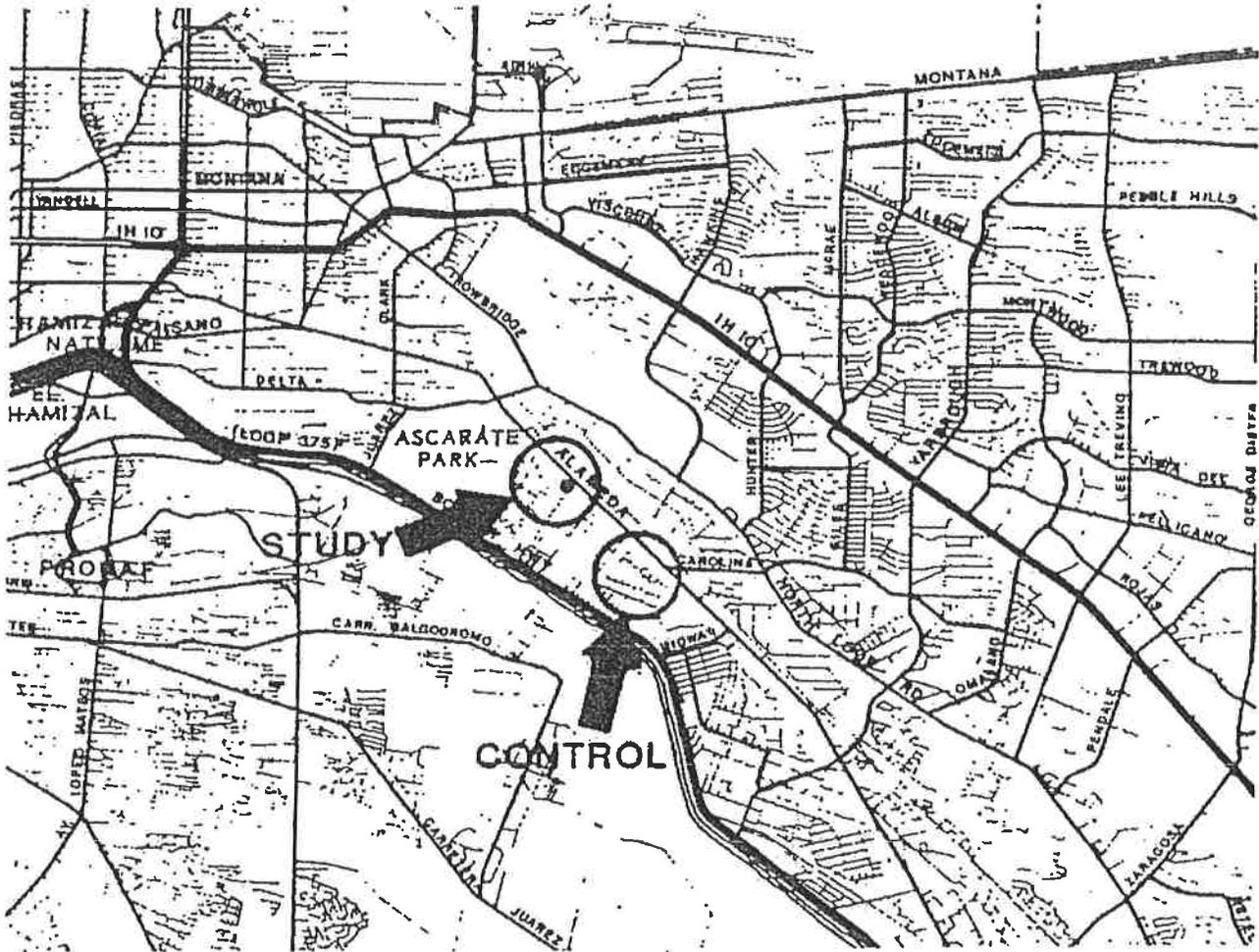
Study/Control Area One - Adult Entertainment Business Locations



- Nude Live Entertainment Club, Lounge, Bar
- Adult Bookstore
- ▼ Adult Theatre
- ▲ Adult Bookstore/Theatre

FIGURE 3

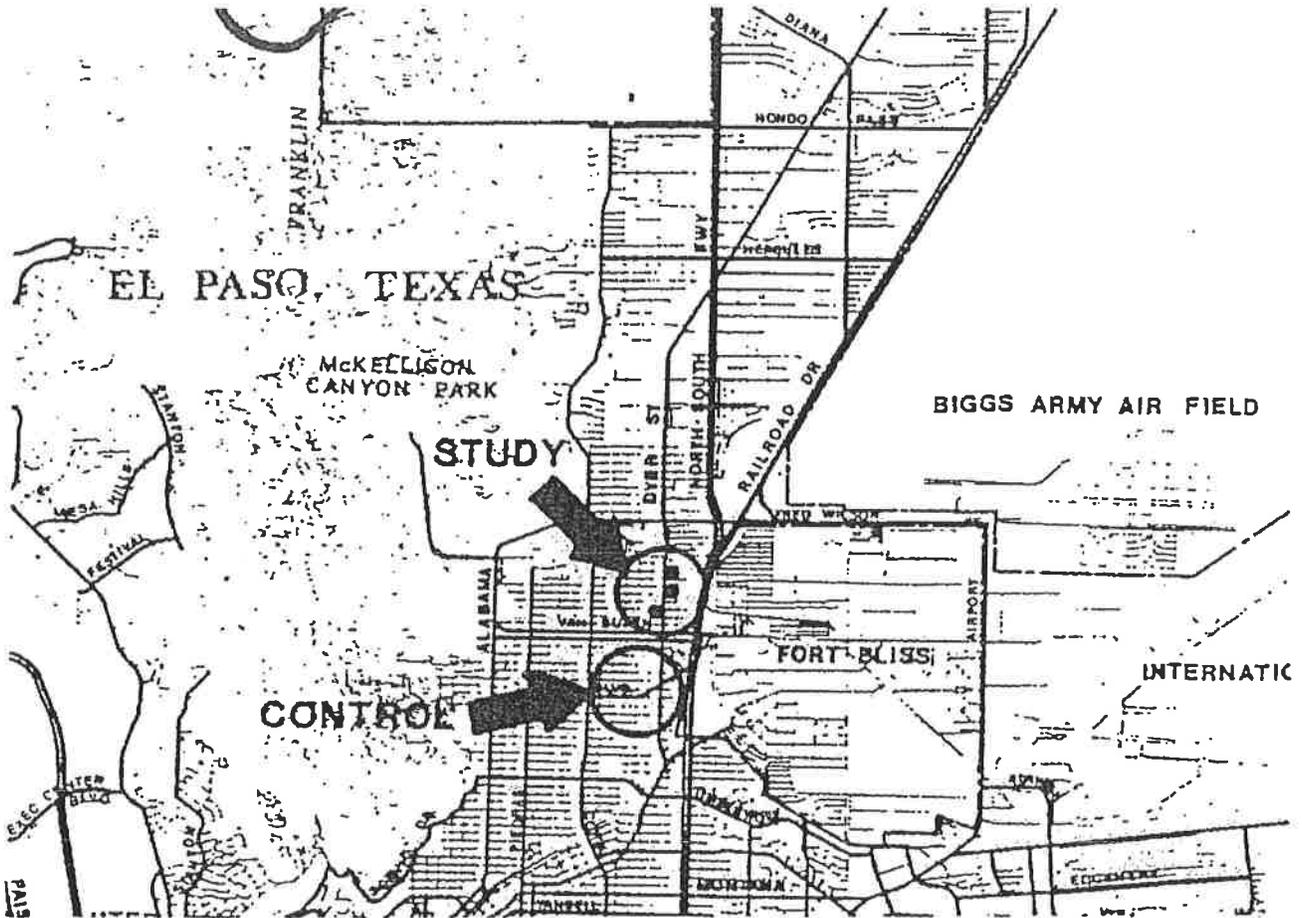
Study/Control Area Two - Adult Entertainment Business Locations



- Nude Live Entertainment Club, Lounge, Bar
- Adult Bookstore
- ▼ Adult Theatre
- ▲ Adult Bookstore/Theatre

FIGURE 4

Study/Control Area Three - Adult Entertainment Business Locations



- Nude Live Entertainment Club, Lounge, Bar
- Adult Bookstore
- ▼ Adult Theatre
- ▲ Adult Bookstore/Theatre

shops, banking facilities, restaurants, mechanic shops, arcade and pool hall, and office uses. Within this area, eleven changes of zoning have taken place; six to C-1 (Commercial) zoning, one to C-2 (Commercial) zoning and four changes to A-0 (Apartment/Office). Control Area One has 636 housing units and like Study Area One has heavy commercialization along Montana Street. The commercial uses found within this area include primarily retail establishments and office uses. Two changes of zoning classification have occurred in this area; one to A-0 (Apartment/Office) zoning and one to S-D (Special Development District) zoning.

Study Area Two was subdivided as McCamant (1923), Balboa Place (1934) and Hidden Valley (1965) and includes approximately 536 single-family dwelling units. Although this area overlaps three subdivisions, the residential uses are found primarily within Hidden Valley Subdivision. Strip commercial uses are found along Alameda Avenue including; retail shopping, auto sales and repair, laundromats and service stations. Thirteen changes of zoning have been processed in this area; three to C-4 (Commercial) zoning, five to C-3 (Commercial) zoning, two to C-1 (Commercial) zoning and three changes to R-4 (Residential) zoning. Control Area Two, consisting of 525 housing units, was platted as Cedar Grove Subdivision (1953). The commercial uses also front along Alameda Avenue and are similar to those found in Study Area One. Within this area, four changes in zoning classification were processed. These include one change to A-2 (Apartment) zoning, one change to C-3 (Commercial) zoning and two to C-1 (Commercial) zoning.

Study Area Three was subdivided in 1913 as Morningside Heights Addition. Approximately 769 housing units are found in this area. Of the six areas, the lowest commercial activity is found in Study Area Three.

The majority of dwelling units are multi-family ranging from four to eight units per structure. Ten changes in zoning occurred in this area; one to C-4 (Commercial), two to C-1 (Commercial), one to A-3 (Apartment) and six to A-2 (Apartment). In contrast, Control Area Three experienced four changes in zoning, all to C-3 (Commercial) zoning. Within Control Area Three, 471

housing units are found. The area was platted in 1906 as Grand View Addition and as Military Heights Subdivision in 1919. As in Study Area Three, several multi-family apartment complexes ranging in size from four to eight units per structure are observed. A convenience store and laundromat are commercial activities found within this area.

As shown in Table 3, the changes in zoning were substantially higher within the study areas. Although several factors influence a change in land use, commercialization of an area is an indicative factor. Of the total rezoning changes within the study areas, fifty-nine percent were

TABLE 3
Percent Change in Zoning Classification
 (As of August, 1986)

	<u>Study Area One</u>	<u>Control Area One</u>	<u>Study Area Two</u>	<u>Control Area Two</u>	<u>Study Area Three</u>	<u>Control Area Three</u>
Change to Residential	0	1	3	0	0	0
Change to Apartment	4	1	0	1	7	0
Change to Commercial	<u>7</u>	<u>0</u>	<u>10</u>	<u>3</u>	<u>3</u>	<u>4</u>
Total	11	2	13	4	10	4

Source: Department of Planning, Research and Development, Zoning Change Files, 1975 to present

changes to commercial districts. This percentage is representative of the commercialization taking place within each area along the major arterials. The increase in zoning change may be attributable in some manner to the close proximity of the residential uses to the adult entertainment businesses. Because residences are not conducive to the adult entertainment environment, or other commercial type uses, properties within residential settings convert to office, commercial or other intensive land uses. Adult entertainment businesses, by their commercial nature, affect land uses within a neighborhood and weigh heavily on changes to the character of such.

