



1077

A 40 Acre Study
Prepared by Planning Division
Department of Planning & Economic Development
City Hall Annex
25 West Fourth Street
Saint Paul, Minnesota 55102

REPORT BRIEF

ADULT ENTERTAINMENT

1. Who initiated the study?

The City Council (Resolution #276732)

2. What is the scope of the study?

The study examines adults-only uses: adult saunas, adult massage parlors, adult theatres, adult bookstores, and adult live entertainment, and makes recommendations to regulate their location.

3. What recommendations does the study make?

The study recommends amendments to the Zoning Code intended to control incompatible uses and concentrations of adult entertainment:

- Define adult entertainment uses.
- Restrict adult entertainment to B-3, B-4, B-5, and I-1 zones.
- Make adult entertainment a special condition use, requiring a public hearing.
- Require in a B-3: 1000' radial from other adult entertainment uses; 100' from residential property; no access to adjacent residential property.
- Require in the Downtown (B-4, B-5): 300' radial from other adult entertainment uses.

4. What problems are addressed by the study?

- Existing zoning and licensing regulations do not adequately differentiate between adults-only and other uses.
- Adults-only uses are permitted in restrictive office and commercial zones intended to serve neighborhood needs.
- Concentrations of adult entertainment change the perception of neighborhoods.
- Regulations must guarantee the rights of both the business owners and the neighborhoods.

5. Are the recommendations consistent with the Comprehensive Plan?

Yes. One of the Plan's major goals is the protection of the City's neighborhoods.

NOTICE OF PUBLIC HEARING

The City Council has initiated a 40 Acre Study relative to the regulation of adult entertainment uses in Saint Paul. Specific texts of the Study are on file in the Zoning Section of the City Planning Division, located at the City Hall Annex, 25 West Fourth Street, and may be viewed there upon request.

The Planning Commission has fixed the 27th day of May, 1983, at 9:00 in the morning, in the City Hall Annex, 15th Floor, 25 West Fourth Street; and at said time and place the Planning Commission will hear all testimony relative to the study.

Liz Anderson, Chairman
Saint Paul Planning Commission

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I. INTRODUCTION

Saint Paul's adult entertainment industry is a relatively innocuous one. There are several notable exceptions which are highly visible, at the corners of University and Dale and at Wabasha and Ninth, but most remain scattered and isolated. Inadequate regulations of these adults-only uses, however, could result in these exceptions becoming the rules throughout the City. These specific cases flag the need for foresight in providing safeguards for all of Saint Paul's neighborhoods.

This paper is in response to a City Council initiated 40 Acre Study to investigate Saint Paul's adult entertainment industry and to recommend regulations to control its concentration.

II. AUTHORITY

The concept of "inverse zoning" to eliminate concentrations of skid row businesses was first implemented by the city of Detroit in its "Anti-Skid Row" ordinance adopted in 1962, and amended to include sexually-oriented businesses in 1972. The ordinances provided that an adults-only business could not be located within 1000' of any other regulated use or within 500' of a residential area. The ordinances were subsequently challenged on their constitutionality by the owners of two adults-only theatres.

In the landmark Young vs. American Mini-Theatres 427 U.S. 50 (1976) Decision, the United States Supreme Court held that:

1. "The Detroit Ordinances did not have a significant deterrent effect on the exploitation of films protected by the First Amendment.
2. "...Apart from the fact that the ordinances treat adult theatres differently from other theatres and the fact that the classification is predicated on the content of material shown in the respective theatres, the regulation of the place where such films may be exhibited does not offend the First Amendment
3. "...The City's interest in the present and future character of its neighborhoods adequately supports its classification of motion pictures. We hold that the zoning ordinances requiring adult motion picture theatres not be located within 1000 ft. of two other regulated uses does not violate the equal protection clause of the Fourteenth Amendment."

In other words, the Supreme Court found that regulation of the place where adults-only films may be exhibited does not violate free expression: a city's interest in planning and regulating the use of property for commercial purposes is clearly adequate to support locational restrictions.

