

APPENDIX A

REPORT ON FINDINGS CONCERNING IMPACTS OF SEXUALLY ORIENTED BUSINESSES [Adopted by Art. 25, 11-23-1998 STM]

The First Amendment to the United States Constitution and Article 16 of the Declaration of Rights of the Massachusetts Constitution guarantee to people the right of freedom of expression. Therefore, federal state and local governments have no power to restrict expression because of its message, its ideas, its subject matter, or its content except in very rare circumstances. However, governments can adopt content-neutral regulations, which are aimed at reducing or eliminating the harmful secondary effect, but not the message or content, of the materials involved.

The town of Fairhaven's Planning Board notes that the both the United States Supreme Court and the Massachusetts Supreme Judicial Court have found that sexually oriented businesses are protected by the First and Fourteenth Amendments to the United States Constitution and Article Sixteen of the Declaration of Rights of the Massachusetts Constitution. The Planning Board also notes that the US Supreme Court in *Young v. American Mini-Theatres*, 427 U.S. 50 (1976) upheld a community's ability to regulate the location of sexually oriented businesses through zoning in order to prevent blight and reduce crime. The prevention of blight and reduction in may be the subject of content-neutral regulation which bears a rational nexus to substantial governmental interests.

In *City of Renton, et al v. Playtime Theaters, Inc., et al*, 475 U.S. 35 (1986) it was held that content neutral time, place and manner regulations on sexually oriented businesses are acceptable. In *Renton*, as in *Young*, the court upheld regulations on adult entertainment businesses which were designed to prevent crime, protect the city's retail trade, and maintain property values. While the courts have held that a total ban on adult entertainment businesses would be unconstitutional, in *Renton*, the court held that the city is not required to guarantee the best commercial locations for sexually oriented businesses. However, the court did note that in order to be valid regulation must provide potentially available sites.

In the *Renton* decision the Supreme Court held that the First Amendment does not require a municipality to conduct new studies, or produce evidence independent of that already generated by other municipalities, so long as whatever evidence the municipality relies on is believed to be relevant to the problem that is addressed. On February 10, 1998 the Fairhaven Planning Board reviewed a number of case studies highlighting the social and economic effects of sexually oriented businesses in other communities across the country. These case studies address issues such as the relationship between sexually oriented businesses and crime, property values, and property turn-over. The following summarizes the findings of these studies:

PHOENIX ARIZONA - Increase in crime, especially sexually oriented crimes were reported. Sex offenses were 506% higher in neighborhoods where sexually oriented businesses were located. Phoenix Planning Department 1979.

TUCSON ARIZONA - Activities at adult entertainment establishments were studied. Activities reported included illegal sexual activities, customers exposing themselves, underage dancers, masturbation in peepshows and anonymous sex acts being facilitated through such devices as "glory holes." Tucson Police Department 1990.

GARDEN GROVE, CA - Increases in crime were directly related to adult businesses. For instance 36% of all crime on Garden Grove Boulevard were linked to the seven adult businesses in the area. Real estate values were also found to be affected by adult uses, with depreciation of both residential and commercial property values. Single family homes were found to suffer the greatest impacts. Survey conducted from police records and survey of real estate professionals, 1991.

LOS ANGELES - Real estate values data was not conclusive, however realtors and appraisers noted that the proximity of adult uses to residential properties decrease market value. City police statistics found that more crime occurred in areas where sexually oriented businesses were concentrated than elsewhere in the city. City Planning Department 1977.

WHITTIER CALIFORNIA - A higher turnover of property in the adult business area was recorded (57% of homes compared to 19% for the non-adult business areas). The overall crime rate was also noted to increase with a before/after study showing a 102% increase in crime near adult businesses versus an 8.3% increase in the entire city. City staff for the City Council, 1978.