Real Estate Impact

Because of the great number of variables that have the potential to cause a particular real estate market to perform erratically at a small area level, the Department of Planning, Research and Development solicited professional opinions from real estate appraisers regarding the market effect of adult entertainment businesses on land values. Locally, twenty-nine attempts to contact the real estate appraisal community were made. Nineteen total responses were received by a telephone survey conducted during the week of August 25-29, 1986 (Appendix IX). Each appraisal office was asked to respond to the following question, "In your best judgment, do you feel that adult bookstores, adult theatres and topless bars, within one block of a residential area, have a detrimental effect on residential property values?"

Of the nineteen responses, fifty-three percent (10) responded affirmatively, sixteen percent (3) responded negatively and thirty-one percent (6) offered no opinion. The most common rationale given for a no opinion response was that each type of adult entertainment business had to

be judged on a case by case basis. Additionally, it was felt that adult entertainment businesses in proximity to other commercial type uses had a greater effect on neighborhood property values, than solely an adult entertainment establishment. Of the fifty-three percent who felt that residential property values were reduced, forty-seven percent from this sample also felt that commercial business values were reduced.

On a national level, the Indiana University School of Business Division of Research polled the real estate appraisal community on the subject. The survey was national in scope and was drawn at two levels. The membership of the American Institute of Real Estate Appraisers and the Member Appraisers Institute were surveyed by the University. In January 1984, approximately 1500 questionnaires were mailed. Of the respondents, eighty percent overwhelmingly felt that an adult entertainment business located in a neighborhood would have a negative impact on residential property values of premises located within one block of the site. Of these, twenty-one percent (21%) felt that the property value would decrease in excess of twenty percent (20%). Only one-fifth of all the respondents saw no resulting change in residential property values.

Seventy-two percent of those responding also felt that there would be a detrimental effect on commercial property values within a one block radius. Only ten percent felt that the effect would exceed twenty percent of worth, with the majority sixty three percent reporting a one to twenty percent decrease in value. Twenty eight percent of these surveyed predicted that there would be no negative effect on commercial property. While the great majority of appraisers felt that the effect of an adult entertainment business on property near a site would decrease in property value, they felt that this impact fell off sharply as the distance from the site increased. The national survey results concluded the following:

- That the majority of these appraisers who responded felt that a negative impact on residential and commercial properties was evident within one block radius of an adult entertainment business.
- That the negative impact dissipates markedly as the distance from the site increases.
- That the negative impact of an adult entertainment business is slightly greater for residential property than for commercial property .

As in the national survey, local real estate appraisers overwhelming indicated that an adult entertainment business does affect residential property values. Although a causal relationship between adult entertainment businesses and neighborhood deterioration cannot be proven, the statistical data does provide evidence of such a relationship.

SOCIAL EFFECTS ON NEIGHBORHOODS

Survey Objectives

Adult entertainment businesses have a strong and direct effect on people's perception of their neighborhood. This relationship was noted in the U.S. Supreme Court case of the City of Renton -vs- Playtime Theatres, Inc. The court ruling showed that preventative versus after the fact zoning is an appropriate means for cities to use in protecting and preserving possibly their most valuable resource, "quality of life" (2).

(2) City of Renton, et al., Appellants v. Playtime Theatres, Inc., et al.,
No. 84-1360, U.S. Supreme Court, 1986.

As a part of this study, New Mexico State University prepared an attitudinal survey within the study and control areas to show the perceived effects of adult entertainment businesses on neighborhood residents. A neighborhood questionnaire was prepared to determine if residents of neighborhoods containing adult entertainment businesses perceived more problems in their neighborhoods than residents who live in areas which did not contain such uses. A copy of their report to the Office of the City Attorney is attached as Appendix IX.

Survey Format

The questionnaires were distributed randomly among three-hundred (300) respondents, a total of fifty respondents from each study and control area. Businesses were sampled in proportion to their prevalence in the neighborhood (using land use percentage), the remaining surveys were completed in residences. Interviews were conducted during working hours, weekends and weekday evenings. The questionnaire for residences consisted of approximately ninety-eight (98) questions. The questions dealt with perceived neighborhood problems, perceived neighborhood safety and fear of crime. All questions regarding neighborhood problems were designed for this research. The questionnaire for businesses was similar. It consisted of questions regarding neighborhood problems, fear of crime and perceived business problems.

The analyses from the questionnaires were taken separately due to the differences in questions. The results from the three study areas were combined, and those for the control areas as well. In reporting the results of the analyses, the typical statistical method of reporting $p = .05$ as significant and $p = .10$ as marginally significant was used. In the survey, the sample of three hundred is used to generalize all

residents of the six neighborhoods. When sample sizes are small, as in the survey, significant differences are likely to be underestimated, therefore marginally significant differences were considered to be meaningful in the interpretation of the results.

Survey Results

In summary, the survey showed the following significant results:

- The residents of the study areas perceived significantly more neighborhood problems than the residents of the control areas ($p = .05$).
- The residents of the study areas perceived their neighborhood as significantly less safe for children than residents of the control areas ($p = .05$).
- The residents of the study areas reported being the victim of crime significantly more than the residents of the control areas ($p = .05$).
- The residents of the study areas perceived their neighborhood as somewhat less safe at night than the residents of the control areas ($p = .08$).
- The residents of the study areas feared being victimized by crime somewhat more than the residents of the control areas ($p = .10$).
- Residents of the study areas stated that they had more reasons to call the police in the past years to report a neighborhood crime than the residents of the control areas ($p = .06$).

In addition to the composite measures, some individual measures were also significant. The specific concerns that were viewed as being more

pervasive in study areas than control areas are as follows: sexual dangers for women, sexual dangers for children, pornography in the schools, declining moral standards, exposure of minors to adult entertainment, declining property values and public drunkenness. Of the problems viewed as more prevalent within a neighborhood, the direct or indirect negative influence of adult entertainment businesses on children was viewed as significant. Additionally, the survey concluded that a strong and consistently higher pattern of neighborhood crime, resident fear, and resident dissatisfaction in the neighborhood containing adult entertainment was evident. To summarize, the survey clearly shows a difference between the perception of neighborhood residents in study and control areas that can be attributed to the adult entertainment businesses located within the areas.

CRIME INCIDENCE

Within the past six years, the Congress and State Legislatures have been actively enacting legislation regulating adult entertainment businesses. Virtually all states now have some form of regulation. Of the studies, reports and articles examined from other cities, it has been consistently found that a relationship does exist between pornography and violence. The 1970 Report of the Presidential Commission on Pornography and Obscenity reported no anti-social effects attributed to pornography, and a no cause-and-effect relationship between pornography and violence. In June 1986, however, the Attorney General's Commission on Pornography, which was to assess the harm caused to society by pornography, found that "...some causal relationship to the level of sexual violence is beared from

pornography" (3). The Meese Commission, as it is more commonly referred to, also reported that more violent and explicit pornography has flooded the market since 1970. This has been accompanied by an increase in the number of sex crimes.

Additionally, the Planning Department from Phoenix, Arizona, reported in its Adult Business Study (May, 1979), that arrests for sexual crimes and locations of adult business were directly related. The study showed that a higher amount of sex offenses were committed in neighborhoods in Phoenix containing adult businesses than in neighborhoods without them.

The Data Processing Unit of the El Paso Police Department tabulated all reported incidents of crime within the study and control areas as a part of this study. The data was compiled to identify any possible differences that might have occurred between the control areas and the areas where adult entertainment establishments were in operation. The crime statistics are based on the actual instance of crime in the areas. The groupings were assembled to determine if crime occurred more frequently in areas containing adult entertainment businesses. Whether or not crime frequencies are determined by the land use (location of adult entertainment businesses) in which they were committed cannot be definitely answered. However, frequency patterns are visible from the comparison.

The reported data was assembled for the period from July to December, 1985. The type of data assembled includes property crimes, violent crimes, sex offenses and traffic violations. The following table displays major crime activities for the six month period for each area.

(3) Time Magazine, Sex Busters, July 21, 1986, Richard Stengel.

TABLE 4
Crimes and Offenses
 (From July to December, 1985)

	<u>Study Area One</u>	<u>Control Area One</u>	<u>Study Area Two</u>	<u>Control Area Two</u>	<u>Study Area Three</u>	<u>Control Area Three</u>
Property Crimes*	129	92	125	16	181	73
Violent Crimes**	20	19	25	0	71	21
Sex Offenses ***	2	1	2	0	1	1
Traffic****	266	209	104	28	482	151

Notes:

- *Includes burglary, larceny, auto theft
- **Includes murder, rape, robbery, assault
- ***Includes rape, indecent exposure, lewd & lascivious, child molest
- ****Includes moving and parking violations

Of the total number of property and violent crimes committed in the six areas, seventy-two percent (72%) of the offenses occurred within the study areas (See Figure 5). This pattern was similar in comparison with frequency of sex offenses within the same time period. Of the seven total sex offenses, five (5) or seventy-two percent (72%) occurred within the study areas. Table 5 provides a more detailed breakdown of crime within each area and is based on the total number of calls for service.

