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**Survey, Findings and Recommendations  
of Sexually Oriented Businesses  
Toledo, Ohio**



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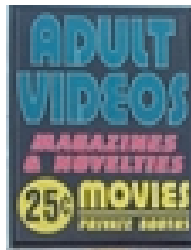
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# Survey of Sexually Oriented Businesses Toledo, Ohio

## Introduction

### *Consultant Team*

The City of Toledo retained Duncan Associates, in association with Cooper Consulting Company, Inc., to undertake a study of sexually oriented businesses within the City of Toledo. Project manager for the study is Eric Damian Kelly, Ph.D., FAICP, vice president with Duncan Associates. Teamed with Eric, is Connie B. Cooper, FAICP, co-author, with Kelly, of the American Planning Association's Planning Advisory Service Report *Everything You Always Wanted to Know About Regulating Sex Businesses*.



The Toledo sexually oriented business study includes an analysis of ordinances, field studies of sexually oriented businesses, findings and recommendations for changes in zoning, licensing and other regulations. The report includes a general identification of probable site opportunities to ensure that the proposed ordinances will provide the continued availability of alternative locations, but not the availability of specific sites.

### *Regulating Sexually Oriented Businesses*

Regulation of sexually oriented businesses has become one of the more challenging tasks facing communities today. Regulations must balance legitimate community concerns about the businesses with the First Amendment rights of the business owners and customers.

Courts increasingly demand that local governments base their zoning regulations of sexually oriented businesses on documented land-use effects of those businesses. Recent court decisions indicate that a local government representing a jurisdiction of significant size is in a

better position legally if it conducts its own study of those impacts, rather than relying on published studies or studies conducted in other communities.

Most regulations of sexually oriented businesses are directed at nude or topless bars, XXX video stores and other establishments devoted almost entirely to sexually oriented activities. However, many well-regarded merchants include in their stock a measurable proportion of arguably sexually oriented material; such businesses include the video rental stores with “adults only” backrooms, news dealers with isolated racks of adult magazines and a variety of specialty stores that may include certain sexually oriented items.



Although those who take the most negative view of sexually oriented activities and materials would lump all such businesses together, this creates an impossible situation, legally and politically. First, any broad limitation on any business with any “sexually oriented” materials or activities would ultimately apply to every bookstore, every movie rental store, every news dealer and, arguably, a variety of other merchants, such as Victoria's Secret, which trades on the fringes of this market in some of the nation's most upscale malls. Although those who would like to see such materials and activities eliminated completely from a community, the fact remains that there are technically x-rated scenes in major works of literature, brief nudity and sexual activity in Academy-award-winning motion pictures.

Toledo must seek balance in how it regulates land uses. Regulation of sex businesses is one of the most litigated areas of land-use law today. Communities that have tried to bar most or all sex businesses have generally lost court challenges to their regulatory schemes. In that context, a community must make reasonable provision for the existence of some sexually oriented businesses; on the other hand, it is also clear that a community need not necessarily allow every such establishment to offer the full range of sexually oriented products or activities that its proprietors might like to offer. Courts have also recognized that a sexually oriented business (such as a book store) is

different from other businesses offering similar products that are not sexually oriented. Toledo can adopt and implement different zoning regulations for such businesses, provided that the effect of them is not a complete ban on all such businesses.

Thus, Toledo must seek a balance. It must recognize the obvious potential for negative impacts on a neighborhood from a XXX Video Store (“viewing booths available inside”), address the possible impacts of such less-intensively adult businesses as the neighborhood video store with a backroom, and distinguish both of those from a mainstream business that may, in the ordinary course of business, carry a few items that have some sexually oriented appeal.



## Recent History in Toledo

### *Businesses Existing at the Time of the Study*

At the time of the study’s fieldwork, Toledo had:

- Six adult cabarets, featuring nude or near-nude entertainment;
- One adult theatre with adult video rentals;
- Eight adult “bookstores” (as they call themselves) that actually include books, videos, sex toys and video arcades offering sexually oriented, hard-core material;
- Two retail shops focusing on lingerie and sex toys with limited media (in one case) and no media in the other, and without video viewing booths;
- A bathhouse;
- A lingerie modeling establishment; and
- Four massage parlors (one includes lingerie modeling) operated by persons who do not appear to be licensed under the Ohio Massage Therapy Licensing Act.

A complete list of these businesses is provided on page 12.

### *Current Regulations*

The primary regulation of sexually oriented businesses in the City of Toledo is through zoning. The City now allows such establishments in the C-3 zoning district. The zoning ordinance defines “adult entertainment” establishments as follows:

As used in this Zoning Code, "adult entertainment" shall mean: massage parlors operated by anyone not a duly licensed medical doctor, osteopath, chiropractor, nurse, physical therapist treating patients recommended by a licensed physician under a duly licensed physician's direction or person practicing the art of massage on the face or hands in a beauty parlor or barber shop duly licensed within the City; and adult bookstores, adult motion picture theatres, adult mini-motion picture theatres, adult entertainment cabarets, or similar entertainment....

City Code, §1131.01(w), relating to permitted uses in the C-3 zoning district. The uses are made subject to the following conditions:

- (1) The establishment of the above adult entertainment uses shall not be located within:
  - A. 500 feet of any residential district, school, church, park, playground or other use established specifically for the activities of minors, as measured by the radius from the location of the adult entertainment use; and
  - B. 1,000 foot radius of another existing adult entertainment use, as measured by the radius from the locations of the adult entertainment uses.

City Code, §1131.01(w)(1). Defines “adult bookstore” as:

An establishment having a substantial and significant portion of its stock in trade in books, magazines, and other periodicals, as well as films, video cassettes, and discs which are distinguished or characterized by their emphasis on matter

depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”.

Note: Not all retail establishments carrying adult materials are included within the retail definition of an adult bookstore now used in the ordinance

City Code §1131(w)(2)A. Although we concluded that both The Love Boutique and Priscilla’s should be regulated as sexually oriented businesses, neither of them appears to contain a “significant or substantial portion” of its stock in defined books, videos or other media; in fact, The Love Boutique has none at all.

Under Ordinance No. 122-99, the City established new regulations for video arcades showing sexually oriented material. Those standards, codified as Chapter 767 of the City Code (under business regulations), include the following:

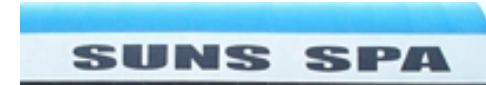
- (b) Each and every viewing booth for all film or video devices must comply with all of the following:
  - (1) Be visible from a well-illuminated continuous main aisle;
  - (2) Not be obscured by any curtain, door or other enclosure;
  - (3) All side or rear walls must be without holes or openings;
  - (4) Shall not be occupied by more than one patron at a time;
  - (5) Be illuminated by a light bulb of a wattage of no less than 25 watts;
  - (6) All floor coverings in viewing rooms shall be nonporous, easily cleanable surfaces, with no rugs or carpeting;
  - (7) All wall surfaces and seating surfaces in viewing rooms, or any room or area providing patron privacy shall be constructed of, or

permanently covered by nonporous easily cleanable material;

- (8) The premises shall be kept clean and sanitary at all time.

City Code, §767.02(b). The industry has an action pending against that language – in particular, against the language prohibiting the use of doors on the booths, and it is not currently being enforced. Most of the video viewing booths that we observed had doors on them; many of those locked. At several establishments, there were violations of the prohibition on holes between booths – often called “glory holes” in the industry, presumably for the “glory” of facilitating sexual contact between unseen partners in adjoining booths.

Under Chapter 1735 of the City Code, the City of Toledo licenses and regulates bath and massage parlors. The chapter establishes licensing criteria, operating standards and standards for facilities used in bath-houses and massage parlors. However, the provisions of the code do not stipulate that a person providing the massage hold a massage therapy license from the State Medical Board of Ohio.



On May 7, 2002, the City Council adopted a moratorium, prohibiting the establishment of additional sexually oriented businesses, with the intent of allowing time for completion of this study and consideration of recommendations made as a result of it.

### ***Litigation since 1990***

Regulation of these businesses has been a contentious and troublesome issue in Toledo for ten years or more. Reported and selected litigation involving adult businesses in Toledo has included:

*Cong Chon Kim v. Vasko*, 2000 Ohio App. LEXIS 1342 (Ohio Ct. App., 6<sup>th</sup> District, Lucas County, 2000). The City denied renewal of a massage establishment license on the grounds that the premises were too close (3 feet) to another adult entertainment establishment – the Flamingo Cabaret

(now Platinum Showgirls). The City admitted that the initial issuance of the license had been in error, because the violation also existed at that time. After the building inspector noted the violation, the Director of Finance denied the license application; the denial was upheld by the Massage License Board of Review of the City and by the common pleas court. The appellate court affirmed. The court held in part that the separation requirement was a valid “time, place and manner” restriction on the conduct of protected expression.<sup>1</sup>

*Lima v. City of Toledo*, 972 F. Supp. 432 (N.D. Ohio 1997). The federal court issued an injunction that allowed Scarlett’s to operate at its present location and that declared it a “legal use.” The City denied Scarlett’s special use permit on the grounds that establishment of the business at that location would violate the provision of the City ordinance prohibiting adult entertainment centers that are “located within a 1,000 foot radius of either two such other uses.” Scarlett’s challenged this provision on the grounds that “the ungrammatical phrase was susceptible to multiple interpretations, and that such vagueness created a risk that First Amendment freedoms could be unconstitutionally chilled.” The court found that the proposed location conformed with all other requirements of the ordinance and that the challenged provision could not be enforced.