Subsequent to this Supreme Court decision, many cities enacted zoning legislation designed to regulate the location of present and future adult entertainments. Some have modeled their ordinances after the Detroit Ordinance and others have major variations, such as Boston's infamous "combat zone". However, the following principles can be used to construct constitutionally valid ordinances:

1. The greater is the vagueness inherent in an ordinance's wording or definitions, especially if rising to the degree that a non-pornographic entrepreneur must worry whether he is within the ordinance's prohibitions, the more likely it is that the ordinance will be struck down.
2. The more evident and rational is the relationship of the adult-use restrictions to recognized zoning purposes, such as the preservation of neighborhoods and the grouping of compatible uses, the greater is the likelihood that the restriction will be upheld.
3. Locational restrictions cannot be so severe as to result in an inability to accommodate the present and/or future anticipated number of adult businesses in a city. In Young, the court upheld the Detroit Ordinance upon finding that numerous sites complying with the Detroit zoning requirements were available to adult businesses and that the market for sexually explicit fare, viewed as an entity, was therefore "essentially unrestrained".
4. An ordinance which grants administrative officials discretionary power whether or not to allow particular adult businesses to operate is more likely to be struck down as violative of the precept, emphasized by the Young dissenters, that in the First Amendment area "Government may regulate only with narrow specificity".

III. SCOPE OF STUDY

Adults-only businesses may be divided into two broad categories: sex-related and alcohol-related. Those which fall under sex-related are the saunas, massage parlors, adult theatres and bookstores; those included as alcohol-related are generally establishments with liquor licenses.

This discussion is restricted to the first category, sex-related adult entertainment. The second category, alcohol-related, is not included for several reasons: problems associated with bars are generally related to operation rather than to location; it is almost impossible to distinguish between a bar and a restaurant with a liquor license; given the limited amount of B-3 zoned property in the City, restricting them to that zone would virtually eliminate alternative locations and would create a long list of non-conforming neighborhood businesses. Licensing is the more appropriate way to regulate bars. There are stringent requirements including distances from schools, churches, other liquor license; operational procedures; City Council public hearings with mailed notice; and, of course, the possibility of revocation.

IV. BACKGROUND

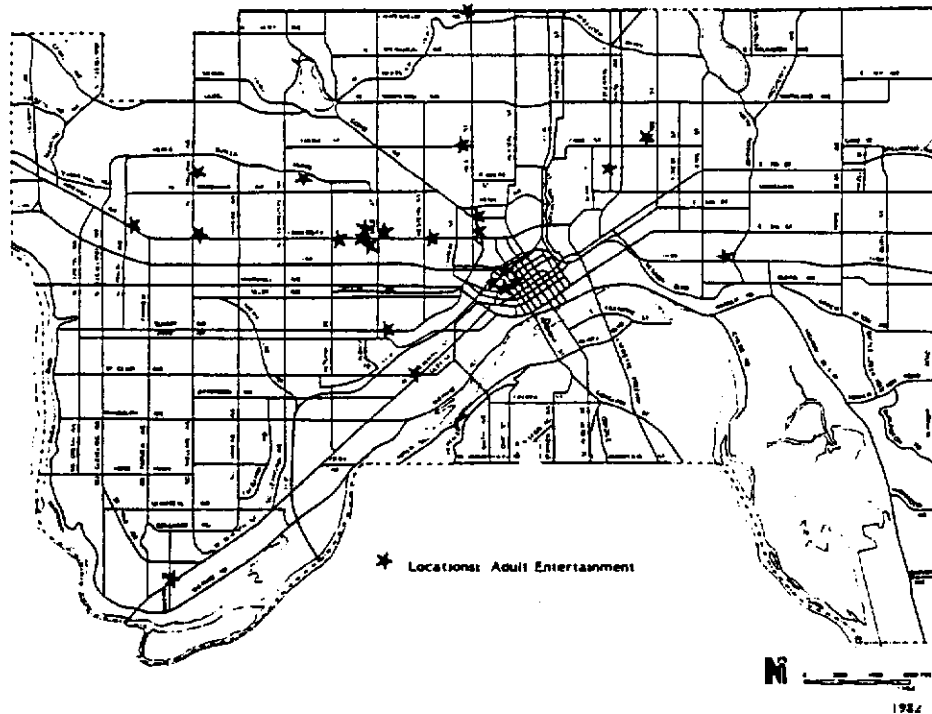
At last count, there are twenty-four adult entertainment establishments in Saint Paul:

- 10 Saunas, Massage
- 7 Adults-only, live entertainment
- 5 Bookstores
- 2 Theatres

All of the twenty-four are zoned for commercial use:

- 6 B-2 (Community Business)
- 12 B-3 (General Business)
- 4 B-4 (Downtown)
- 2 CAAPB (Capitol Area Board) Jurisdiction

Eighty-five percent (21) are located on major thoroughfares: University, Snelling, W. Seventh, Rice, Arcade, and Payne; the other three are on Grand, Hudson Road and Milton.



The total number has dropped from thirty in 1977:

- 10 Sauna/massage parlor
- 13 Live, adult entertainment
- 5 Bookstores
- 2 Theatres

While saunas, massage parlors, bookstores, and theatres have remained constant over the past five years, live adult entertainment has decreased. This pattern with respect to saunas, massage parlors, and live entertainment is certainly in part due to more restrictive licensing regulations which involve consent petitions and public hearings with 30 day notice.

Saint Paul currently regulates these adult entertainment uses in two ways: zoning and licensing. These regulations are summarized in the following chart.

CATEGORY	ZONING					LICENSING				
	CITED IN ZONING CODE	FIRST PERMITTED (WHERE)	PUBLIC HEARING NOTICE	DEFINED IN CODE	DEFINED	DISTANCE REQUIREMENTS	PUBLIC NOTICE	CITY COUNCIL HEARING	CONDITIONS (NEIGHBORHOOD ISSUES)	
ADULT BOOKSTORES	NO*	B-1 (AS RETAIL SALES)	NO	NO	NO*	NO	NO	NO	NO	
SAUNAS AND MASSAGE PARLORS	NO	B-2 (AS HEALTH CLUB) OR OS-1 (AS PERSONAL SERVICE)	NO	NO	YES	200' FROM RESIDENTIAL; MODIFY BY 90% OF OWNERS WITHIN 200'	30 DAY TO 300'	YES	CHARACTER OF NEIGHBORHOOD; PROXIMITY TO SCHOOLS, CHURCHES OTHERS; NUISANCE	
ADULT THEATRES	NO*	B-2 (AS THEATRE)	NO	NO	NO*	NO	NO	NO	NO	
LIVE ENTERTAINMENT	NO	B-2 (ACCESSORY USE)	NO	NO	YES	90% CONSENT OF RESIDENTS WITHIN 200'	30 DAY TO 300'	YES	NONE STATED	
CONVERSATION, RAP PARLORS	NO	OS-1	NO	NO	YES	NONE	NO	NO	NO	

* No discrimination between adults-only and other uses

V. ISSUES AND RECOMMENDATIONS

One of the major goals of the City's adopted Comprehensive Plan is the preservation of the City's neighborhoods. Without controls on the growth and locations of adult entertainment, the City's neighborhoods could change dramatically; the perception of decline associated with adult-entertainment is critical to a neighborhood's well-being. Controls should address the way we protect our neighborhoods in at least three areas: existing regulations, incompatible uses, and concentrations of uses.

A. DEFINITION: EVALUATION OF EXISTING REGULATIONS

I. ISSUE

The City's existing regulations were summarized in the chart in Section IV of this paper. There are some easily discernible omissions in these controls:

Zoning: The Zoning Code does not discriminate between adults-only and other retail/service/commercial uses. Adults-only bookstores could be located in the B-2 (Community Business District) just as any other bookstore or retail use; and adults-only theatres could be located in the B-2 just like any other theatre. Saunas would probably be determined to be similar to health clubs and allowed in the B-1 (Local Business District); and massage parlors and conversation parlors would probably be regarded as providing a personal service and permitted in the most restrictive of the commercial zones, the OS-1 (Office-Service District).