FIGURE 5

Percent Distribution of Crime

CRIMES AND OFFENSES

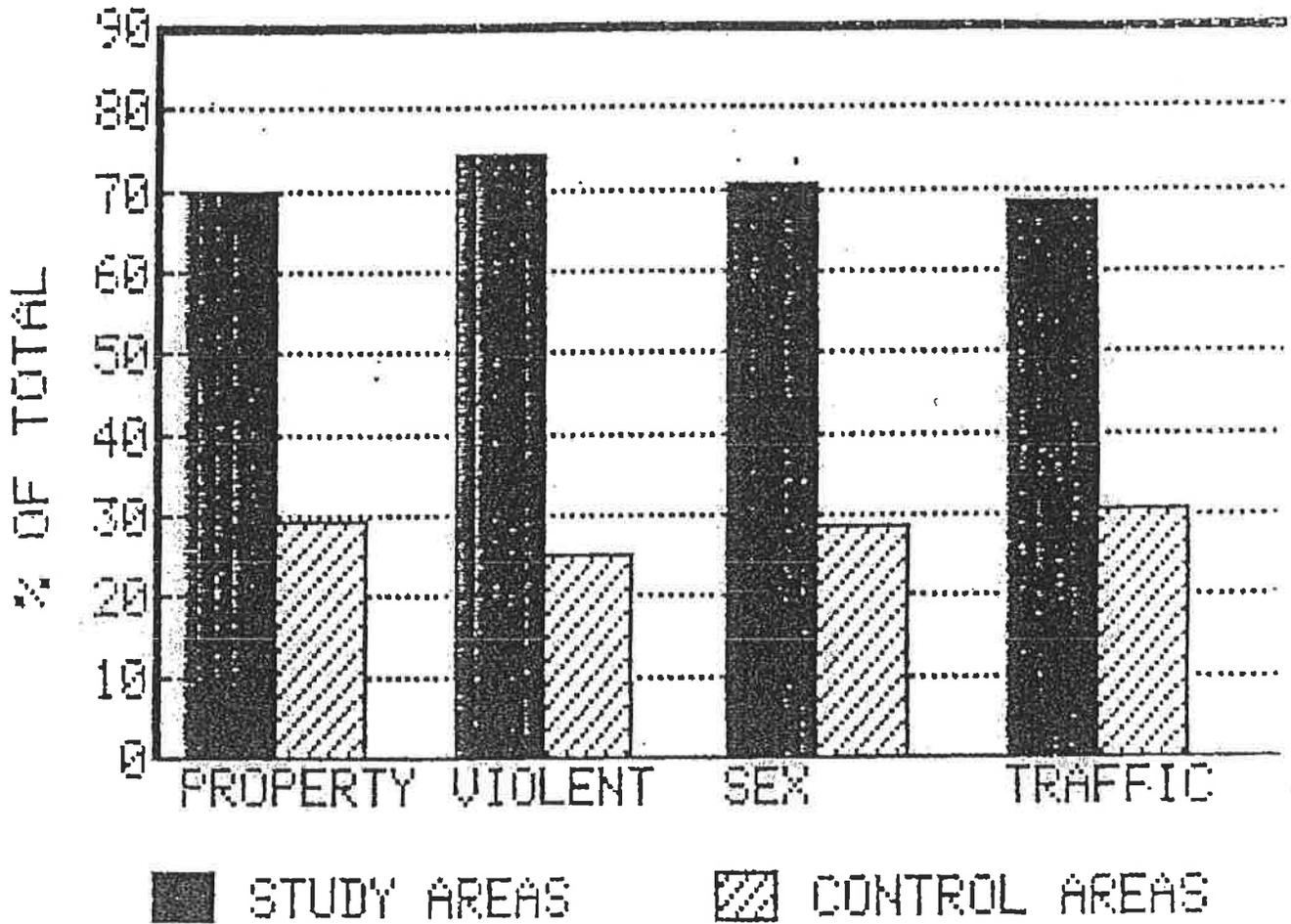


TABLE 5

Service Calls
(From July to December, 1985)

<u>Type Offense</u>	<u>Study Area One</u>	<u>Control Area One</u>	<u>Study Area, Two</u>	<u>Control Area Two</u>	<u>Study Area Three</u>	<u>Control Area Three</u>
Murder	0	2	0	0	2	1
Rape	1	2	2	0	3	2
Robbery	1	3	10	0	4	1
Assault	18	12	13	0	62	17
Burglary	39	40	43	14	87	44
Theft of Vehicle	18	9	15	2	30	10
Larceny Theft	72	43	67	0	64	19
Forgery	3	0	13	1	5	1
Fraud	4	0	0	0	3	0
Prohibited Weapon	5	1	5	0	9	0
Prostitution/Vice	5	0	0	0	0	0
Sex Offenses	2	1	2	0	1	1
Offenses/Family	3	1	4	1	9	4
Drug Abuse	3	1	3	0	4	0
Liquor Laws	0	0	0	0	2	1
Drunk	36	43	26	1	56	40
Disorderly Conduct	201	162	177	46	495	139
Gambling	0	1	0	0	0	0
Lost/Stolen	21	20	9	2	25	26
Suicide	0	0	0	1	4	0
Attempted Suicide	0	0	1	0	1	0
Deaths/Bodies Found	0	2	1	0	1	4
Injured Party	13	16	13	5	26	10
Missing Person	6	10	9	3	26	6
Miscellaneous	482	316	281	87	1129	315
Traffic Violations	266	209	104	28	482	151
Offense not known	0	1	0	1	3	2
TOTAL	1199	895	798	192	2533	794

The table below illustrates a comparison of the ratio of crime for each area. Both the study and control areas experienced a significant incidence of crime. Much of this increase is expected given their location in generally older and more populous neighborhoods of the city. There appears to be a strong correlation between crime frequency and the residential character of neighborhoods. Furthermore, as can be seen, the ratio of crime is higher within the study areas in each classification of crime.

TABLE 6
Ratio of Crime
 (From July to December, 1985)

	<u>Study Area One</u>	<u>Control Area One</u>	<u>Study Area Two</u>	<u>Control Area Two</u>	<u>Study Area Three</u>	<u>Control Area Three</u>
Property Crimes*	.30	.29	.49	.36	.25	.30
Violent Crimes**	.05	.06	.10	.00	.10	.09
Sex Offenses***	.01	.00	.01	.00	.00	.00
Traffic****	.64	.65	.40	.64	.65	.61

Notes:

*Includes burglary, larceny, auto theft

**Includes murder, rape, robbery, assault

***Includes rape, indecent exposure, lewd & lascivious, child molest

****Includes moving and parking violations

The sex offense rates in the study areas is most significant. There is a higher number of sex offenses committed within Study Areas One and Two which have a larger number of adult entertainment businesses located within them. Although the analysis demonstrated in the comparison will not in itself establish an effectual relationship between adult entertainment businesses and crime rates. The statistics do clearly show that within each study area the incidences are substantially higher than in the areas where adult entertainment is not offered.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Given the measures and samples chosen to determine the effects of adult entertainment businesses on neighborhoods and the attitudes of residents living near these establishments, the results of the study are quite clear. The study found that the following conditions exist within the Study Areas:

- The housing base within a study area decreases substantially with the concentration of these commercial uses.
- Properties located within a one-block radius of an adult entertainment business realize a decrease in property value (affecting both residential and commercial properties).
- Properties located near adult entertainment businesses experience an increase in listings on the real estate market.
- The presence of adult entertainment businesses result in a

relative deterioration of the residential condition of a neighborhood.

- A statistically significant increase in crime is found in areas where adult entertainment businesses are located.
- The average crime rate in the study areas was seventy-two percent (72%) higher than that rate for control areas.
- Sex-related crimes occurred more frequently within neighborhoods having at least one adult entertainment business than in those with no adult businesses.
- The neighborhood residents within the study areas perceive far greater neighborhood problems than residents of the control areas.
- Study area residents feared significantly more neighborhood deterioration and crime than residents of the control areas.

No conclusions can be drawn from this study which correlate directly to a type of sexually oriented adult entertainment business. The difficulty of deriving measures for certain types of adult businesses necessitates collecting data regarding all types of adult entertainment businesses. The measures chosen for the study design, residential neighborhood condition and crime, are less difficult to convert statistically.

Since the effects demonstrated in this study relate to the concentration of adult entertainment businesses, the following recommendations should be considered in enactment of an ordinance regulating adult entertainment uses:

- (1) That the ordinance support a reasonable balance between neighborhood protection and the constitutional right of these businesses to exist.
- (2) That the location of adult entertainment businesses be limited in a given area to avoid the concentration of such establishments.
- (3) That a licensing system be established for categorization of these uses, such license to be obtained by the Chief of Police or other designee.
- (4) That a statement of purpose be contained within the ordinance itself to support the validity of the regulation.
- (5) That the ordinance assert and show that the regulation protects the welfare of the citizenry and the quality of neighborhoods.
- (6) That the ordinance specify distances from which an adult entertainment business may be located from a residential area, public use, or any other regulated use.
- (7) That the provisions state, in some manner, the business of selling or dispensing alcoholic beverages within an adult entertainment establishment.
- (8) That no adult entertainment establishment conduct business in a manner which permits the observation of such to any adjacent property.

(9) That annual inspections be required of all adult entertainment businesses to determine if all provisions are complied with.

(10) That provisions for a penalty and fine be enacted for adult entertainment businesses violating the ordinance.

(11) That special sign regulations apply to all premises for adult entertainment.

APPENDIX I

Adult Entertainment Business Listing - Citywide
(As of June, 1986)

<u>NAME</u>	<u>LOCATION</u>	<u>TYPE</u>
Adult Theatre & Bookstore	4812 Montana	4
Aldo's Number One	3802 Pershing	1
B-G Club	6746 Edgemere	1
BK's Cocktail Lounge	4005 Leavell	1
Black Garter	7601 Alameda	1
The Brass Lounge	4321 Dyer	1
The Cabaret Club	4834 Montana	1
Cosmopolitan	6343 Alameda	1
The Dollhouse	5715 Trowbridge	1
El Cine Theatre & Books/Magazines	314 S. Oregon	4
Eros Adult Bookstore & Movies	4828 Montana	4
Eros Adult Bookstore & Movies	108 W. Paisano	4
Eros Adult Fun Center	6215 Airport Road	2
Eve Theatre	1903 Texas	2
Flower Garden	4842 Montana	1
Golden Wheel	4910 Dyer	1
Lanplighter Lounge	9857 Montana	1
Martinique Club	7144 Alameda	1
Naked Harem	6343 Alameda	1
Nero's	10662 Vista del Sol	1
The Nugget	5711 Trowbridge	1
The Oar House	6726 Alameda	1
Palomino	5813 Paisano	1
The Paradise Adult Books/Movies	209 S. El Paso	4
Persian Cat	3810 Pershing	1
Pils	4013 Flory	1
Playmate	113-115 E. Franklin	1
Rainbow Lounge	4620 Dyer	1
The Red Flame	9330 Dyer	1
Starlet Club	6108 Dyer	1
Swingers Adult Bookstore & Movies	9872 Dyer	4
Swingers Boutique Adult Bookstore & Movies	1603 Montana	4
Trixx Adult Cinema	2230 Texas	2

Notes:

- 1 Includes bars, lounges, and clubs operating with topless waitresses .
- 2 Adult theatre
- 3 Adult bookstore
- 4 Adult theatre/bookstore

APPENDIX II

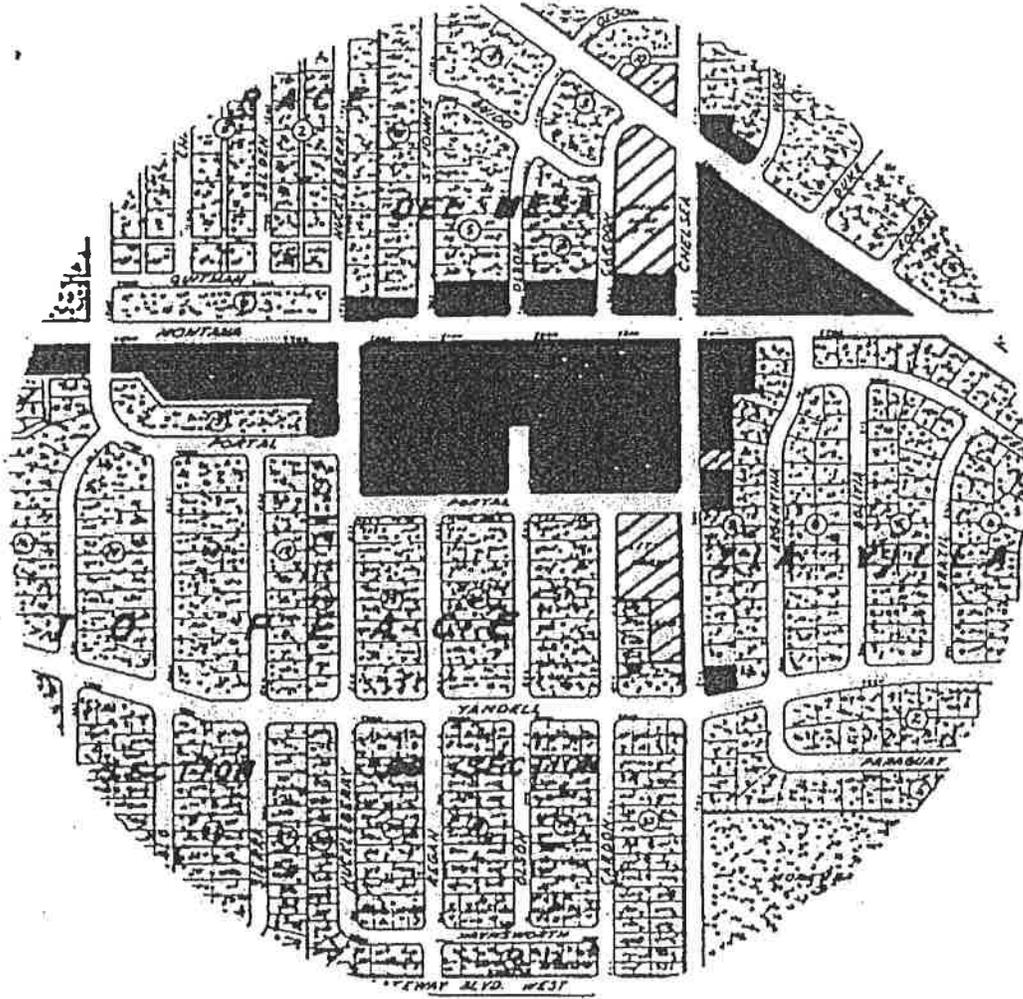
Real Estate Codes

4/4/86, State Codes:

- A1 REAL RESIDENTIAL SINGLE FAMILY
- A2 REAL RESIDENTIAL MOBILE HOME
- A3 CONDOMINIUM (IF ASSESSED SEPARATELY, % PAID TOWARD COMMON AREA)
- A4 TOWNHOUSE (IF ASSESSED SEPARATELY, OWN LAND)
- A6 LOT UTILIZED AS MOBILE HOME
- B1 REAL RESIDENTIAL MULTI FAMILY (DUPLEX)
- B2 APARTMENT HOUSE (WITH OR WITHOUT STREET LEVEL STORES OR OFFICES)
- B3 QUADRAPLEX OR TRIPLEX
- C1 REAL VACANT RESIDENTIAL, PLATTED LOTS/TRACTS (FIVE ACRES OR LESS)
- C2 REAL VACANT COMMERCIAL
- C3 REAL COMMON OPEN AREA
- C4 COMMERCIAL COMMON OPEN AREA
- C5 AG AND NON AG (FIVE ACRES OR LESS)
- C6 VACANT PARCEL WITH AMENITY VALUE
- D1 REAL ACREAGE, RANCH LAND (OVER FIVE ACRES)
- D2 TIMBERLAND
- D3 FARM LAND (OVER FIVE ACRES)
- D4 UNDEVELOPED LAND
- D5 AG AND NON AG (OVER FIVE ACRES)
- E1 REAL FARM AND RANCH IMPROVEMENTS (HOMESTEAD AGRICULTURAL)
- E2 REAL FARM AND RANCH IMPROVEMENTS (OTHER THAN E1)
- F1 REAL COMMERCIAL (STORES AND MANUFACTURING)
- F2 REAL INDUSTRIAL
- F3 REAL COMMERCIAL (OFFICE BUILDINGS)
- F4 REAL COMMERCIAL (HOTEL AND MOTELS)
- F5 REAL COMMERCIAL (GASOLINE STATIONS)
- F6 REAL COMMERCIAL (GARAGES AND PARKING LOTS)
- F7 REAL COMMERCIAL (WAREHOUSES)
- F8 REAL COMMERCIAL (THEATRE BUILDINGS)
- F9 REAL COMMERCIAL (FINANCIAL INSTITUTIONS OTHER THAN BANKS)
- F0 REAL COMMERCIAL (HOSPITALS, CLINICS, AND NURSING HOMES)
- G1 OIL, GAS, AND MINERAL RESERVES (UNDERGROUND)
- H1 TANGIBLE PERSONAL VEHICLES
- I1 REAL ESTATE OWNED BY BANKS
- Y9 REFERENCE
- Z1 ALL ENTITIES (SCHOOLS, CITY, WATER, COUNTY AND FIRE)
- Z2 CHURCHES, PARKING LOTS, PARSONAGES AND CEMETERIES
- Z3 CHARITABLE INSTITUTIONS
- Z4 PRIVATE SCHOOLS
- Z5 UNIVERSITY OF TEXAS
- Z6 EL PASO PUBLIC SERVICE BOARD
- Z7 PEOPLE OF THE STATE OF TEXAS
- Z8 MEXICO
- Z9 UNITED STATES OF AMERICA