*Dia v. City of Toledo*, 937 F. Supp. 673 (N.D. Ohio 1996). The federal court issued a preliminary injunction that allowed the predecessor of Platinum Showgirls (then called

Flamingo Cabaret) to open at its present location. The case focused on the denial of a special use permit required to establish the business. The court ruled for the applicant essentially on two alternative grounds. First, the court held that the City’s zoning ordinance did not contain adequate standards to control the issuance of a special use permit thus giving the city council too much discretion, and therefore the ordinance amounted to an unconstitutional prior restraint on First Amendment rights; second, the court held that the city council in fact had no right to deny a special use permit under the circumstances and that the applicant had met all of the requirements for the issuance of the permit.

*City of Toledo v. Gombar*, 1992 Ohio App. LEXIS 2647 (Ohio Ct. App., 6<sup>th</sup> District, Lucas County, 1992). This case involved an adult cabaret that had changed from scantily clad “go-go girls” to entertainment featuring full frontal female nudity. Based on citizen complaints, the Building Commissioner determined that the establishment was operating in violation of the City’s zoning ordinance.<sup>2</sup> Although the Building Commissioner’s notice informed Gombar of a right of appeal to the Board of Zoning Appeals, Gombar did not appeal that decision but took the matter to court. The common pleas court ruled for the City on the merits, but the appellate court held that the trial court should not have reached the merits and that the Gombar claim should be dismissed for failure to exhaust administrative remedies by appealing to the Board of Zoning Appeals.

*State of Ohio ex rel. Pizza v. Déjà vu, Inc.*, Case No. 90-0417 (Common Pleas, Lucas County, Ohio). This action was brought by the county prosecutor seeking to close Déjà Vu,

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<sup>1</sup> Note that both sides apparently assumed at that time that the massage parlor was to be accorded the same First Amendment protection as the dancing establishments and book and video stores; we have found no case that supports that position and a number that support the contrary conclusion, that “there is no Constitutional right to a massage.” See discussion at 39.

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<sup>2</sup> It was clearly in violation of the ordinance because it did not have a special use permit; it is not clear from the record whether a business at this location could have met the separation and other requirements for a special use permit.

an adult cabaret. Although the court refused to close the establishment as a public nuisance and rejected the prosecutor's claim that the actions of the dancers constituted prostitution, the court attempted to balance the interests involved, noting:

In fact – given a constitutionally protected right of expression as it involves the narrow question of nude dancing – this Court finds that there is no corresponding constitutional right for the dancers at Déjà Vu to remain nude once their dance routines are ended; that there is no corresponding constitutional right for the dancers at Déjà Vu to touch any of the customers at any time; and that there is no corresponding constitutional right for the dancers at Déjà Vu to manipulate their genitalia as part of their dance routine.

Case No. 90-0417, at 4. After a thoughtful (and ironically humorous) discussion of the facts and that law, the court issued an injunction against Déjà Vu, Inc., an individual named defendant, “together with their agents and employees” against:

Touching any customer during the course of a dance routine; they are further enjoined from coming any closer than two feet from any customer during any dance routine at Déjà Vu; they are further enjoined from touching their genitalia during the course of the dance routine at Déjà Vu; and they are ordered to eject any customer who touches the breast, thigh, crotch, buttock of any dancer or member of the service staff.

Case No. 90-0417, at 16-17.

Dealing with live adult entertainment in Toledo changed significantly with the decision of the U.S. District Court for the Northern District of Ohio in *J.L. Spoons, Inc., v. City of Brunswick*, 181 F.R.D. 354; 1998 U.S. Dist. LEXIS 13584

(N.D. Ohio 1998). Ohio, like many other states, has an administrative liquor regulation that prohibits knowingly permitting a female to dance in a liquor establishment with insufficient attire, such as “pasties,” which portrayed the female as dancing in a topless state. See Ohio Admin. Code § 4301:1-1-52 (Rule 52)<sup>3</sup>. In this suit, operators of an admittedly topless cabaret that served alcohol challenged the Constitutional validity of the regulation. The court ruled for the industry, issuing a permanent injunction against enforcement of the rule. After noting that “Rule 52 employs several extraordinarily vague terms, including ‘improper’, ‘lewd’, ‘immoral’, ‘indecent’ and ‘profane’, without providing any explanatory definitions or limiting constructions,” (1998 U.S. Dist. LEXIS 13584, at 12), the court held:

Given that the vague terms of Rule 52 not only apply to conduct, but also apply to the spoken and written word, Rule 52 clearly “sweeps within its prohibitions what may not be punished under the First and Fourteenth Amendments.” *Grayned v. City*

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<sup>3</sup> Pertinent portions of the rule read:

No permit holder, his agent, or employee shall knowingly or willfully allow in, upon or about his licensed premises improper conduct of any kind, type or character; any improper disturbances, lewd, immoral activities or brawls; or any indecent, profane or obscene language, songs, entertainment, literature, pictures, or advertising materials; nor shall any entertainment consisting of the spoken language or songs which can or may convey either directly or by implication an immoral meaning be permitted in, upon or about the permit premises.

Entertainment consisting of dancing, either solo or otherwise, which may or can, either directly or by implication, suggest an immoral act is prohibited. Nor shall any permit holder, his agent, or employee possess or cause to have printed or distributed any lewd, immoral, indecent, or obscene literature, pictures or advertising materials.

*of Rockford*, 408 U.S. 104, 115, 33 L. Ed. 2d 222, 92 S. Ct. 2294 (1972). For example, depending upon the particular sensibilities and morals of those currently in charge of enforcing Rule 52, the reading of poetry, the showing of a film, the singing of a song or the performance of an interpretive dance that deals with sexuality, rape, abortion or suicide may subject a liquor permit holder to the revocation of his or her permit. Similarly, owners of comedy clubs that serve alcohol may be punished for allowing comedians who use coarse language, such as Richard Pryor or George Carlin, to perform on stage. Restaurant owners who serve alcohol and also display non-obscene artwork portraying the naked human form may be subject to a penalty. The type of protected First Amendment expression that Rule 52 threatens to punish is seemingly endless. Therefore, Rule 52 is unconstitutionally overbroad, in violation of the First Amendment and must be permanently enjoined.

For the foregoing reasons, this Court finds Rule 52 unconstitutionally overbroad in violation of the First Amendment, and permanently enjoins its enforcement.

1998 U.S. Dist. LEXIS 13584 at 15-16. The state then promulgated a new version of Rule 52, of which the same court, in a subsequent proceeding, provided this précis:

The challenged sections prohibit permit holders from allowing anyone on their permit premises to “engage in any lewd or disorderly activities,” “appear in a state of nudity,” “touch, fondle, or caress [certain body parts] of any person,” or “commit improper conduct of any kind . . . that would offend the public’s sense of decency, sobriety, or good order.” Ohio Admin. Code 4301:1-1-52 §§ (B)(1), (B)(2), (B)(3), (B)(7) (1998).

*J.L. Spoons, Inc., v. Brown*, 40 F.Supp.2d 902, at 904 (N.D. Ohio 1999). After denying the state’s motion to dismiss the case (40 F.Supp.2d 902), the court considered the matter on the merits, holding that the new rule was unconstitutionally over-broad and thus issuing a permanent injunction against its enforcement. *J.L. Spoons, Inc., v. O’Connor*, 190 F.R.D. 433; 1999 U.S. Dist. LEXIS 20288 (N.D. Ohio 1999). Although the court now found that portions of the new rule were enforceable, it found that other portions remained overbroad and unconstitutionally vague; because the court found that it was impossible to sever the unconstitutional portions, it held the entire regulation unconstitutional and enjoined its enforcement.

An Ohio appellate court has held somewhat more narrowly that some portions of the new Rule 52 are unconstitutionally vague, although it upheld the action of the state in revoking a liquor license based on violations of parts of the rule that it found not to be unconstitutional. *161 Dublin, Inc. v. Ohio State Liquor Control Comm’n*, 2001 Ohio App. LEXIS 5905 (Ohio App. 10<sup>th</sup> Dist., Franklin County, 2001), app. den. 95 Ohio St. 3d 1438, 766 N.E.2d 1003 (Ohio 2002). It is our understanding from third-party sources that Rule 52 in its current form is currently enforced in the southern parts of Ohio, which are not within the jurisdiction of the federal court that issued the injunction against enforcement of the rule.

### ***Recent Developments***

Shortly before we began work on this study, the City denied a license for a massage parlor at 1002 North Reynolds Road (above one of the existing book stores). The license was denied on the grounds that the proposed establishment was too close to another adult entertainment establishment (downstairs), too close to a residential use (immediately behind the building) and too close to a church (across the street). The applicant has appealed the denial of the application to the

Court of Common Pleas. *Geha v. City of Toledo*, CI0200105710 (Ohio Court of Common Pleas, Lucas County, 2001).