Licensing: Likewise, the City's licensing ordinances do not discriminate between the adults-only bookstores and theatres and all others. Licensing requirements for saunas and massage parlors are stringent, requiring consent from neighbors within 200', a City Council hearing with 30 day notice, and provisions for protection of neighborhood character; the only locational requirements indicate that the use must comply with the Zoning Code. Enforcement has been a problem because many establishments have simply changed their names to "health club", subverting the original intent of the law. Entertainment licenses are required where liquor is served and consent, notice, and public hearing requirements are similar to those for saunas and massage parlors.

Certainly, there is a difference in the Faust and the Grandview, in the Wabasha Bookstore and Odegaard's, in a realtor's office and a massage parlor; but our existing ordinances and codes don't reflect those inherent differences. As a consequence, the businessman along the commercial strip has no assurance that an X-rated theatre might not move in next door; the resident, no assurance that the local dentist's office might not become the neighborhood massage parlor.

2. RECOMMENDATION

Recognizing that the Supreme Court in its decision involving the Detroit Ordinance found that the place where films may be exhibited does not affect the right of free expression, amendments to the Zoning Code should include definitions of adult, adults-only theatres, bookstores, saunas, massage parlors, conversation parlors, and cabarets (live adults-only entertainment).

3. DISCUSSION

A good zoning definition enables planners, officials and the public to distinguish between similar, but not identical, uses. Adult entertainment has been defined in two basic ways: the "Detroit model" which very explicitly lists "Specified Sexual Activities and Anatomical Areas" and the "Boston model" which relies on existing State obscenity laws which prohibit the distribution of pornographic material to minors. The approach proposed here is most similar to the "Boston model" with the great advantage that any operator who avoids violating the State's obscenity laws will automatically prohibit attendance by minors; the restriction of the adult uses becomes, to a large part, self-controlling. Thus once an establishment is required to place itself off limits to minors, it concurrently becomes subject to zoning restrictions.

B. PROTECTION FROM PERMITTED BUT INCOMPATIBLE USES

1. ISSUE

Saint Paul's Zoning Code has a number of different commercial zones, each with a specific intent:

OS-1: The OS-1 Office-Service District is intended to accommodate various types of office use performing administrative, professional and personal services and to serve as a transitional use between the more intensive uses of land such as major thoroughfares or commercial districts and the less intensive uses of land such as one-family residential.

B-1: The B-1 Local Business District is intended to permit those uses as are necessary to satisfy the basic convenience shopping of service needs of persons residing in nearby residential areas.

B-2: The B-2 Community Business District is intended to serve the needs of a consumer population larger than that served by the "Local Business District," and generally characterized by a cluster of establishments generating large volumes of vehicular and pedestrian traffic.

B-3: The B-3 General Business District is intended to provide sites for more diversified types of businesses than those in the B-1 and B-2 business districts, and is intended for location, along major traffic arteries or adjacent to the Community Business Districts.

B-4: The B-4 Central Business District is intended to permit those uses which provide for a variety of retail stores and related activities, and for office buildings and service establishments which occupy the prime frontages in the Central Business District; and which serve the consumer population beyond the corporate boundaries of the city.

B-5: The B-5 is intended to provide the necessary services for the population area which is served by all of the previous business districts. Such service establishments often involve objectionable influences, such as noise from heavy service operations and large volumes of truck traffic, and are thus incompatible with the previous business districts.

Under the existing Code, any of the adults-only uses could go into the B-2 district. In other words, the neighborhood, corner drugstore could become a Wabasha Bookstore or the local theatre, a Faust, without benefit of public hearing or community comment. As the Code now stands, these incompatible uses could go in by right, as permitted uses.

2. RECOMMENDATION

The Zoning Code should be amended to place adult entertainment in the B-3, B-4, B-5 or I zones.