APPENDIX III

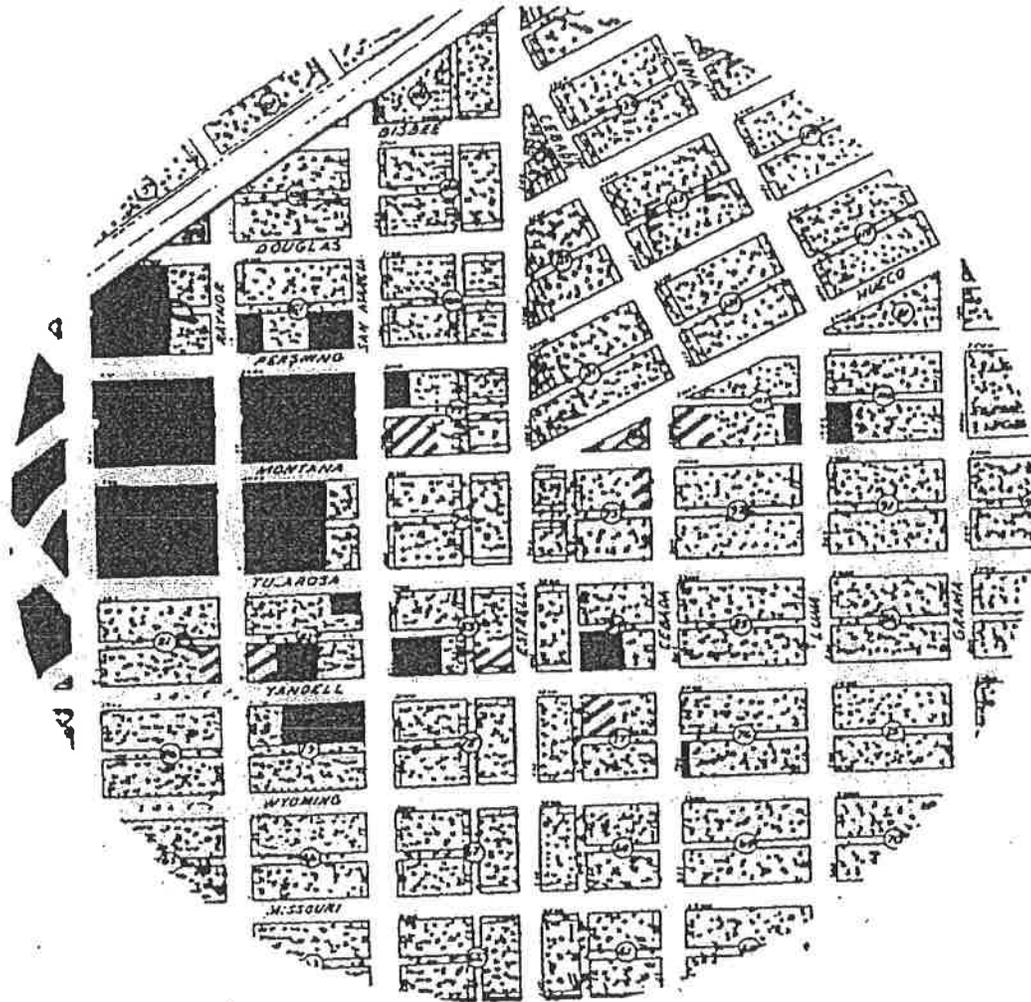
Land Use - Study Area One



-  Residential
-  Commercial
-  Industrial
-  Other

APPENDIX IV

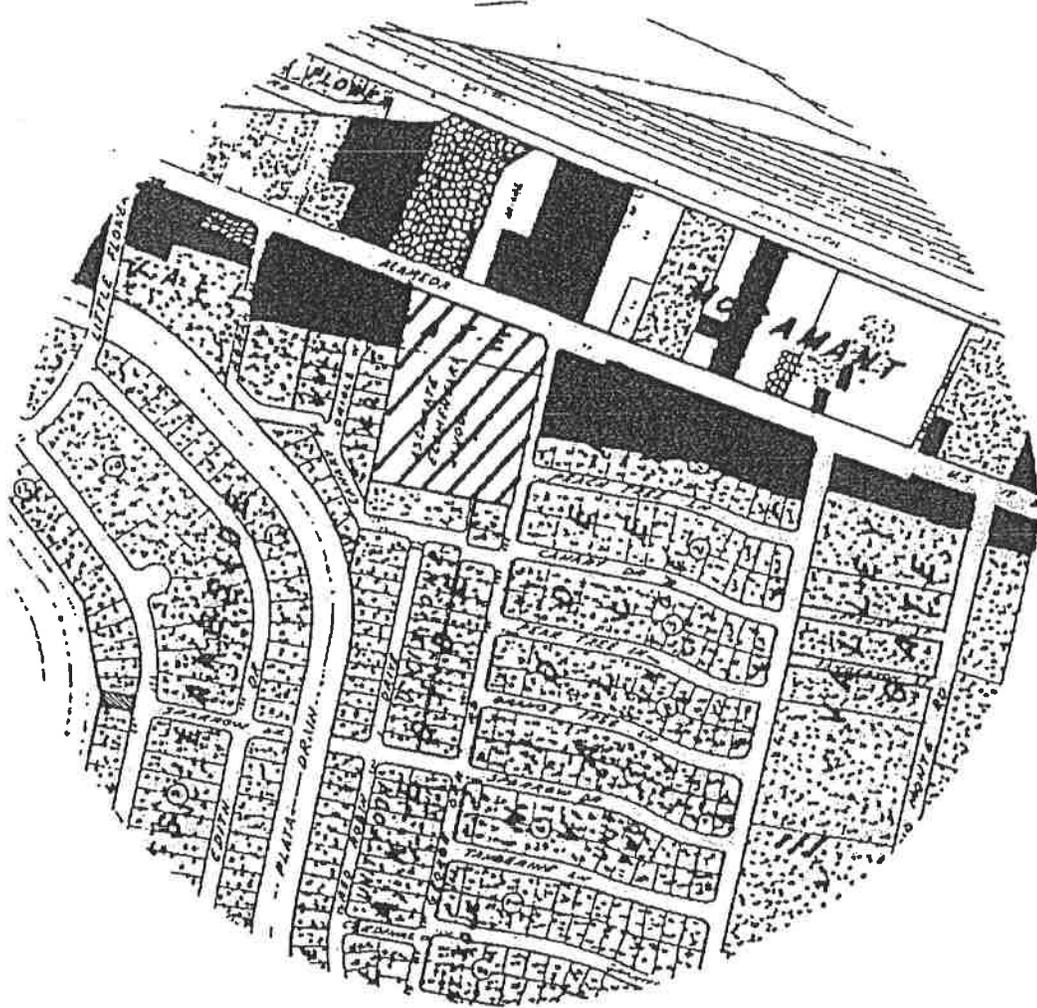
Land Use - Control Area One



-  Residential
-  Commercial
-  Industrial
-  Other

APPENDIX V

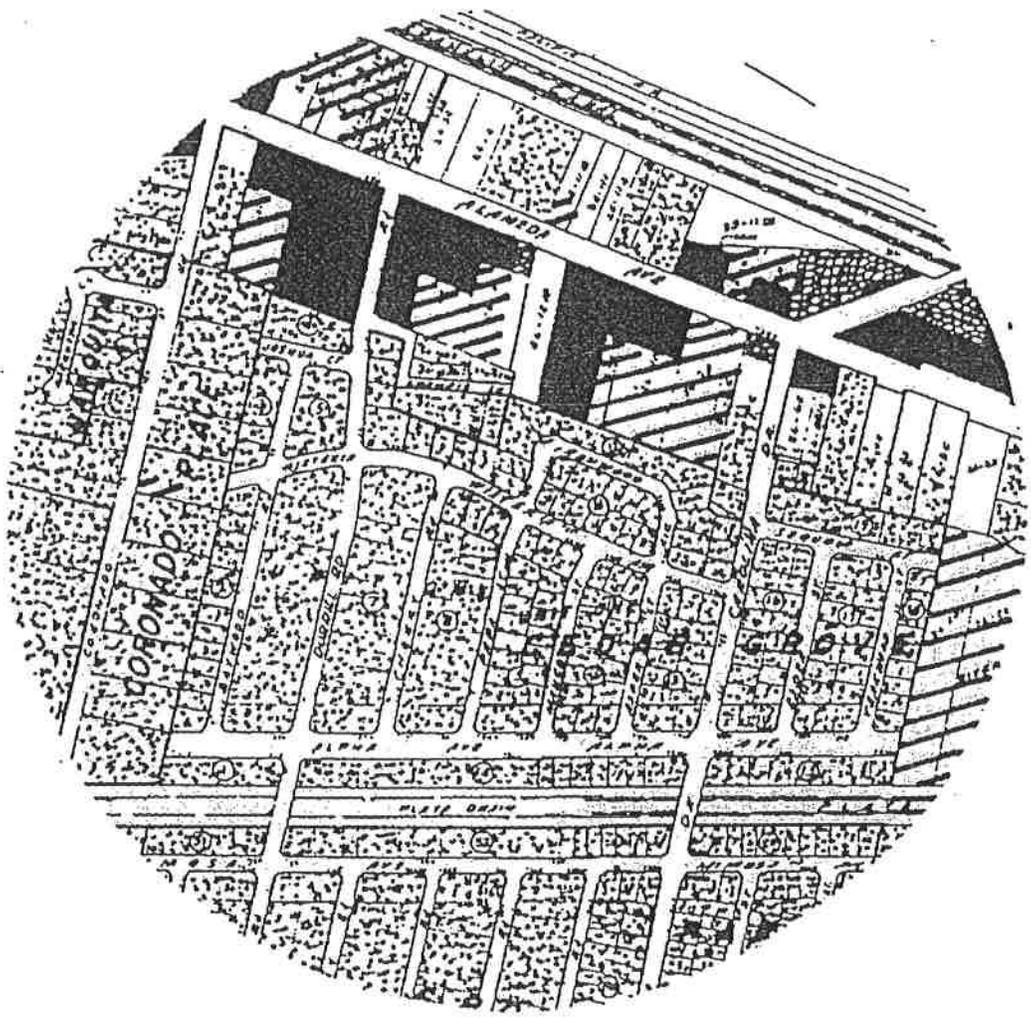
Land Use - Study Area Two



-  Residential
-  Commercial
-  Industrial
-  Other

APPENDIX VI

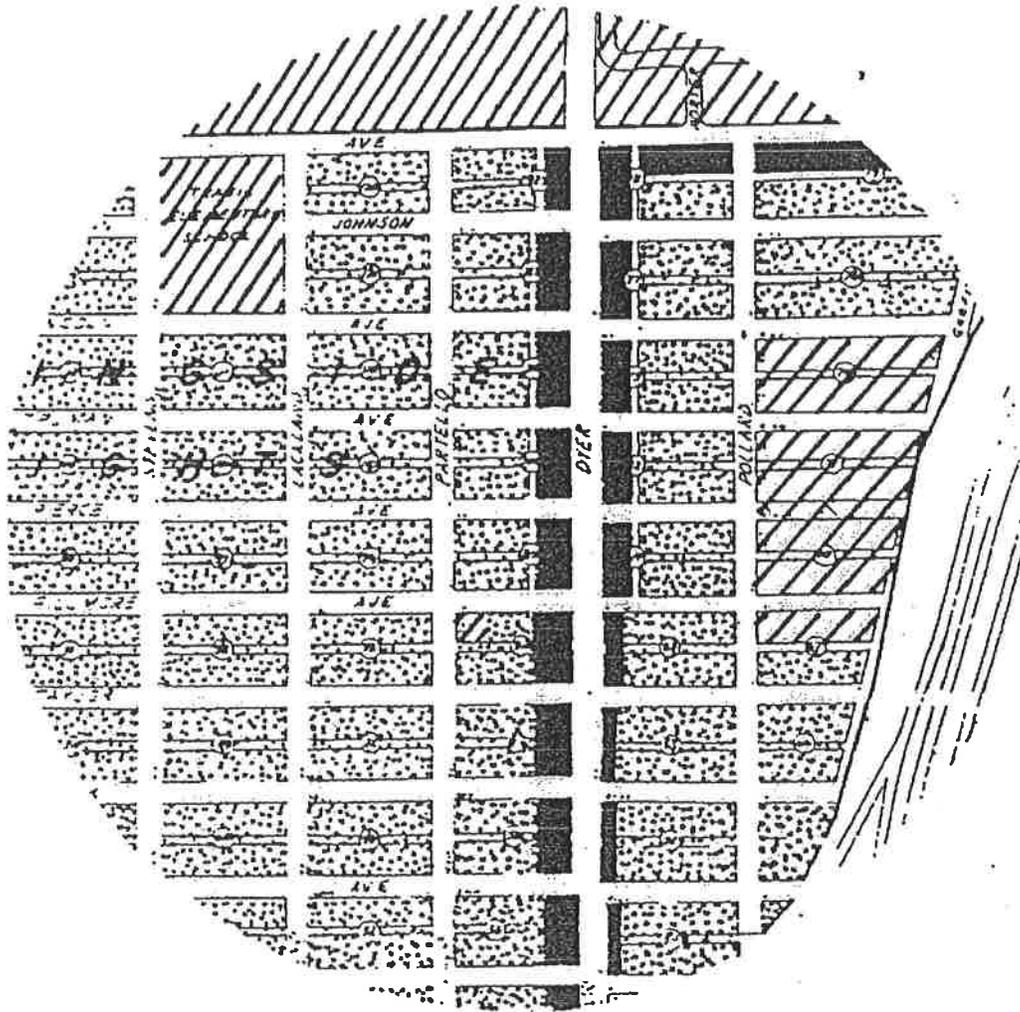
Land Use - Control Area Two



-  Residential
-  Commercial
-  Industrial
-  Other

APPENDIX VII

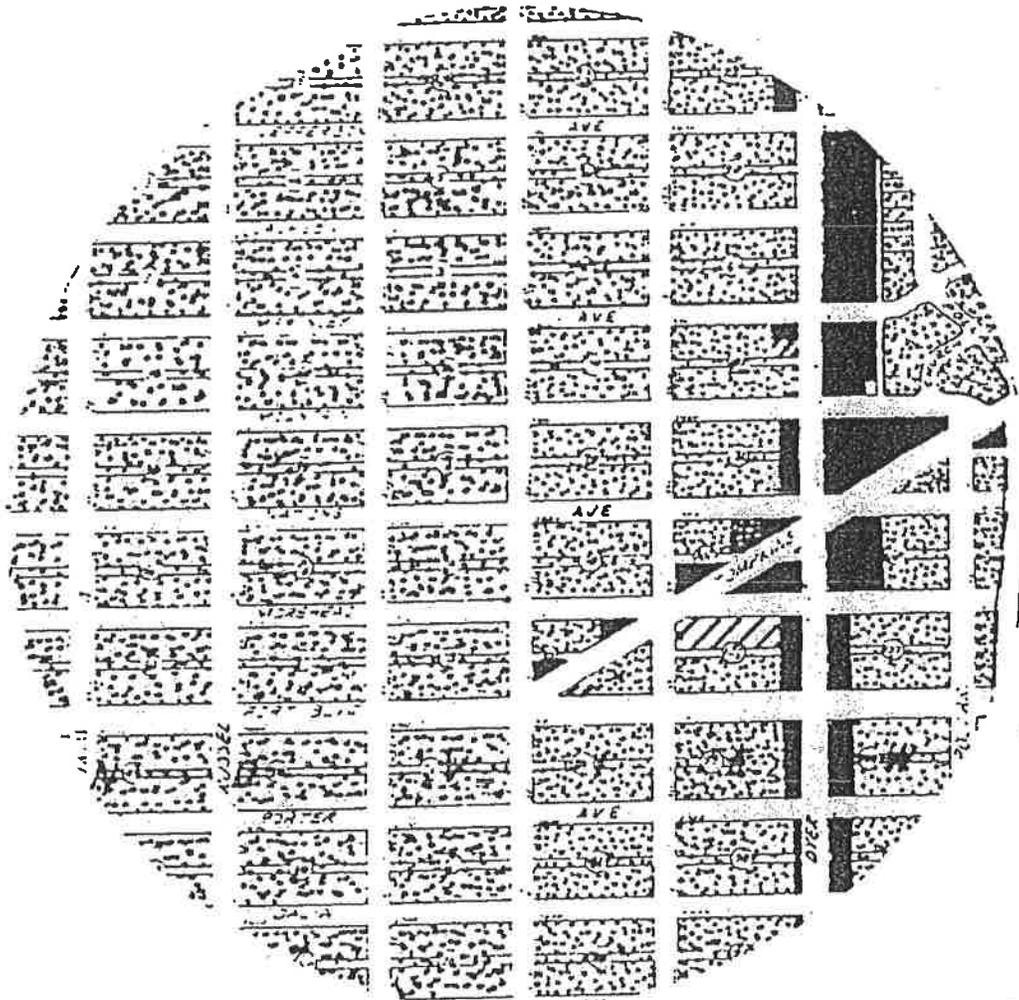
Land Use - Study Area Three



-  Residential
-  Commercial
-  Industrial
-  Other

APPENDIX VIII

Land Use - Control Area Three



-  Residential
-  Commercial
-  Industrial
-  Other

APPENDIX IX

Real Estate Appraisal Poll

<u>Name</u>	<u>Address</u>
Andressen & Co., Inc.	403 Executive Center Blvd.
Appraisal Associates of El Paso	310 N. Mesa, Suite 212
Brenner, Aaron	806 Myrtle
Burns, Scott	1115 Airway Blvd.
Clark Appraisal Service	1855 Trawood
Davis, Jim	1851 Trawood
Davis, John Alfred & Assoc.	2829 Montana
Dempsey, Richard T., Jr.	619 Arizona
Flores, Moises	549 Magoffin
G & R Appraisal Service	3517 Firestone
Kemp, John	311 N. Kansas
McKinstry, Fred	5862 Cromo
Passero & Associates	5822 Cromo
Real Estate Appraisals of El Paso	6044 Gateway Blvd. East
Rubalcava, J. Roberto, Sr.	3030 Montana
Sellers, Ralph	5862 Cromo
Toner, David T.	4100 Rio Bravo, Suite 315
Wagner, Dennis	4900 Montana
Wood, William E., Jr.	4120 Rio Bravo

APPENDIX X

Report of the Perceived Neighborhood Problems
New Mexico State University
August, 1986

DEPARTMENT OF SOCIOLOGY AND ANTHROPOLOGY

Box 38V/Las Cruces, New Mexico 88003
Telephone (505) 646-3821



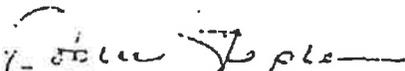
August 28, 1986

Mr. Rudy Hernandez
Office of the City Attorney
2 Civic Center Plaza
El Paso, TX 79999

Dear Mr. Hernandez:

Enclosed is the report of "The Study of Perceived Neighborhood Problems" for the Office of the City Attorney, El Paso, Texas, in accordance with our contract of June 24, 1986.