One of the issues that clearly led the City to determine that it needed a comprehensive study of sex businesses in Toledo was the decision



of Priscilla's to open what we categorize as a "sex shop" across from the Notre Dame Academy in west Toledo. Because the emphasis of the store is on racy lingerie, sex toys and gag gifts, with only a limited stock of adult videos and magazines, it may have not fallen

within the definition of "adult entertainment establishment" in the current City code. The City initially allowed the store to open and then, after a number of citizen protests about the location, attempted to close it on the grounds that it was located too close to a school and church. In the face of litigation, the City allowed the store to open. See *Toledo Gifts, L.L.C., vs. Toledo*, (Case No. 3:02CV7123, N.D. Ohio, 2002). Clearly citizens of the community thought that the City was regulating the location of such businesses, regardless of whether that is the effect of the current ordinance.

Also pending in court is *Four-Star Books, Inc., v. City of Toledo*, Case No. 3:99CV7450 (N.D. Ohio, 1999), a case by multiple operators of sexually oriented bookstores in Toledo challenging the "doors off" provisions for video arcades, established by Ord. No. 122-99.

A more recent action is *Soumbasis v. City of Toledo*, 3:02 CV7350 (N.D. Ohio 2002), challenging the moratorium adopted to prevent the establishment of additional adult entertainment facilities during the conduct of this study and consideration of its recommendations for amendments to City ordinances. Based on the facts of the case, the federal court in August held that the moratorium should not have been applied to Soumbasis' business and issued a preliminary injunc-

tion against enforcement of the moratorium against Soumbasis or his business<sup>4</sup>.

Toledo has had ongoing concerns with local taverns that have begun to feature adult entertainment. On July 4, 2002, Toledo undercover vice narcotics detectives visited three exotic dance clubs: Club Chablis zoned C-3; Ecstasy Club zoned C-3; and Hot Shotz zoned M-1. The visits revealed that all dancers were dancing topless, and in Hot Shotz, 6 dancers were dancing completely nude. All three clubs were closed by the Commissioner of Building Inspection due for violations of the zoning ordinance – Hot Shotz for operating in an M-1 zone and the other two for operating an adult use within 500 feet of residential zoning district without a Certificate of Use and Occupancy (Toledo Municipal Code 1131.01-w, 1171.01, 1309.01-a, 1309.03). Two of the cases were scheduled to be heard on appeal by the Board of Zoning Appeals, but both parties withdrew those appeals, indicating that they intended to reopen in compliance with applicable zoning.

Another recent development related to sex businesses in Toledo is the federal indictment of the Young A. Kim, operator of the Rainbow Health Spa, for a variety of alleged violations of the Racketeer Influenced and Corrupt Organization (RICO) statute and alleged money laundering.<sup>5</sup>

### ***Other Current Issues***

Certainly the litigation over sexually oriented businesses is both a part of the problem facing the City and an indication of the importance of the issue to the City and its residents. It is not an issue that will disappear on its own. Further, the City's piecemeal actions to deal with the issue to date appear not to have accomplished their intended purposes.

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<sup>4</sup> The order that we received is undated but has an August 13, 2002, date stamp for the copy.

<sup>5</sup> *Toledo Blade*, 2 August 2002, pp. 1, 2.

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The litigation is only one part of the issue, however. Despite this history of contention over the businesses, the City has not been entirely attentive to issues involving sexually oriented businesses. Three of the adult cabarets that we visited (Club Ecstasy, Club Chablis and Hot Shotz) had permits to operate only as bars but were, until just recently, passively allowed (with the City's knowledge but without official approval) to feature sexually oriented entertainment even though two were located too close to residential areas and one was in the wrong zoning district for adult entertainment. As noted above, only recently has the City taken action against all three businesses and closed them for violating the City's zoning ordinance.

The task of the City is a difficult one, however. It currently attempts to regulate the operations of these establishments through zoning, which is a good tool for dealing with issues of location but a poor one for dealing with actual operations. The only establishments over which the City has attempted to establish any operating control through licensing are the massage parlors, although there is little evidence that the current licensing ordinance is accomplishing the City's purposes.

The difficulty of dealing with these issues is further illustrated by the operation of Déjà Vu, which is still subject to the injunction of the Lucas County Court of Common Pleas, cited above. We found Déjà Vu to be a well-managed establishment that is, in many ways, the best of the adult cabarets now operating in Toledo from a public policy perspective. Nevertheless, we personally observed the following actions, all of which violate the clear language of Judge Skow:

Dancers touching customers in the course of a dance routine, in particular wrapping their breasts around the faces of tipping patrons and taking tips from customers' laps, using the dancers' mouths to do so;

Regularly coming within less than two feet of customers during dance routines, including the couch dances.

Although the judge did not specifically enjoin nudity between dance routines, he found that there was no constitutional protection for it; the technique for soliciting customers for couch dances at Déjà Vu is

for the dancers, nude on top, to circulate among customers, touching them and/or coming very close to them, pitching these personal services. The injunction has had some effect, however; Déjà Vu dancers, unlike their counterparts at some other establishments, did not ever ride the laps of their customers during "couch dances" – at least not in our presence.

### *The Study in Context*

The purpose of this study is to provide the City with a fresh and objective look at the adult entertainment and related industries currently operating in Toledo. It is our intent to offer the City a comprehensive set of recommendations through which it can address the issues related to these sexually oriented businesses in ways that balance the concerns of citizens with the rights of the businesses and their customers.

There are certainly a variety of expectations of this study. There are undoubtedly residents of the community who hope that our study will give the City a basis for "banning porn." It will not do that, because the City cannot constitutionally ban lawful pornography. Some representatives of the industry may believe that this is simply another band-aid approach to the issue by the City. It will not be that, either. The City needs regulations that are clearer, more effective and more easily enforced. We hope that our recommendations can help to simplify enforcement, but any attempt to regulate operating businesses is necessarily labor intensive – much more so than simply controlling the location of particular activities through zoning. We certainly believe that a clearer set of regulations can limit the amount of litigation faced by the City by reducing the uncertainty sometimes faced by the industry.



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## Site Survey

### *Issue Orientation*

As part of the initial work effort, the consultant team toured Toledo's sexually oriented businesses with staff members and met with the study's steering committee comprised of the planning department, police force, building services and the legal department. The team also met with city council members, neighborhood groups and representatives of the sexually oriented businesses to further understand the issues and concerns.

We analyzed existing zoning and licensing ordinances in the city as they relate to the study, and reviewed state statutes and past or ongoing litigation concerning sexually oriented businesses. Our review of the ordinances examined two different aspects: provisions that directly impact sexually oriented businesses; and the zoning characteristics of more intensive non-residential districts that may provide some appropriate locations for sexually oriented businesses. Existing crime reports were reviewed to understand the types of complaints and convictions related to sexually oriented businesses.

### *Approach to Site Visits*

We conducted a minimum of two site visits to each of the 25 sexually oriented businesses within Toledo. The only exceptions were the massage parlors and the bathhouse, The Diplomat. At these establishments, we inquired at the front door about the rates and services; we did not attempt to patronize what we call "touching businesses." We relied on police and other reports regarding the activities within these businesses. One business (Snap Shots, a nude photography studio), closed before our study began; therefore our report only briefly discusses this business. In addition to existing businesses, we attempted to identify other businesses that might be included in a regulatory program aimed at sexually oriented businesses – such businesses include mainstream video stores and newsstands with significant stocks of sexually oriented material in backrooms.

During our site visits, we took photographs of the exterior portions of the businesses, however, no photographs were taken from within the businesses. As part of the site visits, we surveyed the exterior premises, available parking, lighting, signage, adjacent land uses and appropriateness of the existing locations. Inside video bookstores, we examined the types of merchandise available for purchase or rent (videos), monitoring access and activities in the video booth area, attentiveness of the employees/manager, cleanliness and interior lighting, number of booths and their configuration, number and type of customers and whether there was any loitering within the businesses or outside.

Site visits of exotic dancing establishments included the same exterior survey information. Inside, the site visit focused on the interaction of the dancers with customers, where and how this interaction took place and the actions of management. The businesses included in the survey were:

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### **Adult Videos and Video Viewing Booths**

1. Adult Pleasures – Video Booths, 4404 N. Detroit Avenue
2. Adult Videos – Video Booths, 3107 W. Alexis Road
3. Adult Videos/Woodville News – Video Booths, 1634 Woodville Road
4. Adult Videos/G&L Videos/Jolly Trolley – Video Booths, 5070 Telegraph Road
5. Adult Videos/G&L Videos – Video Booths, 1124 N. Reynolds Road
6. Adult Zone – Video Booths, 5661 Telegraph Road
7. Pleasure Palace/Adult Book Store – Video Booths, 135 South Byrne Road
8. Reyn-dor News/Toledo Adult Book Store – Video Booths, 1002 N. Reynolds Road

### **Sex Shops**

9. The Love Boutique – Sex Shop, 135 South Byrne Road
10. Priscilla's – Sex Shop, 4739 Monroe Street

### **Exotic Dancing and Adult Theater**

11. Club Chablis Gentlemen's Club – Exotic Dancing, 5405 N. Detroit Avenue
12. Club Ecstasy – Exotic Dancing, 5038 Lewis Avenue
13. Déjà Vu Showgirls – Exotic Dancing, 135 South Byrne Road
14. Hot Shotz – Exotic Dancing, 3835 N. Detroit Avenue
15. Platinum Showgirls, 5801 Telegraph Road
16. Scarlett's Adult Cabaret – Exotic Dancing, 5765 Telegraph Road