3. DISCUSSION

Mr. Ferris Alexander, in expert testimony before the Minnesota 4th District Court (in the case of the Minneapolis Adults-Only Ordinance) stated the locational requirements for successful adult theatres and bookstores. According to his testimony, the type of location required is "at street level in the vicinity of other retail businesses, with a lot of vehicular and pedestrian traffic, well-lighted, and close to transportation."

Adult entertainment fits the intent of the B-3, B-4, B-5 zones: they draw from a metropolitan consumer population and typically seek locations along well-lighted major retail, traffic and transportation arteries.

Within Saint Paul, that would mean basically the commercial strips along major traffic arteries and the downtown area. This classification provides for the needs of adult entertainment while protecting neighborhoods from the intrusion of people, traffic and accompanying nuisances.

The majority of the twenty-two existing adult entertainment businesses are already zoned B-3 or higher: twelve, B-3 and four, B-4. The remaining six are zoned B-2 and would be non-conforming.

C. PROTECTION FROM CONCENTRATIONS

I. ISSUE

In testimony before the Supreme Court in the case of Gibbs vs. American Mini-Theatres, urban sociologist Mel Ravitz stated a sociological axiom: if people believe something to be true, even if it not originally, they will tend to act as if it were true and, in so doing, help produce the condition originally believed. "If residents of any neighborhood believe that the concentration of the prescribed uses damages the neighborhood, they will act as if it were true and will seek to move away and allow people with different standards... It is far too risky for a city to allow indiscriminately into residential areas any number of commercial uses which have already been identified as those which concentration help shake people's confidence."

Within Saint Paul, there are two locations which people would readily identify as concentrations of adult entertainment: University and Dale and Ninth and Wabasha. Saint Paul's Zoning Ordinance already has recognized the impact of concentration with the 1320' requirement for residential group homes as well as incompatibility with residential uses with the 100' requirement for game-rooms.

In Young vs. American Mini-Theatres the Supreme Court firmly established that local authorities have the police power to regulate the location of businesses that deal in First Amendment protected materials provided that such regulations do not limit freedom of access to such materials under the Fourteenth Amendment. The Detroit ordinance stipulated that such businesses could not be located within 500' of a residence or within 1000' of another regulated use. The City of Detroit was able to prove that there was a "myriad" of locations that would be suitable for such businesses. The Detroit ordinance did not require amortization of businesses that were in operation prior to approval of the ordinance.

2. RECOMMENDATION

The Zoning Code should be amended to make adult entertainment Special Condition Uses in the B-3, B-4, B-5 and I-1 zones. The conditions would be three hundred radial feet between uses in the B-4, B-5, (the average downtown block) and one thousand radial feet between uses in the B-3 zone (the one and one half average commercial blocks outside of the downtown). The I-1 zone permits B-3 special condition uses as regulated.

3. DISCUSSION

Essentially, this regulation limits adult entertainment to one per one and a half block faces; the radial foot measurement prohibits situations on corners with uses on both of the intersecting streets. This requirement is consistent with others in the Zoning Code, such as the 1320' rule for group homes.

With the exception of the University and Dale and North Wabasha clusters, the existing businesses could meet this standard; and over one hundred alternative locations would also meet this standard.

4. RECOMMENDATION

The Zoning Code should be amended to require that adult entertainment uses in the B-3 zone be a minimum of one hundred feet from residentially zoned property, measured from the front door of the use to the residential property line and that there be no access, other than for fire and safety requirements, to abutting or adjoining residentially zoned property.

5. DISCUSSION

The majority of the City's B-3 property lies along commercial strips, characterized by shallow lots and abutting residentially zoned property. If the 100' measurement were made from building to property line, virtually no B-3 structures would conform; thus, the measurement from the front door with no "back door" access. The intent of this requirement is to put traffic and trade on the commercial front of the block. The 100' requirement is consistent with the Zoning Code requirement for indoor commercial uses such as pool halls and video arcades.

As with all special condition use permits, the Planning Commission could modify if the applicant could prove that "strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure, provided that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property".