Sincerely,


Cookie White Stephan

Professor
Director, Center for Social Research

REPORT OF THE
STUDY OF PERCEIVED NEIGHBORHOOD PROBLEMS

FOR THE OFFICE OF THE CITY ATTORNEY
EL PASO, TEXAS

BY THE CENTER FOR SOCIAL RESEARCH
NEW MEXICO STATE UNIVERSITY

August, 1986

Cookie White Stephan, Ph.D.

Ronald A. Farrell, Ph.D.

PURPOSE

The purpose of the study was to determine if residents of the City of El Paso who live in neighborhoods containing sex-related businesses perceive more problems in their neighborhoods than residents who live in comparable neighborhoods of the City which do not contain such businesses.

METHODS

Sample. The sample of the study was to consist of three neighborhoods containing topless bars, adult bookstores, and adult theatres (the experimental areas) and three similar neighborhoods containing no such businesses (the control areas). In fact, one control neighborhood (area 4) contained a topless bar. In addition, another control neighborhood (area 2) contained a home for transients and a ditch that is a primary pathway for illegals to enter the city, both of which were seen by the residents as creating an unusual number of neighborhood problems. The experimental and control neighborhoods were matched for land use patterns and demographic characteristics of residents; in each case the experimental and control neighborhoods were within close proximity. (See Appendix 1 for characteristics of the neighborhoods).

Fifty residences from each neighborhood were randomly selected for interview, for a total sample of 300 respondents. Businesses were sampled in proportion to their prevalence in the neighborhoods; the remaining surveys were completed at residences. (See Appendix 1 for sample sizes). Only respondents 17 years of age and older were interviewed. In businesses, either owners or managers were interviewed if available. Otherwise clerks were interviewed.

The respondent samples are comparable in terms of demographic characteristics, with the exception of sex. As may be seen in the analysis which follows, sex is unrelated to the responses of respondents in this study.

The interviewers were three female graduate students at New Mexico State University. The interviews were conducted either in Spanish or English, in accordance with the respondents' wishes. Sixty-five percent of the interviews were conducted during working hours from Monday through Friday. The remaining interviews were conducted during weekends and weekday evenings. The interviewers, who wore Office of the City Attorney identification badges, explained the study as a survey of neighborhood conditions to assist the City in improving these conditions. The response rate was 79%.¹

Survey forms. The questionnaire for residences consisted of 98 questions. Twenty-eight questions were concerned with perceived neighborhood problems, 2 questions allowed the respondent to list additional neighborhood problems, 2 questions concerned perceived neighborhood safety for adults, 5 questions concerned perceived neighborhood safety for children (answered only by respondents with minor children living at home), 13 questions concerned fears of being the victim of various crimes, 13 questions concerned the perceived seriousness of these crimes, 13 questions concerned the experience of being the victim of these crimes, 2 questions concerned calling the police regarding crime, 7 questions concerned security measures, and 9 questions related to the demographic characteristics of the respondents. The questions regarding neighborhood problems were designed for this research. All other scales were taken or adapted

from national crime surveys.

The questionnaire for businesses was similar. It consisted of 28 questions concerned with perceived neighborhood problems, 11 questions concerning fears of being the victim of various crimes,² 11 questions concerning the perceived seriousness of these crimes, 11 questions concerning being a victim of these crimes, 2 questions concerning calling the police regarding crime, 7 questions regarding security measures, four questions regarding perceived business problems, and an item designating the respondent's relationship to the business. (See Appendix 2 for the survey forms).

ANALYSIS

Data from residences and businesses were analyzed separately due to differences in the questions asked in the resident and business samples.

Residences. To assess perceived neighborhood problems, a scale of perceived problems was formed from the responses to the 28 questions regarding neighborhood problems perceived to have existed during the last year. Any additional problems mentioned by the respondents were also tabulated. To assess fear of crime, a scale of fear of being the victim of 13 crimes was constructed. To assess actual victimization of crime, the respondents' rates of victimization for these 13 crimes during the last year were also tabulated. To document the seriousness with which the respondents viewed these 13 crimes, they were asked to rank their seriousness. As other measures of neighborhood problems, the number of times in the last year respondents reported they had called the police to report a crime in the neighborhood and the number of times in the last year the

respondents reported they had reason to call the police to report a neighborhood crime were tabulated. To determine the extent to which the respondents felt the need to protect their homes from crime, a scale of security measures was comprised of 7 items regarding household security. The demographic characteristics of the respondents were also examined.

Businesses. A scale of perceived problems was formed from the responses to 28 questions regarding neighborhood problems perceived in the last year, and the additional problems listed by the respondents were tabulated. A scale of fear of being victimized by crime was constructed from the responses to the 11 questions regarding fear of crime. In addition, scales were constructed from the respondents' answers to the 11 questions regarding the seriousness of these crimes and the actual number of times in the last year the respondents had been the victims of these 11 crimes. The number of times respondents reported they had called the police in the last year to report a crime in the neighborhood was tabulated, as well as the number of times they reported that they had reason to call the police in the last year to report a neighborhood crime. A scale of security measures was comprised of the 7 items regarding security. In addition, the 4 items regarding business problems and the identity of the respondent were tabulated.

Statistics. For each scale or item, a one-way analysis of variance was conducted to determine if the perception and experience of problems differed in experimental (sex-related businesses present) and control (sex-related businesses absent) neighborhoods. For these analyses, the three experimental neighborhoods were combined and the

three control neighborhoods were combined. In reporting the results of these analyses, we follow the typical statistical convention of reporting $p = .05$ as significant (5 or fewer chances in 100 of finding a difference between experimental and control neighborhoods by chance) and $p = .10$ as marginally significant (6 to 10 chances in 100 of finding a difference by chance). In this study a sample of 300 is used to generalize to all residents of the 6 neighborhoods. When sample sizes are small, as in this study, significant differences are likely to be underestimated. Therefore, we consider marginally significant differences to be meaningful in the interpretation of the results.

Residence data.

- (1) The residents of the experimental neighborhoods perceived significantly more neighborhood problems than the residents of the control neighborhoods, $p < .05$. They also listed more additional neighborhood problems than the residents of the control neighborhoods.
- (2) The residents of the experimental neighborhoods perceived their neighborhoods as significantly less safe for children than the residents of the control neighborhoods, $p < .05$.
- (3) The residents of the experimental neighborhoods reported being the victims of crime significantly more than the residents of the control neighborhoods, $p < .05$. These crimes were perceived to be quite serious in nature.
- (4) The residents of the experimental neighborhoods perceived their neighborhoods as somewhat less safe at night than the residents of the control neighborhoods, $p < .08$.

- (5) The residents of the experimental neighborhoods feared being victimized by crime somewhat more than the residents of the control neighborhoods, $p < .10$.
- (6) Residents of the experimental neighborhoods stated they had somewhat more reasons to call the police in the past year to report a neighborhood crime than the residents of the control neighborhoods, $p < .06$.

There were no differences in number of times residents in the experimental and control groups actually called the police to report neighborhood crimes in the last year, no differences between these groups on number of security measures in the home, and no differences in the perceived seriousness of the crimes. (See Tables 1 and 2 for all measures).

In addition to the composite measures, some individual measures also were significant. The specific problems that were viewed as being more pervasive in experimental than control neighborhoods are as follows: sexual dangers for women, sexual dangers for children, homosexual misconduct, pornography in the schools, inability of families to guide the sexual conduct of children, declining moral standards, interference with the family's moral guidance of children, exposure of minors to adult entertainment, offensive business advertising, disturbing the peace, declining property values, public drunkenness, fighting, gambling, public indecency, and weapons. Drunk driving and adults who set bad examples for children were viewed as somewhat more pervasive in experimental than control neighborhoods.

The specific crimes of which residents of experimental neighborhoods had been a victim significantly more than residents of

control neighborhoods were having someone expose themselves to the respondent and being endangered by a drunk driver. The specific crime which the residents of experimental neighborhoods feared somewhat more than residents of control neighborhoods was having someone try to sell or show them pornography.

The residents of the experimental and the control neighborhoods were similar in age, education, religion, religiosity, employment, and income. They differed only on one dimension: more females were interviewed in the experimental than in the control groups (Chi square = 4.24, $p < .05$). Additional analyses of variance showed that sex of respondent does not account for the significant differences in responses to any of the measures reported above ($F = 0.00$, $p = n.s.$ for problems, $F = 1.88$, $p = n.s.$ for reasons to call the police, $F = .77$, $p = n.s.$ for safety, $F = 1.25$, $p = n.s.$ for safety of children, $F = .66$, $p = n.s.$ for being the victim of crimes. (See Table 3 for demographic characteristics of respondents).

Respondents with minor children living at home were more likely to report having called the police to report a neighborhood crime in the last year, $p < .05$; to believe they had reason to call the police to report a neighborhood crime in the last year, $p < .01$; to perceive more neighborhood problems, $p < .01$; and to have a high degree of fear of crime, $p < .001$, relative to respondents without minor children living at home. Respondents with minor children living at home reported being the victims of somewhat more crimes than respondents without children, $p < .10$. There was also an interaction between presence/absence of children and neighborhood area. (See Table 4 for means). Respondents in the experimental group with minor

children living at home reported about 3 times more neighborhood problems than respondents in all other groups, $p < .05$. These respondents were also somewhat more likely to have called the police to report a neighborhood crime in the last year than respondents in all other groups ($F = 3.18$, $p < .08$ (See Table 5 for means). Because the experimental and control neighborhoods did not differ in proportion of respondents with minor children living at home ($F = .40$, $p = n.s.$), the significant and marginally significant differences between experimental and control groups could not have been caused by such differences.

Business data. There were no differences in measures between business respondents in the experimental and control areas. The lack of significance was anticipated, due to the small sample sizes. These respondents were included to ensure feedback from all types of neighborhood users. As a result of the random selection process, several operators of sex shops were respondents in the experimental groups.

DISCUSSION

The data show that there are a number of differences between the experimental and control neighborhoods that can be attributed to sex-related businesses in the experimental neighborhoods. In neighborhoods containing sex-related businesses, residents perceive significantly more neighborhood problems, report being the victim of more crimes, and perceive the neighborhood as significantly less safe for children than residents of neighborhoods that do not contain sex-related businesses. In addition, in neighborhoods containing sex-related businesses, residents perceive their neighborhood as somewhat

less safe at night, fear being the victim of crime somewhat more, and believe that they had somewhat more reasons to call the police in the past year to report a neighborhood crime than respondents in neighborhoods that do not contain sex-related businesses.

Considering the perceived problems in the control neighborhoods, especially those related to the presence of a topless bar, the data are markedly clear in showing differences between neighborhoods with and without sex-related businesses.