17. Velvet Rope – Exotic Dancing, 4635 N. Detroit Avenue – Not Opened
18. Westwood Art Theater & Adult Videos, 1602 Sylvania Avenue

### **Bathhouse, Lingerie Modeling and Nude Photography**

19. Diplomat – Bath House, 1313 Summit Street
20. Kim's Lingerie Modeling, 5070 Telegraph Avenue
21. Snapshots – Nude Photography, 5701 Benore Road – Closed

### **Massage Parlors and Shower Massages**

22. Chang Mi Health Spa – Massages, 135 S. Byrne Road
23. Lorain's Private Studios – Massages, 5661 Telegraph Road
24. Rainbow Spa – Massages, 5205 Telegraph Road
25. Suns Health Spa – Massages, 1722 W. Laskey Avenue

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## *Surveyed Businesses*

### **Adult Videos and Video Viewing Booths**

#### **Adult Pleasures (1)**

4404 N. Detroit Avenue

Adult Pleasures is an adult video sales and viewing booths establishment operated in north Toledo. It is currently zoned C-3. It is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. In addition to adult video sales and video booths, Adult Pleasures handles adult magazines, cards, sex aids and novelties. The business is located in a concrete block structure with approximately 40 paved parking spaces. Typically, during the day the lot had 3 or 4 cars, however, late in the evening (11 p.m.) the number swelled to approximately 10 or 12 cars. Operating hours are 24/7 and the age limit is 18 year olds and above. Signs are limited to a 25-foot pole sign and roof-mounted signs both titled “Adult Books.” The adjacent land uses are older industrial and commercial activities located some distance from the business.

Management is located at the entrance of the store to the right. During our visits they were friendly and asked if we needed assistance. Two-thirds of the business’s space is devoted to adult retail merchandise, with the remainder devoted to 18 video booths and 3 preview booths. The store, although older in appearance, appeared clean. The interior of the business is well lighted both in the retail portion of the business and in the video booth area. The booths are located at the rear of the store through a single doorway. The booths have one-person seats and doors that lock with about 3” of space at the top and bottom of the doors. There is electronic monitoring of the booth area but little effort to detain anyone walking straight back to the booths without buying tokens. There was loitering in the video booth area and some booths had “glory holes.” These were clearly the more popular booths.

Of the thirty-seven police calls to sexually oriented bookstores in a 39-month period, 10 were to this address. That finding, which we made after completing our field work, was not surprising in light of our observations of activities in the back halls.



**(1) Adult Pleasures – Video Booths**



### **Adult Videos (2)**

3107 W. Alexis Road

Adult Videos is an adult video sales and viewing booths establishment operated in northwestern Toledo. It is currently zoned C-3. It is the only adult use on Alexis Road. In addition to adult video sales and video booths, Adult Videos handles adult magazines, sex aids and novelties. The business is located in a concrete block structure that is painted entirely black. The building sits very close to the front property line, and only provides about 8 paved parking spaces. During our visits there were only 1 or 2 people at the business. Operating hours are 24/7 and the age limit is 18 year olds and above. Signs are limited to a 20-foot pole sign and multiple wall-mounted signs advertising adult video booths, magazines, videos and novelties. Adjacent land uses include a residence attached to a portion of the building and surrounding commercial businesses. This business was one of only two businesses (The Love Boutique was the other business) that had a glass front that contained some very limited adult merchandise viewable from the outside.

Two-thirds of the business's space is devoted to adult merchandise, with the remainder devoted to 16 video and 2 preview booths. Management is located near to the front of the business to the right with the booths to the left of the store through a single doorway. The interior of the business is well lit in the retail portion of the business but much less so in the video booth area. The video booths have one-person seats and doors that lock. There is no electronic monitoring of the booth area and no effort to detain anyone walking straight back to the booths without buying tokens. At the time of the visits, there did not appear to be any loitering within the business. The management was quite friendly and the store appeared very clean. The person on duty had worked with this company about five years, and had actually transferred to this store from another one owned by the same company.

### **Adult Videos / Woodville News (3)**

1634 Woodville Road

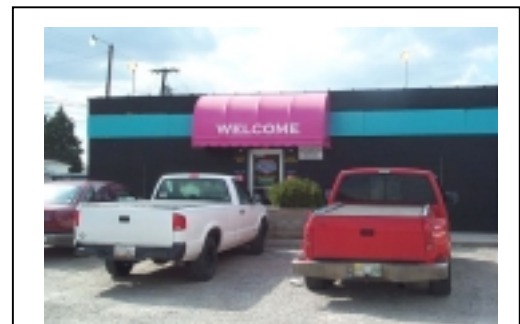
Adult Videos or Woodville News (sign indicates Adult Videos), an adult video sales and viewing booths establishment, is the only adult business located east of the Maumee River. This is one of only two adult businesses located in the M-2 Industrial District (the other is the closed "Snap Shots" business on Benore Road). Adult Videos is located in a black painted concrete block structure with approximately 30 gravel parking spaces. In addition to adult video sales and video booths, Adult Videos handles adult magazines, sex aids and



**(2) Adult Videos – Video Booths**



**(2) Adult Videos – Video Booths**



**(3) Woodville News – Video Booths**

novelties. During our visits there were four people in the business. The business operates 24/7, with a minimum age limit of 21 years or above. Signs are limited to a 20-foot pole sign and multiple wall-mounted signs advertising 25-cent movies, magazines, videos and novelties. Adjacent land uses include a bar to the east, a commercial business to the west, an industrial operation across Woodville Road, and residences to the south.

Approximately two-thirds of the space is devoted to adult merchandise, with the remainder devoted to 22 adult video booths and 3 preview booths. Management is located in the middle of the store with video booths to the left side of the store. The booths have one-person seats and doors that shut but do not lock. The store had video monitoring but only of the retail area. The retail area is well lit but the booth area is very dark. The store appeared recently remodeled and very clean. The management asked if they could assist us but did not appear to be monitoring activity in the booth area.

#### **Adult Videos/G & L Videos/Jolly Trolley (4)**

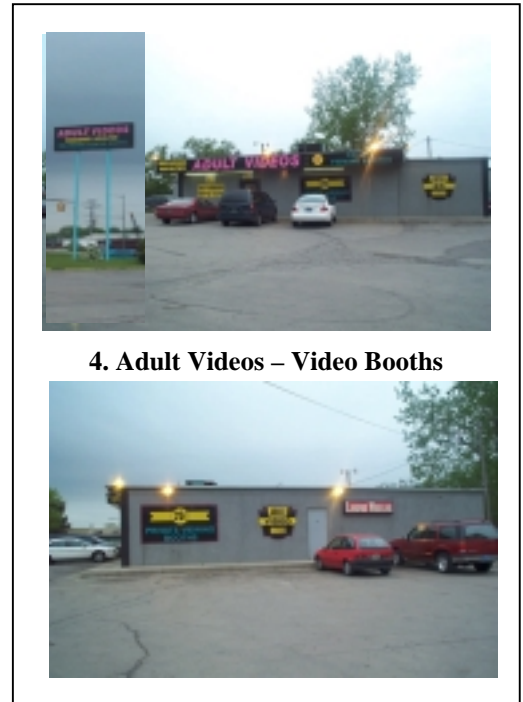
5070 Telegraph Road

This business appears to go by multiple names: Adult Videos, G & L Video Store, and Jolly Trolley. Zoned C-3. It is one of many adult uses in the Detroit Avenue/Telegraph Road corridor in north Toledo. Adult Videos is located in a gray concrete block structure and sits at the intersection of Telegraph Road and Detroit Avenue with approximately 25 paved parking spaces. It is an adult retail establishment that also has video viewing booths. In addition to adult video sales and video booths, Adult Videos handles adult magazines, sex aids and novelties. During our visits there were 5 to 7 people in the business. The business operates 24/7, with a minimum age limit of 18 years or above. Signs are limited to a 35-foot pole sign and multiple wall-mounted signs advertising adult video booths, magazines, videos and novelties. Adjacent land uses include a lingerie modeling studio (Kim's Lingerie Modeling), Rainbow Spa (massage parlor) and an industrial scrap metal company.

Two-thirds of the business's space is devoted to adult merchandise, with the remainder devoted to 12 video and 3 preview booths. Management is located at the front entrance with the video booths to the rear of the business. The interior of the business is well lit in the retail portion of the business but much less so in the video booth area. The booths have one-person seats and doors that lock. There is electronic monitoring of the booth area. At the time of our visit, there was not strict enforcement of persons walking back to the booths before buying tokens. We did observe that there were a couple of people hanging around within the business. The management was quite friendly, but did not seem to know anything about the adjacent lingerie modeling business.



**(3) Woodville News – Video Booths**



**4. Adult Videos – Video Booths**

### **Adult Videos/G&L Videos (5)**

1124 N. Reynolds Road

Adult Videos or G&L Video Store is one of two C-3 zoned adult businesses on Reynolds Road within a block of one another in southwest Toledo. The business is located in a black concrete block structure with approximately 20 paved parking spaces. Adult Videos is an adult video sales and viewing booths establishment. In addition to adult video sales and video booths, Adult Videos handles adult magazines, sex aids and novelties. During our visits there were two customers in the business. The business operates 24/7, with a minimum age limit of 21 years or above. Signs are limited to a 15-foot pole sign and multiple wall-mounted signs advertising adult video booths, magazines, videos and novelties. Adjacent land uses include a limousine rental business to the south and east, residences to the east, a Chinese restaurant to the north and a Family Dollar Store across the street.