Businesses in existence at the date of adoption of these amendments which would be classified as non-conforming would be entitled to all rights guaranteed by that classification.

VI. CONCLUSIONS

- A. Existing zoning and licensing regulations do not adequately differentiate between adults-only and other uses.
- B. Adults-only uses are permitted in restrictive office and commercial zones intended to serve neighborhood populations and to provide buffers between residential and more intensive uses.
- C. Concentrations of adult entertainment uses change the perception of neighborhoods about themselves.
- D. Adult entertainment uses may be regulated in such a way as to guarantee the rights of both the owners of these businesses and the neighborhoods.

VII. PROPOSED AMENDMENTS
TO ZONING CODE

A. SECTION 60.201

A - ADULT USES

NEW DEFINITION

Adult uses are those uses excluding bars which are not open to the public generally but only to one or more classes of the public and excluding any minor by reason of age, a minor being a person under the age of eighteen years. Adult uses include, but are not limited to, adult bookstores, adult motion picture theatres and mini-theatres, adult massage parlors, adult saunas, adult rap/conversation parlors, adult health clubs, and adult cabarets, or similar adult uses.

NEW DEFINITION

ADULT BOOKSTORE

A shop for the barter, rental or sale of printed matter, pictures or motion picture film, if such shop is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age.

NEW DEFINITION

ADULT MOTION PICTURE THEATRE

An enclosed building with a capacity of 50 or more persons used for presenting material defined by Minnesota Statutes 617.292 as "sexually provocative" and which as a prevailing practice excludes minors by virtue of age.

NEW DEFINITION

ADULT MINI-MOTION PICTURE THEATRE

An enclosed building with a capacity for less than 50 persons used for presenting material defined by Minnesota Statutes 617.292 as "sexually provocative" and which as a prevailing practice excludes minors by virtue of age.

NEW DEFINITION

ADULT CABARET

An establishment which provides go-go dancers, exotic dancers, strippers, or similar entertainers and which excludes minors by virtue of age.

NEW DEFINITION

MASSAGE PARLOR, SAUNA, HEALTH CLUB

Any establishment licensed by Chapter 412 of the the City Ordinance and having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, health clubs, sauna baths, and steam baths. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or physical therapist duly licensed by the State of Minnesota nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck, or the shoulder. This definition shall not be construed to include a non-profit organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational, and athletic facilities, and facilities for the welfare of the residents of the area.

NEW DEFINITION

CONVERSATION, RAP PARLORS

An establishment licensed by chapter 413 of the City Ordinance and advertising, offering or selling the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, regardless of whether other goods or services are also simultaneously advertised, offered or sold, and regardless of whether those other goods or services are also required to be licensed.

The term "conversation parlor" shall not include bona fide legal, medical, psychiatric, psychological, or counseling services by a person or firm appropriately licensed; or bona fide educational institutions, or panels, seminars or other similar services offered by such institutions; or churches or synagogues.

B. SECTION 60.543

PRINCIPAL USES PERMITTED SUBJECT TO SPECIAL CONDITIONS
(IN THE B-3 ZONE)

PROPOSED CHANGE

(9) Adult uses subject to the following conditions (a) the use shall be at least 1000 radial feet from any other adult use measured from front door to front door of the building in which the uses are located; (b) the use shall be located at least 100 feet from residentially zoned property measured from the front door of the building in which the adult use is located to the closest residential property line; (c) there shall be no access to the alley or to adjacent residential property.

C. SECTION 60.5544

PRINCIPAL USES PERMITTED SUBJECT TO SPECIAL CONDITIONS
(IN THE B-4 ZONE)

PROPOSED CHANGE

(2) Adult uses provided the use shall be at least 300 radial feet from any other adult use.

D. SECTION 60.563

PRINCIPAL USES PERMITTED SUBJECT TO SPECIAL CONDITIONS
(IN THE B-5 ZONE)

PROPOSED CHANGE

(2) Adult uses provided the use shall be at least 300 radial feet from any other adult use.