The residents of neighborhoods containing sex-related businesses seem particularly concerned about the influence of these businesses on children in the neighborhood. Many of the problems that are viewed as significantly more prevalent in these neighborhoods than in neighborhoods not containing sex-related businesses concern direct or indirect negative influences of these businesses on children. In addition, the residents of neighborhoods containing sex-related businesses who have minor children living at home are significantly more likely to perceive problems in their neighborhoods.

We believe that the numbers of problems reported are actually lower than the problems experienced by the residents in neighborhoods containing sex-related businesses. Many residents seemed to cope with the problems of these neighborhoods psychologically, by perceiving the sex-related businesses as being outside their neighborhood, even when they were in close proximity to their homes. It was common for respondents in the experimental areas who were only two blocks from a sex-related business to respond that their neighborhood had few problems but that the people in the neighborhoods where there were topless bars had terrible problems. This redefinition of neighborhood

- 35 -

boundaries may have allowed residents of neighborhoods where sex-related businesses caused problems to justify their continued residence in the neighborhoods.

Other respondents told the interviewers that they could not tell them about the problems caused by the sex-related businesses because they feared retaliation, or because they feared being involved in police investigations of these businesses. Despite the interviewers' assurances of confidentiality, the identification badges worn by the respondents identifying them as being from the City Attorney's Office apparently caused many respondents to believe that their responses would be turned over to the police with their names attached.

In conclusion, the data show a strong and consistent pattern of higher neighborhood crime, resident fear, and resident dissatisfaction in the neighborhoods containing sex-related businesses relative to neighborhoods that do not contain such businesses. We believe that these neighborhood problems are sufficiently great to justify action to decrease their magnitude in these neighborhoods.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

PHYLLIS WOODALL, & JEANNIE COUTTA,
d/b/a/ THE NAKED HAREM; ALMA RUIZ,
SOLEDAD AGUAYO, JOHN LUCIANO,
WHANPEN DUBOIS, CHRISTINA JAMES
& ELENA ANNA BROWN, employees of
PHYLLIS WOODALL & JEANNIE COUTTA;
LOUISE COMPTON, KEN COMPTON, d/b/a
TRIXX ADULT THEATRE; JEDJO, INC.,
SMD ENTERPRISES, INC., d/b/a THE
LAMPLIGHTER & RED FLAME, MARC
DIEDRICH, President, BRUCE SEIKO
Manager; HIROYOSHI IWABUCHI &
wife LUZ IWABUCHI, HENRY IWABUCHI,
ESTELA RODRIGUEZ d/b/a LATIN PALACE
& CABARET; ENRIQUE VILLANUEVA,
WILLIE CENICEROS, d/b/a SWINGER'S
CINEMA,

Plaintiffs,

vs.

THE CITY OF EL PASO, TEXAS,
the Mayor, JONATHAN ROGERS; each
City Representative, SUZIE AZAR,
JIMMY GOLDMAN, TONY PONCE, JETHRO
HILLS, ED ELSEY, ROBERT CANDELARIA,
the City Attorney, DAVID CAYLOR,
the City Prosecutor, HERB FLEMMING,
the Chief of Police of the City of
El Paso, Texas, JOHN SCAGNO; the
Chief Administrator of the Zoning
Office Department of the City of
El Paso, Tx., R.A. PROVENCIO, and
head of vice squad, LUIS BARBA,

Defendants.

NO. EP-88-CA-127

CITY ATTORNEY'S
OFFICE

AUG 17 1992

STATE OF TEXAS
COUNTY OF EL PASO

AFFIDAVIT

Before me the undersigned authority on this day personally appeared PATRICIA D. GARCIA and CAROLE HUNTER, who after being deposed, upon oath stated as follows:

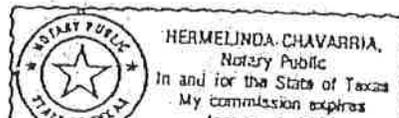
"My name is Patricia D. Garcia. My title with the Department of Planning, Research and Development for the City of El Paso is that of Current Planning Coordinator. I hereby certify that the attached documents are true and correct copies of a study prepared by the Center for Social Research at New Mexico State University, dated August 1986, entitled: "Report of the Study of Perceived Neighborhood Problems", and a study prepared by the Department of Planning, Research & Development of the City of El Paso entitled: "Effects of Adult Entertainment Businesses on Residential Neighborhoods" dated September 26, 1986.

"I hereby further certify that I am the custodian of said documents for the Department of Planning, Research & Development of the City of El Paso. I further certify that said documents were prepared at the request of the City of El Paso in anticipation of the enactment of an amendment to the zoning ordinances regulating certain adult entertainment establishments. I further certify that they were prepared by persons with personal knowledge of the contents contained therein."

Patricia D. Garcia
PATRICIA D. GARCIA

SWORN AND SUBSCRIBED TO before me, the undersigned authority, this 28 day of September, 1989.

Hermelinda Chavarria
NOTARY PUBLIC
STATE OF TEXAS



"My name is Carole Hunter, I am the City Clerk for the City of El Paso. I hereby certify under seal, that PATRICIA D. GARCIA is the custodian of records for the Department of Planning, Research and Development of the City of El Paso with respect to the studies that were prepared at the request of the City of El Paso regarding the effect of adult entertainment businesses on neighborhoods, and that her signature as shown above, is genuine.

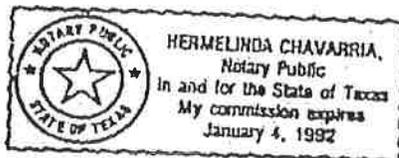
Carole Hunter

CAROLE HUNTER

28 SWORN AND SUBSCRIBED TO before me, the undersigned authority, this day of September, 1989.

Hermelinda Chavarria

NOTARY PUBLIC
STATE OF TEXAS



J:005

JONATHAN ROGERS
MAYOR
KENNETH E. BEASLEY
CHIEF ADMINISTRATIVE OFFICER



CITY COUNCIL

JIMMY GOLDMAN
DISTRICT NO. 1

SUZANNE S. AZAR
DISTRICT NO. 2

ORLANDO R. FONSECA
DISTRICT NO. 3

PATRICK B. HAGGERTY
DISTRICT NO. 4

ED ELSEY
DISTRICT NO. 5

ALICIA R. CHACON
DISTRICT NO. 6

September 26, 1986

Office of the City Attorney:

Submitted herewith is the report on Effects of Adult Entertainment Businesses on Residential Neighborhoods. The study was undertaken to examine potential negative impacts created by adult entertainment businesses to the land use characteristics of the area in which they are located. Additionally, the study examined the perceived social effects and the incidence of crime to show the deviation between study areas having adult entertainment businesses and control areas which do not.

The analyses show that adult entertainment businesses are an obvious variable in the negative impacts in each instance of comparison. Based on the findings, the Department of Planning, Research and Development recommends that adult entertainment businesses be regulated insofar as location, concentration, licensing, signage and other such applicable provisions.

DEPARTMENT OF PLANNING,
RESEARCH AND DEVELOPMENT

Nestor A. Valencia, A.I.C.P.
Director

Patricia D. Garcia
Current Planning Coordinator
Land Development Division

ORDINANCE NO. _____

AN ORDINANCE RELATING TO LICENSING REQUIRMENTS AND REGULATIONS FOR SEXUALLY ORITENTED BUSINESSES WITHIN EL PASO.

Section

- _____ Preamble
- 5.54.010 Rationale and Findings.
 - 5.54.020 Definitions.
 - 5.54.030 Classifications.
 - 5.54.040 License Required.
 - 5.54.050 Issuance of License.
 - 5.54.060 Fees
 - 5.54.070 Inspection.
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 - 5.54.190 Scienter Required to Prove Violation or Business Licensee Liability.
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 - 5.54.210 Severability.
 - 5.54.220 Conflicting Code Provisions Repealed.
 - 5.54.230 Effective Date.

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as citizens of the City; and

WHEREAS, the City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

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WHEREAS, with the passage of any Ordinance, the City and the City Council accept as bind the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Texas Constitutions, Texas State Statutes, and the Texas Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the Texas Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to-wit, the controlling of secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the current Chapter 5.54 of the El Paso City Code be repealed and replaced with the following:

Section 5.54.010. Rationale and findings.

(a) **Purpose.** It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(b) **Findings and Rationale.** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Fantasy Ranch, Inc. v. City of Arlington*, No. 04-11337, 2006 WL 2147559 (5th Cir. 2006); *N.W. Enters. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d (W.D. Tex. 2002), *aff'd* 340 F.3d 295 (5th Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *aff'd* 176 F.3d 1358 (11th Cir. 1999); *Ctr for Fair Public Policy v. Maricopa County*, 336 F.3d 1152 (9th Cir. 2003); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Reliable Consultants, Inc. v. City of Kennedale*, Case No. 4:05-CV-166-A (N.D. Tex., May 16, 2005); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich., Aug. 28, 2006); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Cove, California – 1991; Houston, Texas – 1983; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado – 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997, 2004; Greensboro, North Carolina – 2003; Kennedale, Texas – 2005; Effingham, Illinois – 2005; Amarillo, Texas – 1977; El Paso, Texas – 1986; New York, New York Times Square – 1994; and the Report of the Attorney General’s Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota),

The City Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter and sexual assault and exploitation.

(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(3) Each of the foregoing negative secondary effects constitutes a harm, which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City’s rationale for this Ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City’s interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.

Section 5.54.020. Definitions

For purposes of this Ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

A. *“Adult Bookstore or Adult Video Store”* shall mean an establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.

A “principal business activity” exists where the commercial establishment:

1. Has a substantial portion of its displayed merchandise which consists of said items, or
2. Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

3. Has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

4. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

5. Maintains a substantial section of its interior business space for the sale or rental of said items, or

6. Maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

B. "*Adult Cabaret*" shall mean a nightclub, bar, juice bar, restaurant, bottle club or other commercial establishment, whether or not alcoholic beverages are served, whose primary business is the offering to customers of live entertainment that features persons who appear semi-nude.

C. "*Adult Lounge*" shall mean an adult cabaret, as defined above, which is permitted or licensed premises, pursuant to the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.

D. "*Adult Motion Picture Theater*" or "*Adult Movie Theatre*" shall mean an establishment, that contains a room with a screen or projection area, whose primary business is the exhibition to customers of films, motion pictures, videocassettes, digital video disc, slides, any electronically produced media or similar photographic reproductions which are distinguished by or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas or intended to provide sexual stimulation or sexual gratification to such customers and are regularly shown to more than five persons for any form of consideration.

E. "*Characterized by*" shall mean describing the essential character or quality of an item. As applied in this Ordinance, no business will be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.

F. "*City*" shall mean City of El Paso, Texas.

G. "*Conduct any business in a sexually oriented business*" shall mean any person who engages in any one (1) or more of the following:

1. Operate a cash register, cash drawer or other depository on the premises of the sexually oriented business where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the sexually oriented business or the activities of the premises of the sexually oriented business;

2. Display or take orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;

3. Deliver or provide to any customer any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;

4. Act as a door attendant to regulate entry of customers or other persons into the premises of the sexually oriented business; or

5. Supervise or manage other persons in the performance of any of the foregoing activities on the premises of the sexually oriented business.