Like most of the adult video stores, two-thirds of the business's space is devoted to adult merchandise, with the remainder devoted to 12 video booths. Management is located in the middle of the store with the video booths to the left and rear of the business. This was only one of two businesses that had access control by way of a buzzer system. The interior of the business is well lit in the retail portion of the business but much less so in the video booth area. The store appeared recently remodeled and very clean. This was also one of the few stores that had video monitoring of the booth area and a buzzer when someone walked into the area where the booths were located. Even though the booth area was fairly dark, during our visit we tested the system and the speaker system very loudly said "only one person to a booth!" The booths have one-person seats and doors that lock. We found the management was quite friendly and attentive to persons entering the business.

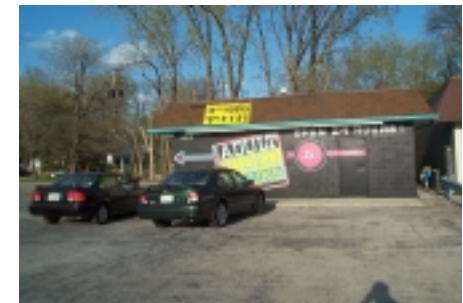
### **Adult Zone (6)**

5661 Telegraph Road

Adult Zone is an adult video sales and viewing booths establishment operated in north Toledo. Zoned C-3, it is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. Based on information provided by the person at the front counter, the business has been in operation since 1999 or 2000. It is located next door to Lorain's Private Studio (lingerie modeling and shower massages) and a few doors down from Scarlett's Adult Cabaret. In addition to adult video sales and video booths, Adult Zone handles adult magazines, sex aids and novelties. The business is located in a gray painted brick structure, adjoining the two-storied building housing Lorain's with approximately 30 paved parking spaces. During our visits only one customer came into the business. Operating hours are



**(5) Adult Videos – Video Booths**



**(6) Adult Zone – Video Booths**

24/7 with an age limit of 18 year olds and above. Signs are limited to a 15-foot monument sign and a few small wall-mounted signs.

The business is in a L-shaped building with three-fourths of the space devoted to adult merchandise, with the remainder devoted to adult video booths and a couple of preview booths. Management is located at the front of the business to the left, retail merchandise in the main portion of the businesses and the video booths in the segment of the building off to the right a few steps below the main building. All portions of the interior of the business are well lighted and very clean. The booths have one-person seats and doors that lock. There is electronic monitoring of the booth area, but little effort to detain anyone walking straight back to the booths without buying tokens. This was the only business that offered a handicap accessible booth, with a separate ramp providing access to the booth areas. There were paper towel dispensers outside the booths and a sign asking patrons not to urinate in the booths. We did observe that there were no common walls shared between booths, thus eliminating the problem with “glory holes.” At the time of the visits, there was no loitering around or within the business. The management was friendly and asked if we needed assistance.

### **Pleasure Palace / Adult Book Store (7)**

135 South Byrne Road

The Pleasure Palace, or Adult Book Store as the sign indicates, is one of four C-3 zoned adult businesses in a strip shopping center on South Byrne Road in southwest Toledo. Other businesses include The Love Boutique, Déjà Vu and Chang Mi Sauna. The Pleasure Palace shares the strip center’s large parking lot (100+ paved parking spaces) with these other adult businesses). This business is an adult video sales and viewing booths establishment. In addition to adult video sales and video booths, Pleasure Palace handles adult magazines, sex aids and novelties. During our visits there were 4 or 5 people in the business, two who were just hanging around the booth area. The business operates 24/7, with a minimum age limit of 18 years or above. An interesting quirk to the business’s operating policies – it does not allow females into the video booth area after 9 p.m. Signs are limited to one wall-mounted sign. Adjacent land uses include the other adult uses and a bar opened mostly on weekends called The Field House. This bar, not the adult uses, appears to be the subject of a number of police calls for fights and unruly customers.

About half of the business’s space is devoted to adult merchandise, with the remainder devoted to 16 adult video booths and 3 preview booths. Management is located at the front of the business to the left of the entrance. The video booths are situated at the rear. The inte-



**(6) Adult Zone – Video Booths**



**(7) Pleasure Palace – Video Booths**

rior of the business is well lighted in the retail portion as well as in the video booth area. The store appeared somewhat tired, particularly in the video booth area. There was no electronic monitoring of the booth area and the attendant was not particularly curious about who went into the booth area. The booths had benches that would hold one or two people with doors that lock. There were three glory holes linking six booths.

### **Reyn-dor News / Toledo Adult Bookstore (8)**

1002 N. Reynolds Road

Reyn-dor News, or Toledo Adult Bookstore as the sign indicates, is one of two C-3 zoned adult businesses on Reynolds Road within a block of one another in southwest Toledo. The business is located in a two-story yellow wood framed structure with approximately 8 paved parking spaces that are very close to the street. Reyn-dor News is an adult video sales and viewing booths. In addition to adult video sales and video booths, Reyn-dor News handles adult magazines, sex aids and novelties. During our visits there were two people in the business. The business operates 24/7, with a minimum age limit of 18 years or above. Signs are limited to a 15-foot pole sign and a wall-mounted sign advertising videos, novelties and 25-cent movies, magazines. Adjacent land uses include a donut shop, two churches across Reynolds, and residences immediately adjacent to the business. Outside the business there is a sign advertising “Foxy’s” located above the video store. We were told this was an adult massage business, but at the time of our visit it did not appear in operation.

Reyn-dor News is a fairly small sized business, with approximately half of the space devoted to adult merchandise, with the remainder devoted to 10 video booths. Management is located at the entrance to the business on the right with the video booths to the rear. The booths have one-person seats and doors that lock. The store had video monitoring but only of the retail area. This area is well lighted but the booth area was more dimly lit (some of the fluorescent fixtures were covered by cardboard). The store appeared somewhat ill kept. Management was very attentive, noticing that we were taking photos and inquired as to what we were doing. They also closely monitored when someone walked back into the booth areas without buying tokens.



**(8) Reyn-dor News – Video Booths**



## Sex Shops

### The Love Boutique (9)

135 South Byrne Road

The Love Boutique is one of two Toledo adult businesses that we classified as a “sex shop” ... a retail establishment with multiple types of adult merchandise such as sex novelties and toys, lingerie, some videos and magazines but with no on-site entertainment within the business. The other sex shop is Priscilla’s. The Love Boutique is located in a strip shopping center with three other C-3 zoned adult businesses on South Byrne Road in southwest Toledo. The other businesses are Pleasure Palace/Adult Bookstore, Déjà Vu and Chang Mi Sauna. The business utilizes the strip center’s large parking lot of at least 100 paved parking spaces. The Love Boutique has merchandise displayed in the windows, but most of it is limited to lingerie-type merchandise. During our visits there was only one person in the business and she appeared to be a Déjà Vu dancer located next door. Unlike the 24/7 operating hours of the video viewing booths, The Love Boutique’s operating hours was from 10 a.m. to 2 a.m. Monday through Saturday and from noon until 2 a.m. on Sundays. The minimum age limit for entering was 18 years or above. Signs are limited to one wall-mounted sign that advertises adult toys, dancewear, video rentals and arcade (there is no arcade). The Love Boutique has two interesting features ... it is connected by a hallway to Déjà Vu and the store’s TV monitor appears to receive a direct feed from Déjà Vu’s performance stage (or a similar business). The store was very clean and nicely merchandised. Management was friendly and somewhat attentive to store customers. Adjacent or near by uses include the other adult uses and a bar opened mostly on weekends called The Field House. This bar, not the adult uses, appears to be the subject of a number of police calls for fights and unruly customers.

### Priscilla’s (10)

4739 Monroe Street

Priscilla’s is the second Toledo adult businesses (The Love Boutique is the other one) that we classified as a “sex shop” ... a retail establishment with multiple types of adult merchandise such as sex novelties and toys, lingerie, some videos and magazines but with no on-site entertainment within the business. Priscilla’s, on Monroe Street, is zoned C-3 in the northwest part of Toledo, and was opened this spring (2002). The business’s 20 parking spaces are shared with the adjacent restaurant. Priscilla’s has received quite a large amount of press coverage since its opening due to its location across the street from Notre Dame



(9) The Love Boutique – Sex Shop



(10) Priscilla’s – Sex Shop

Catholic Academy and its very suggestive window displays (mannequins clad in bustiers and panties). Compared to The Love Boutique, its operating hours are much more limited, being open from 10 a.m. to midnight Monday through Saturday, and from noon to 10 p.m. on Sunday. The minimum age limit for entering is 18 years and above. Management was friendly and asked us if we needed assistance. Signs are limited to a 20-foot pole sign and wall-mounted signs advertising lingerie and novelties. Adjacent land uses include commercial uses within the strip center and the catholic school across Sylvania Avenue.