INDIANAPOLIS - An increase in crime over control areas was found. Commercial areas with sexually oriented businesses had a lower increase in crime rate than residential areas near sexually oriented businesses. It was also found that real estate values increase at lower rates near sexually oriented businesses than in control areas or city wide. Department of Metropolitan Development 1984.

MINNEAPOLIS - Report provides a notation of increased crime and lower property values but this data is not adequately documented. Minnesota Crime Prevention Center 1980.

CLEVELAND - The Cleveland Police Department analyzed crime statistics by census tracts. The analysis indicated a much higher crime rate in census tracts with sexually oriented businesses than in tracts without the uses. The study also notes the impacts of concentrating sexually oriented businesses, for instance the city's largest census tract by population, with no sexually oriented businesses had only 14 robberies, while in a tract with only 730 people but five sexually oriented businesses there were 136 robberies. Cleveland Police Department 1977.

OKLAHOMA CITY - A survey of 100 realtors and appraisers in Oklahoma City, 34 responding, results of the survey found that 32% felt that an adult bookstore within one block of a residential area would decrease home values by at least 20%; 76% said that an adult bookstore would negatively effect other businesses within one block. The study noted that residential properties would be more negatively affected than business properties. Oklahoma City Community Development Office, 1986.

AMARILLO TEXAS - Police records were studies to gauge the impacts of concentrating sexually oriented businesses. The study showed that areas of concentration had a crime rate 2 ½ time the city average. Amarillo Texas Planning Department 1977.

AUSTIN TEXAS - This study found that sexually oriented crime was 177% - 482% higher in areas with sexually oriented businesses than the city average. The study also found that areas with two sexually oriented businesses experienced a crime rate 66% higher than in areas with only one. A survey found that 88% felt that a sexually oriented business within one block decreased residential property values, 33% said that it decreased business property values. The realtors also noted that the presence of such businesses reflected a neighborhood in decline, making financing more difficult. Office of Land Development Services, 1986.

HOUSTON TEXAS - This study presents the hearing testimony oriented to ensuring that the First Amendment Rights of sexually oriented businesses were protected. Houston City Council 1983.

SEATTLE WA - This study noted an increasing number of complaints to police and petitions to the Seattle City Council regarding an increased number of cabarets. Protests included decreases in property values, increase in insurance rates, and increases in crime. Department of Construction and Land Use, 1989.

In addition to these studies, the Board of Selectmen of the Town of Fairhaven, during a licensing hearing for a proposed expansion of use by an existing sexually oriented business within the town reviewed reports of the Rockingham County NH, County Attorney's Office related to findings at several sexually oriented businesses in Portsmouth and Seabrook New Hampshire. The findings from these studies included instances of masturbation, disposal of used condoms, and the presence of peepholes.

The town of Fairhaven's 1996 Master Plan recommends that the Planning Board take steps to preserve the town's character. In addition, the purpose of the town's zoning bylaw includes:

- A. To promote the health, safety, convenience and general welfare of the inhabitants of the town of Fairhaven.
- C. To improve and beautify the town.

- G. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- H. To encourage the most appropriate use of land throughout the town.

It is the responsibility of the Fairhaven Planning Board to develop zoning provisions to carry out the goals of the Master Plan and to implement the purpose of the Zoning Bylaw. Given the findings from the case studies from other municipalities cited above regarding the effects and impacts of sexually oriented businesses it is clear that these uses:

- engender increased crime, particularly in their immediate vicinities, and that the incident of crime increase as these uses are concentrated;
- have an adverse impact on health as they relate to illicit sexual activities;
- have an adverse impact on property values; and
- have an adverse impact on the business climate in their vicinity.

In order to protect the health, safety and general welfare of the inhabitants of the Town of Fairhaven, and to prevent blight, the Planning Board of the Town of Fairhaven finds that it is necessary to regulate the potential adverse impacts of sexually oriented businesses through a zoning regulation that ensures that these uses are:

- not concentrated into one location;
- are located adequate distances away from residential properties; and
- are located adequate distances away from churches, schools, and playgrounds.