H. “*Director*” shall mean the Building Permits and Inspections Director.

I. “*Employee*” shall mean any person, whether or not the person is designated as an employee, independent contractor, agent or otherwise, who renders any service whatsoever to the customers of a sexually oriented business, works in or about a sexually oriented business or who conducts any business in a sexually oriented business and who receives or has the expectation of receiving any compensation from the operator, or customers of the sexually oriented business. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that this definition cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships and any other scheme or system whereby the “employee” has an expectation of receiving compensation, tips or other benefits from the sexually oriented business or its customers in exchange for services performed on the premises. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

J. “*Establish or Establishment*” shall mean and include any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
3. The addition of any sexually oriented business to any other existing sexually oriented business.

K. “*Hearing Officer*” shall mean an attorney who is licensed to practice law in Texas, and retained to serve as an independent tribunal to conduct hearings under this Ordinance.

L. “*Influential Interest*” shall mean any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

M. “*Licensee*” shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an “employee” it shall mean the person in whose name the sexually oriented business employee license has been issued.

N. “*Manager*” shall any person who supervises, directs or manages any employee of a sexually oriented business or any other person who conducts any business in a sexually oriented business with

respect to any activity conducted on the premises of the sexually oriented business, including any on-site manager.

O. “*Nudity or a State of Nudity*” shall mean the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

P. “*On-Site Manager*” shall mean a person charged by an owner or operator of a sexually oriented business with the responsibility for direct supervision of the operation of the sexually oriented business and with monitoring and observing all areas of the sexually oriented business to which customers are admitted at all times during which the sexually oriented business is open for business or customers are on the premises of the sexually oriented business.

Q. “*Operate or Cause to Operate*” shall mean to cause to function or to put or keep in a state of doing business.

R. “*Operator*” shall mean any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

S. “*Person*” shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

T. “*Premises*” means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the licensee, as described in the application for a sexually oriented business license.

U. “*Regularly*” means and refers to the consistent and repeated doing of the act so described.

V. “*Semi-Nude or State of Semi-Nudity*” means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard or similar wearing apparel provided the areola is not exposed in whole or in part.

W. “*Sexual Device*” means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy or devices primarily intended for medical or healthcare use.

X. “*Sexual Device Shop*” means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this

definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.

Y. “*Sexually Oriented Business*” means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” or a “sexual device shop.”

Z. “*Specified Anatomical Areas*” means and includes:

1. Less than completely and opaquely covered: human genitals, pubic regions, buttock, and 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.

AA. “*Specified Criminal Activity*” means any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of the release from confinement imposed for that conviction, whichever is the later date:

1. Prostitution; promotion of prostitution; aggravated promotion of prostitution; compelling prostitution; obscenity; sale, distribution or display of harmful material to minor; sexual performance by a child; employment harmful to children; or possession or promotion of child pornography; as defined in Chapter 43 of the Texas Penal Code;

2. Public lewdness; indecent exposure; or indecency with a child; as defined in Chapter 21 of the Texas Penal Code;

3. Sexual assault or aggravated sexual assault as defined in Chapter 22 of the Texas Penal Code;

4. Criminal attempt, solicitation or conspiracy to commit any of the foregoing offenses; or

5. Any offense in another jurisdiction that, had the predicate act(s) been committed in Texas, would have constituted any of the foregoing offenses.

AB. “*Specified Sexual Activity*” means any of the following:

1. Intercourse, oral copulation, masturbation or sodomy; or

2. Excretory functions as part of or in connection with any of the activities described in (1.) above.

AC. “*Substantial*” means at least thirty-five percent (35%) of the item(s) so modified.

AD. “*Transfer of Ownership or Control*” of a sexually oriented business shall mean any of the following:

1. The sale, lease or sublease of the business;

2. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange or similar means; or

3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

AE. "Viewing Room or Booth" shall mean the room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, any electronically produced media or other video production which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.

Section 5.54.030. Classification.

The classifications for sexually oriented businesses shall be as follows:

1. Adult bookstore or adult video store;
2. Adult cabaret or adult lounge;
3. Adult motion picture theater or movie theatre;
4. Sexual device shop.

Section 5.54.040. License Required.

A. *Business License.* It shall be unlawful for any person to engage in, conduct, or operate a sexually oriented business in the City without a valid sexually oriented business license.

B. *Employee License.* It shall be unlawful for any person to be an "employee," as defined in this Ordinance, of a sexually oriented business in the City without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

C. *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Director a completed application made on a form provided by the Director. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (D) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (C), accompanied by the appropriate licensing fee:

1. The applicant's full legal name and any other names used by the applicant in the preceding five (5) years. Applicant is also required to include mother's maiden name.
2. Current address of the applicant.
3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
4. A current photograph of applicant.
5. If the application is for a sexually oriented business license, the business name, location, mailing address and phone number of the sexually oriented business.

6. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

7. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Ordinance, and if so, each specified criminal activity involved, including the date, place and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

8. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (a) Been declared by a court of law to be a nuisance; or
- (b) Been subject to a court order of closure or padlocking.

9. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth and/or room configuration requirements of this Ordinance shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

At the time of filing an application, the filing applicant shall present himself or herself to the City of El Paso Police Department Headquarters for the purpose of being fingerprinted and photographed. The police department shall take the photographs and fingerprints within four business hours of the time that the filing applicant presents himself or herself to be fingerprinted and photographed.

The information provided pursuant to this subsection (C) shall be supplemented in writing by certified mail, return receipt requested, to the Director within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

D. *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he or she shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Ordinance and each applicant shall be considered a licensee if a license is granted.

E. The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the office of the Director on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by law or a court order.

Section 5.54.050. Issuance of License.

A. *Business License.* Upon the filing of a completed application for a sexually oriented business license, the Director shall immediately issue a Temporary License to the applicant if the completed application is from a pre-existing sexually oriented business that is lawfully operating in the City and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

1. An applicant is less than eighteen (18) years of age.
2. An applicant has failed to provide information required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this Ordinance has not been paid.
4. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of the El Paso Zoning Ordinance or any other portion of the El Paso City Code.
5. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (a) Been declared by a court of law a nuisance; or
 - (b) Been subject to an order of closure or padlocking.
6. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

B. *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the Director shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business employee license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue license unless:

1. The applicant is less than eighteen (18) years of age.
2. The applicant has failed to provide information as required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this Ordinance has not been paid.
4. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (a) Been declared by a court of law to be a nuisance; or
- (b) Been subject to an order of closure or padlocking.

5. The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Section 5.54.060. Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: five-hundred-fifty dollars (\$550) for the initial fee for a sexually oriented business license and three-hundred-fifty dollars (\$350) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five (\$25) for annual renewal.

Section 5.54.070. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the Director and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Ordinance, but not to authorize a harassing or excessive pattern of inspections.

Section 5.54.080. Expiration and Renewal of License.

A. Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Ordinance.

B. Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Section 5.54.090. Suspension.

A. *Business License.* The Director shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licenses has knowingly violated this Ordinance or has knowingly allowed an employee to violate this Ordinance.

B. *Employee License.* The Director shall issue a written notice of intent to suspend a sexually oriented business employee license if the employee license if the employee has knowingly violated this Ordinance.

Section 5.54.100. Revocation.

A. The Director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this Ordinance on two (2) or more occasions within a twelve (12) month period.

B. The Director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

1. The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

2. The licensee has knowingly or recklessly engaged in or allowed possession, use or sale of controlled substances on the premises of the sexually oriented business;

3. The licensee knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

4. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises or the sexually oriented business.

C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

D. When, after the notice and hearing procedure described in this Ordinance, the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date the revocation becomes effective.

Section 5.54.110. Hearing; Denial, Revocation and Suspension; Appeal.

A. When the Director issues a written notice of intent to deny, suspend, or revoke a license, the Director shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Director for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the hearing officer shall conduct a hearing on the Director's written notice of intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel (at respondent's expense), present evidence and witnesses on his or her behalf, and cross-examine any of the Director's witnesses. The Director shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The

hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing. The decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.

If the decision is to deny, suspend, or revoke the license, the decision shall become effective on the thirtieth (30th) day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the Director to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Director shall contemporaneously therewith issue the license to the applicant.

B. If any court action challenging a license denial, suspension, or revocation is initiated, the City shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The City shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the Director: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the Director shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement.

Section 5.54.120. Transfer of License.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

Section 5.54.130. Hours of Operation and Supervision of Premises.

A. No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

B. The licensee or manager named and approved with respect to issuance of a permit or the holder of the current manager's permit, shall be present on the premises of a sexually oriented business at all times when the establishment is in operation.

Section 5.54.140. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

A. A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing room, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, any electronically produced media or other video productions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. It shall be the duty of the operator, and of any employees present on the premises, to insure that no patron is permitted access to any area of the premises, which has been designated as an area in which patrons will not be permitted.

3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to insure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

4. It shall be the duty of the operator, and of any employees present on the premises, to insure that no sexual activity occurs in or on the licensed premises.

5. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(a). That the occupancy of viewing rooms less than 150 square feet is limited to one person.

(b) That sexual activity on the premises is prohibited.

(c) That the making of openings between viewing rooms is prohibited.

(d) That violators will be required to leave the premises.

(e) That violations of these regulations are unlawful.

6. It shall be the duty of the operator to enforce the regulations articulated in (5)(a) through (d) above.

7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to insure that at least one employee is on

duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to insure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 5.54.150. Loitering, Exterior Lighting, Visibility, and Monitoring Requirements.

A. It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

C. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Section 5.54.160. Penalties and Enforcement.

A. A person who knowingly engages in or permits another person to engage in a specified sexual activity on the premises of a sexually oriented business shall be guilty of a Class A misdemeanor. A person who engages in any violation of this Ordinance other than a specified sexual activity violation shall be guilty of a Class C misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense.

B. Any premises, building, or other structure in which a sexually oriented business, as defined in this Ordinance, is repeatedly operated or maintained in violation of the provisions of this Ordinance shall constitute a public nuisance and shall be subject to abatement proceedings initiated by the City of El Paso in a court of competent jurisdiction. Three violations of this Ordinance in a twelve-month period shall constitute repeated operation or maintenance as discussed in the preceding sentence.

C. The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Section 5.54.170. Applicability of Ordinance to Existing Businesses.

All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this Ordinance. By the end of said ninety (90) days, all sexually oriented

businesses and sexually oriented business employees must conform to and abide by the requirements of this Ordinance.

Section 5.54.180. Prohibited Conduct.

It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

A. It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

B. It shall be a violation of this Ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

C. It shall be a violation of this Ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

D. It shall be a violation of this Ordinance for any person to knowingly allow a person under the age of eighteen (18) years to come or remain on the premises of a sexually oriented business as an employee or patron.

A sign in a form to be prescribed by the Director, and summarizing the provisions of subsections (A), (B), (C), (D), and (E) shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 5.54.190. Scierter Required to Prove Violation or Business Licensee Liability.

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this Ordinance, or the purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability was imputed was powerless to prevent the act.

Section 5.54.200. Failure of City to Meet Deadline Not to Risk Applicant/Licensee Rights.

In the event that a City official is required to act or to do a thing pursuant to this Ordinance within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City official under this Ordinance, and not completed in time prescribed, includes approval of condition(s) necessary for approval by the City of an applicant or licensee's application for sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the City's action has passed.

Section 5.54.210. Severability.

This Ordinance and each section and provision of said Ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

Section 5.54.220. Conflicting Code Provisions Repealed.

Any provision(s) in the El Paso City Code specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.

Section 5.54.230. Effective Date.

This Ordinance shall become effective after publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2007.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Laura P. Gordon
Deputy City Attorney

CITY CLERK DEPT.
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