### **Exotic Dancing and Adult Theater**

#### **Club Chablis Gentlemen's Club (11)**

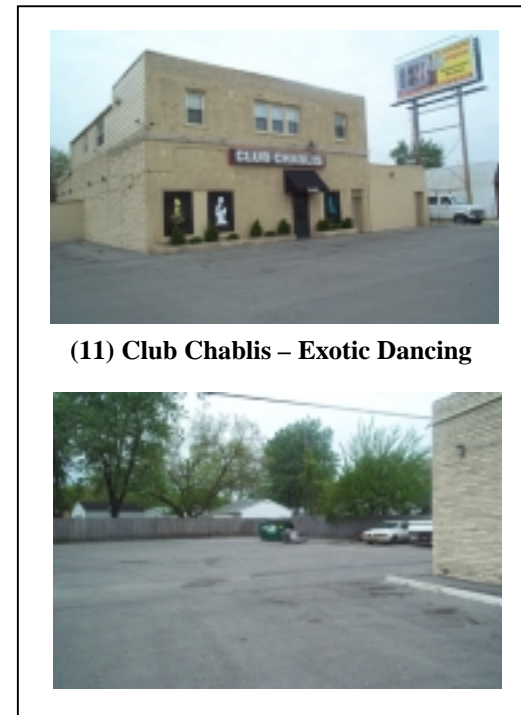
5405 N. Detroit Avenue

Club Chablis Gentlemen's Club is a nightclub featuring female exotic dancers. The property, zoned C-3, is in west Toledo and is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. Club Chablis is housed on the first floor of a two-story concrete structure with approximately 30 paved parking spaces. Upon entering the bar, there is a small cover charge; the bar is on the left and stretches the full length of the room; small tables and chairs are in the center; at the rear is an elevated rectangular dance stage approximately four feet in height measuring 10' x 18'; and behind the stage is a large dark room with couches where lap dancing is performed for customers. At the time of the site visits, there were three or four dancers who danced topless with g-strings on. Customers would come up to the stage from time to time, offer the dancer a tip and she would usually rub her bare breasts in the customer's face. Dancers also solicited private lap dances. If a customer declined, the dancer would go onto another table; if the customer agreed, the dancer would take the customer into the backroom and perform the lap dance with the customer sitting on the couch. The partially nude dancer would make full-body contact with the customer remaining clothed. Overall, the club was reasonably clean with a cordial management. A key issue is Club Chablis' location adjacent to single-family residences to the west of the club; however, to the east is older industrial development.

On the date of this report, it is our understanding that adult entertainment is no longer being offered at this establishment.



**(10) Priscilla's – Sex Shop**



**(11) Club Chablis – Exotic Dancing**

**Club Ecstasy (12)**

5038 Lewis Avenue

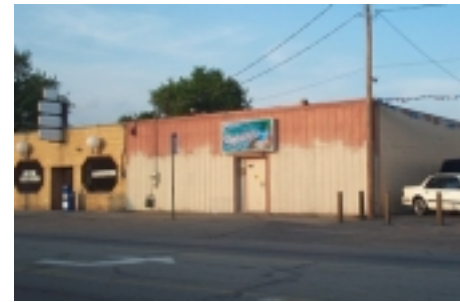
Club Ecstasy is a nightclub featuring female exotic dancers. The property, located on Lewis Avenue and zoned C-3, is in north Toledo about a mile west of the many adult uses in the Detroit Avenue/Telegraph Road corridor. The one-story concrete structure with a wood façade and approximately 20 paved parking spaces sits very close to the Lewis Avenue right-of-way line. We observed that parking is sometimes a problem, with cars being double stacked on busy nights. On some nights, there is a small cover charge, but not always. Inside, the bar stretches down the left side of the room; tables and chairs surround the U-shaped elevated dance stage that is approximately three feet in height and 10' x 35'; and there is a five-foot high walled area to the right of the front entrance with couches where dancers provide lap dances for customers. At the time of the site visits, there were four or five dancers who danced topless with g-strings on. Customers would come up to the stage from time to time, offer the dancer a tip and she would usually rub her bare breasts in the customer's face. Other times the dancer would rub the customer's face in her crotch. Unlike Club Chablis, lap dances were solicited much less formally. Often the dancer would be sitting with the customer and then only after sometime would they go back into the lap dance area. On the occasion that we observed a lap dance, full-body contact was made by the partially nude dancer with the customer remaining clothed. This is the club that we observed a dancer being hired on what appeared to be "on the spot" after a brief audition. Overall, the club was in a somewhat run down condition, but seemed to have friendly staff. Like Club Chablis' location, Club Ecstasy is problematic with its location adjacent to single-family residences to the north and east of the club. In fact, residences sit within 10 feet of the Club's parking lot without any buffer provided; however, to the west and south are older commercial areas.

On the date of this report, it is our understanding that adult entertainment is no longer being offered at this establishment.

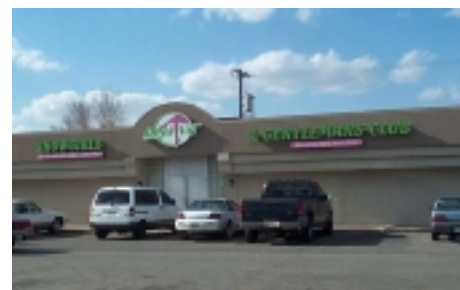
**Déjà Vu Showgirls (13)**

135 South Byrne Road

Déjà Vu Showgirls is a nightclub featuring female exotic dancers. The club is one of four C-3 zoned adult businesses in a strip shopping center on South Byrne Road in southwest Toledo. The other businesses are The Love Boutique, Chang Mi Sauna, and the Pleasure Palace Adult Bookstore. The business utilizes the strip center's large parking lot (100 +



**(12) Club Ecstasy – Exotic Dancing**



**(13) Déjà Vu Showgirls**

paved parking spaces). There is a cover charge, with women often given free admission. This is a large club with a much more upscale look than the more neighborhood” bars like Club Chablis and Club Ecstasy. The bar has a much less prominent position since the club does not have an alcoholic beverage license (we understand that the club is in the process of getting a license approved). Only soft drinks were served to customers. The club has approximately 10 U-shaped upholstered lap dancing booths lining each side of the room with a four-foot high half circle dance stage that was perhaps 30 feet in diameter. The general routine was for a dancer to perform, usually totally nude at some point in the routine, for about 10 minutes. As in other clubs, customers would come up to the stage, offer the dancer a tip and she would rub her bare breasts in the customer’s face or the customer’s face in her crotch. At the end of the performance, all the dancers (approximately 15) would circulate through the crowd and ask customers if they would like to buy a lap dance. If the customer declined, they would move on to another table. Both men and women were asked if they would like to buy a lap dance. Since the lap dance booths opened up toward the club’s general seating area, all the dances could be viewed by customers sitting at tables in the club. The lap dances were performed in the nude with the dancers on occasion rubbing up against the customers. During our visit, it was clear that management was present, but there was clearly no enforcement of what we had heard of as the two-foot rule – that the dancer could not be any closer to the customer than two feet while performing a lap dance – a rule that had come out of litigation against Déjà Vu. It was at this club that we learned from talking with management that the dancers operated as independent contractors. Déjà Vu did not have dancers as paid employees but as contract employees on a per night basis.

### **Hot Shotz (14)**

3835 N. Detroit Avenue

Hot Shotz is a nightclub featuring female exotic dancers on property zoned M-1. The club is in north Toledo and is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. It is housed in a one-story pink painted concrete structure with approximately 35 paved parking spaces. There is a cover charge to enter. The club’s bar is on the right side of the room with the square (20’ x 20’) 3-foot high dance stage occupying the center of the club. At the time of the site visits, there were approximately eight dancers who for the most part danced topless with g-strings on (we did observe one dancer totally nude and have learned that since our visits total nude dance at this club is more frequent). As in other exotic dance clubs, customers would come up to the stage from time to time, offer the dancer a tip and she would usually rub her bare breasts in the customer’s face. The area for lap dances is a small area on the opposite side of the bar with vertical blinds offering privacy



**(13) Déjà Vu Showgirls**



**(14) Hot Shotz – Exotic Dancing**

for the lap dancing. From the vantage point of our table, the dancer performing the lap dance kept her g-string on but rubbed her body up against the customer. Like Club Ecstasy, lap dances were solicited fairly informally. Dancers seemed to spend more time sitting at tables with the customer buying them drinks. The management seemed attentive and the establishment appeared reasonably well kept inside. Interestingly, the women's bathroom had a toilet with a douche system that was designated for dancers only. Overall, the club was in better condition than Club Ecstasy and Club Chablis, but not as upscale as some other clubs. However, like Club Ecstasy and Club Chablis, Hot Shotz is problematic with its location adjacent to single-family residences to the west of the club. We also encountered a problem during one of our visits. We were followed outside by a man in his early 30's who attempted to start an altercation, then waited in his truck in an attempt to follow us, but then finally went his way.

### **Platinum Showgirls (15)**

5801 Telegraph Road

Platinum Showgirls is a nightclub featuring female exotic dancers on property zoned C-3. The club is in north Toledo and is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. Somewhat like Déjà Vu's location, this club is within a commercial strip center, thus there is more than adequate parking available for customers. The business has operated since June 13, 1997. There is a cover charge to enter, and those customers above the legal drinking age are issued wristbands (those under the age are not issued wristbands). The dance stage is a large U-shaped stage (20x 30), elevated about four feet, with tables surrounding it. Like all stages, there are chairs adjacent to the stage. The club's bar is located in the front of the room to the right of the stage. To the rear of the room are booths and behind them is the entrance to the private lap dancing area. The night we visited, the club was sponsoring amateur night. The dancers at the Platinum Showgirls danced totally nude. On a typical night, there are from 15 to 20 dancers. They dance on stage and solicit private lap dances throughout the evening – a business that they appeared to do a substantial amount of. Since the lap dancing area was a separate room, we do not know if they performed totally nude like they did on stage. But we do know that on stage, as in other exotic dance clubs, customers would come up to the stage from time to time, offer the dancer a tip and she would usually rub her bare breasts in the customer's face and sometimes wrap her legs around the customer's neck. Also, dancers would spend time sitting at tables with the customers buying them drinks. This was the club where we observed a nude dancer circulating among the crowd soliciting lap dances. Management seemed to be very visible and the establishment, although very smoky, appeared well kept inside. One



**(14) Hot Shotz – Exotic Dancing**



**(15) Platinum Showgirls**



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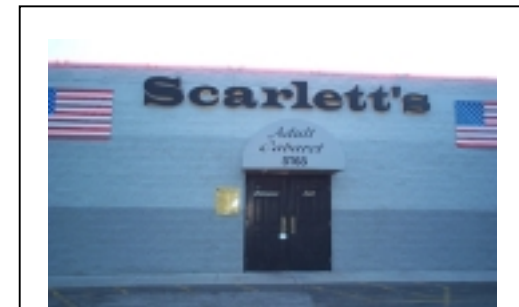
thing we noticed was that there appeared to be a large number of customers too young to drink but not too young to come in and if they chose, purchase lap dances.

As part of our study, we examined police reports of incidents at addresses related to all businesses included in this report. During the 39-month reporting period for which we had data, 92 of the 305 incidents that we reviewed related to Platinum Showgirls – in other words, this one establishment, which is only one of 26 businesses included in the study and one of six with live entertainment, accounted for 30 percent of the total police calls to all of these businesses over that period of time.

### **Scarlett's Adult Cabaret (16)**

5765 Telegraph Road

Scarlett's Adult Cabaret is a nightclub featuring female exotic dancers on property zoned C-3. The club is in north Toledo and is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. This is a fairly upscale club that has operated since March 9, 2000. There is a cover charge to enter (sometimes women are free), and like other clubs, permits those 18 and above to enter, but not drink if they are below the drinking age. The club's bar is located to the right of the entrance and immediately in front of the stage. The dance stage is a large U-shaped stage (12 x 30), elevated about four feet, with tables and chair surrounding it and adjacent to the stage. Like Platinum Showgirls, the private lap dancing area is through a couple of entrances behind the stage. On either side of the room are elevated seating areas. Scarlett's also sponsored an amateur night during one of our visits. Like Platinum Showgirls, Scarlett's is also a totally nude exotic dancing club that serves alcohol. On a typical night, there are from 15 to 20 dancers. They dance on stage and solicit private lap dances throughout the evening. They appeared to do a substantial amount of lap dances. Since the lap dancing area was a separate room, we do not know if they performed totally nude as they did on stage. We do know that on stage, as in other exotic dance clubs, customers would come up to the stage from time to time, offer the dancer a tip and she would usually rub her bare breasts in the customer's face. The club's dancers seemed to be much more aggressive in how they would solicit lap dances, sometimes standing in between the customer's legs and rubbing against them when they asked if they were interested in a lap dance. Management seemed to be very visible and the establishment, although very smoky, appeared well kept inside. There were signs on the wall and cards on some tables promoting after-hours parties. We were told that the club often stayed opened past the legal time to serve alcohol but did so without serving customers alcoholic beverages.



**(16) Scarlett's Adult Cabaret**

As part of our study, we examined police reports of incidents at addresses related to all businesses included in this report. During the 39-month reporting period for which we had data, 24 of the 305 total incidents occurring at all businesses occurred at Scarlett's. What is interesting about the Scarlett's data is that only 6 of the 24 incidents occurred inside the establishment, and at least two of those were attempts to rob the business. Those findings reflect the tight management controls that we observed inside the business but may indicate a need for better control over what occurs in the parking lot.

At the community meeting held to discuss issues related to the impacts of these businesses, several persons reported that Scarlett's had held a car wash at which its entertainers provided the car wash in the parking lot at the business. There was some concern over this activity but even greater concern over a report that there were flyers for the car wash circulated in a high school. Although we asked several people to provide us with copies of the flyers, no one did so. We acknowledge this report but cannot attribute anything other than the car wash to Scarlett's management and staff. Although we believe that there probably were some flyers at the high school, those could have been distributed by a student who found one elsewhere and copied it, or even by a competitor of the club or an opponent of the clubs in general seeking to create negative publicity for the club. Although distribution of such a flyer to students under the age of 18 reflects poor judgment, it is unclear what the City could do to prevent that; assuming that the car wash was a lawful activity<sup>6</sup>, materials truthfully advertising it are also lawful and in fact protected by the First Amendment<sup>7</sup>. While we would strongly encourage Scarlett's management to ensure that such incidents not recur, nothing in our recommendations would encourage the City to attempt to regulate the distribution of non-obscene flyers.

### **Velvet Rope (17) – new**

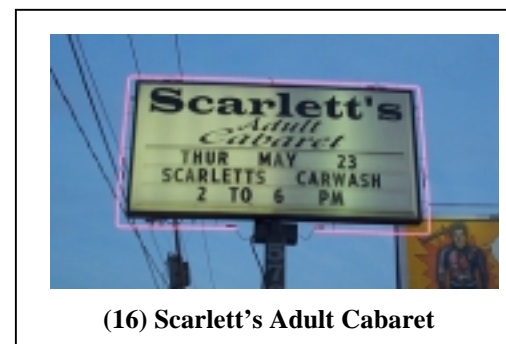
4635 N. Detroit Avenue

Velvet Rope is a new nightclub in the process of opening what we have been told will feature male exotic dancers. The property is zoned C-3 and is one of many adult uses in the Detroit Avenue/Telegraph Road corridor in north Toledo. Velvet Rope is a one-story pur-

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<sup>6</sup> The reports to us indicated that the women were clothed, although scantily so, thus making it legal if perhaps not tasteful.

<sup>7</sup> See *44 Liquormart, Inc., v. Rhode Island*, 517 U.S. 484, 116 S. Ct. 1495, 134 L. Ed. 2d 711 (1996), in which the U.S. Supreme Court struck down a state ban on advertising liquor prices.



**(16) Scarlett's Adult Cabaret**



**(17) Velvet Rope – Exotic Dancing**

ple and beige painted wooden structure with about 30 paved parking spaces. Although the business was not open at the time of our fieldwork, it is our understanding that it has subsequently opened but was not, at least initially, offering adult entertainment. Adjacent land uses include commercial and residential.

**Westwood Art Theater & Adult Videos (18)**

1602 Sylvania Avenue

Westwood Art Theater & Adult Videos, zoned C-3, is the only adult theater within the city limits of Toledo. In addition to the theater, Westwood also offers adult videos. The business is located on Sylvania Avenue in a highly commercial area of north central Toledo. Although there is an entrance to the theater on Sylvania Avenue, this door is locked, and access is gained through a side entrance on the west side of the building where there are approximately 30 parking spaces available. The business’s adult videos are at the building’s entrance with the theater at the rear of the building in the traditional theater area. Business hours are from 10 a.m. to midnight, Sunday through Thursday, and until 2 a.m. on Friday and Saturday. You must be 18 to enter. During our visit, we observed that the theater was very dark and a customer was wandering around the theater in his underwear selectively sitting with different customers in the theater. After mentioning this to the manager, he went into the theater to see about our complaint.

Note that there were three police calls for public indecency and two for solicitation during the 39-month period for which we examined police records. These five calls accounted for 21 percent of all police calls to adult businesses for sex-related crimes or indecency during the period, although the theater is only one of 25 businesses included in the comparison.

**Bathhouse, Lingerie Modeling and Nude Photography**

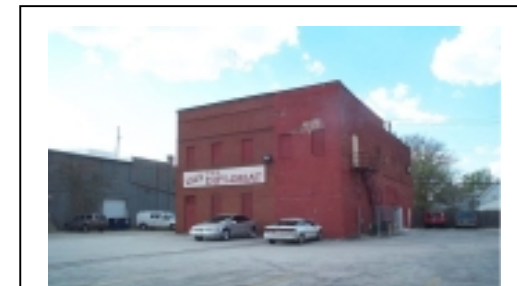
**The Diplomat – Bathhouse (19)**

1313 Summit Street

According to information provided by the city, The Diplomat is gay bathhouse. We were told that a few years ago, there was a police raid on the business. Things did not go well and in a lawsuit that followed, damages were awarded to the club. Today, the business operates as it did in the past. We made no attempt to personally survey the business and will depend on information provided by the city and the owner’s representative. Land uses to the north of the business are residential, to the east is a bar and commercial property is to the west. The property is zoned M-1.



**(18) Westwood Art Theater & Video**

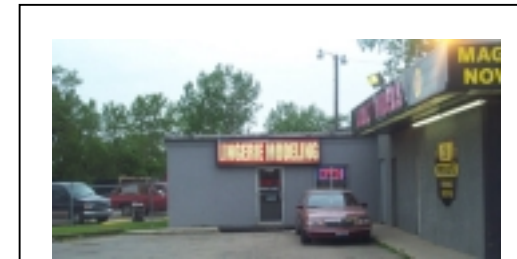


**(19) The Diplomat – Bathhouse**

**Kim’s Lingerie Modeling (20)**

5070 Telegraph Avenue

Kim’s Lingerie Modeling is located next door to Adult Videos (G&L Videos/Jolly Trolley). This is one of many adult uses in the Detroit Avenue/Telegraph Road corridor. It has been in business since Dec. 15, 1998. We inquired of the business operators what they provided. They indicated a customer could enjoy modeling of lingerie for \$40 with a required \$30 tip. This business was similar to at least two of the other massage parlors, with its operations being closed and quite secretive. It is zoned C-3.

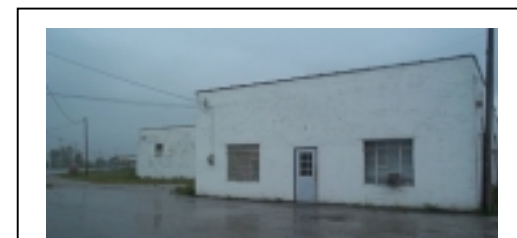


**(20) Kim’s Lingerie Modeling**

**Snapshots – Nude Photography (21)**

5701 Benore Road – Closed

Snapshots was a nude photography studio that closed before our study began. It was located in north Toledo about a mile east of the many adult uses in the Detroit Avenue/Telegraph Road corridor. The business closed spring 2002. The property is zoned M-2.



**(21) Snapshots – Nude Photography**

**Massage Parlors and Shower Massages**

Four massage parlors operate within the City of Toledo. Two are located on Telegraph Road in north Toledo – Lorain’s Private Studios is next door to the Adult Zone (adult videos and video booths) and a couple of doors down from Scarlett’s (adult cabaret); Rainbow Spa is located just a block away from Kim’s Lingerie Modeling and Adult Videos. All are zoned C-3 except for Rainbow Spa which is M-1. All but Lorain’s operate with a simple business license for providing massages, although the range of services offered at Lorain’s includes “shower massages” and we observed a massage table there in a large shower stall.



**(22) Chang Mi Health Spa  
135 S. Byrne Road**



**(23) Lorain’s Private Studios  
5661 Telegraph Road**



**(24) Rainbow Spa  
5205 Telegraph Road**



**(25) Suns Health Spa  
1722 W. Laskey Avenue**

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## Findings

### *Purpose*

In our Toledo study, we looked for two types of data. First, we looked for evidence of external impacts of the sexually oriented businesses on adjacent neighborhoods. This is called “secondary effects.” A basic principle of First Amendment law in the United States is that protected speech may not be restricted because of its content, but such speech can be restricted to reduce the “secondary effects” of the businesses on the neighborhood.<sup>8</sup>

Second, we looked for activities at sexually oriented business that are of the type that concern local residents but that are not protected by the First Amendment’s protection of freedom of speech or expression. For example, what a newspaper chooses to print is protected by the First Amendment, but this does not protect its printing plant from reasonable land use restrictions controlled by zoning regulations. Similarly, although the First Amendment protects the performances of dancers on stage as a form of expression, we are aware of no First Amendment protection of lap dancing or other interaction between dancers and the public.

Our findings regarding objectionable activities within the businesses that are not protected by the First Amendment are far more extensive than our findings regarding general impacts on neighborhoods. Yet there is little doubt that the two sets of findings are inter-related. Any veteran police officer will testify that a bar that has been cited for under-age drinking or frequent altercations inside the bar is the kind of bar at which trouble spills onto the street – and does so far more

often than at other establishments. Similarly, a sexually oriented business that has questionable activities inside is far more likely than others to have negative impacts on the neighborhood – not necessarily because of the business itself, but because it attracts patrons who are looking for or at least willing to be around such activities.

Finally, in considering the secondary impacts of these businesses, it is important to note that many of our recommendations relate to operating regulations, to be implemented through a licensing ordinance. The purpose of those recommendations is to ensure that each of the businesses is well managed in accordance with clear community standards. By ensuring the quality of the operations within the establishments, the City can often reduce the occurrence unnecessary secondary impacts on surrounding neighborhoods.

### *Secondary Effects*

#### **Proximity and Pedestrian Contact**

The most important secondary effect of these businesses is the most obvious – when such a business is located in close proximity to a residence or a use frequented by families this creates a land-use conflict of the sort that zoning is intended to avoid. As the Supreme Court noted in its landmark decision upholding the constitutionality of zoning:

Thus the question whether the power exists to forbid the erection of a building of a particular kind or of a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality ... A nuisance may merely be a right thing in the wrong place -- like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zon-

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<sup>8</sup> *Playtime Theatres, Inc. v. City of Renton*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed 2d 29 (1986). See, also, *D.G. Restaurant Corp. v. Myrtle Beach*, 953 F.2d 140 (4th Cir. 1991) ; *Thames Enters. v. City of St. Louis*, 851 F.2d 199 (8th Cir. 1988); *Genusa v. City of Peoria*, 619 F.2d 1203 (7th Cir. 1980); *S&G News, Inc. v. City of Southgate*, 638 F. Supp. 1060 (E.D. Mich. 1986), *aff’d*, 819 F.2d 1142 (6th Cir. 1987).

ing purposes be fairly debatable, the legislative judgment must be allowed to control.<sup>9</sup>

Where a sexually oriented business is located in a shopping center or freestanding building with the primary access by automobile, anyone coming in close contact with it is likely to do so by choice. In contrast, when such a business is located at a corner where a residential street intersects a collector or arterial street, residents of the



neighborhood may have to walk past the business to reach a bus stop or nearby shops. Similarly, where such a business is located along the access way to or across the street from a school or religious institution,

people going to school or to worship service will encounter the business regularly. The yellow building shown in the picture is the Reyn-dor News at 1002 North Reynolds; note the houses just down the street from it – it is also across the street from a house of worship.

Much of the sensitivity expressed about the businesses at the community meeting held in Toledo – and in other communities – relates to the location of these businesses in close proximity to residential or family-oriented uses. Although City officials had engaged in general discussions with us about conducting this study at an earlier date, it was when Priscilla’s opened a sexually oriented retail shop across from Notre Dame Academy that City officials decided that the issue was serious enough to merit a major study, even at a time of budget difficulties in the City. There is nothing fundamentally wrong with Priscilla’s; of the businesses that we visited in Toledo, it was one of the cleanest and best managed. Its product line is risqué but certainly not as likely to offend as the hard-core media collections at some of the other establishments. We saw no indication that Priscilla’s en-

couraged or allowed sexual activity on or near the premises. In short, as a sexually oriented business goes, it is near the low end of the community impact scale. It is, however, as the Supreme Court noted 75 years ago, “like a pig in the parlor” – a perfectly reasonable creature in a location that is completely inappropriate for it. The picture included here shows a view of the Priscilla’s building facing the Notre Dame Academy. The problem with Priscilla’s is compounded by the fact that it (and similar sex shops, including Toledo’s Love Boutique) use window displays for some of their racy lingerie and, at least in some cases, for sex toys. Priscilla’s displays some of the lingerie on translucent body-forms that are lighted from within.



The point of this discussion is not to focus unduly on two establishments but to note the importance of location. The Love Boutique is an operation very similar to Priscilla’s; we found no concerns with the Love Boutique’s location – located in a strip shopping center, well separated from residential uses (although its inclusion in a large complex of adult uses raises other issues addressed in this report). The primary concern that we had about Priscilla’s was its location – but that was a big concern indeed.

In short, one of the most significant “secondary effects” for a community is the impact of causing or allowing unwitting citizens to come in close contact with these businesses while going about their daily lives; it is a particular concern where the people who may come in unintentional or unplanned contact with the businesses are children. Thus, our recommendations



reemphasize the importance of a policy already adopted (but incompletely implemented) by the City – the separation of sexually oriented uses from sensitive uses, including areas zoned primarily for residences, houses of worship and schools.

<sup>9</sup> Village of Euclid v. Ambler Realty Co., 272 U.S. 365, at 388, (1926).

## Police Calls

The Toledo Police Department provides copies and summaries of reports of police contacts with addresses associated with these businesses from January 1, 1999, through March 31, 2002.<sup>10</sup> The following tables summarize the data by type of establishment<sup>11</sup>:

	Total	Violent	Vehicle	Sex	Indecency	Other Theft	Drug	Other
Adult Cabarets (5)	137	45	26	0	5	26	2	33
Adult Theater (1)	10	0	0	2	3	3	0	2
Adult Book Stores (7)	34	14	6	0	0	6	0	8
Contact/Encounter Businesses (6)	26	6	2	6	0	3	0	9
Sex Shop (1)	0	0	0	0	0	0	0	0
South Byrne Cluster (5)	131	39	31	6	2	19	4	30
<b>TOTAL</b>	<b>338</b>	<b>104</b>	<b>65</b>	<b>14</b>	<b>10</b>	<b>57</b>	<b>6</b>	<b>82</b>

### Key – Businesses:

“**Adult Cabaret**” includes Club Chablis, Club Ecstasy, Hot Shotz, Platinum Showgirls, and Scarlett’s.

<sup>10</sup> We received printed summaries, by address, with NCIC codes, for 1999 and 2000, with some copies of associated reports attached. We received copies of actual reports for 2001 and the first part of 2002.

<sup>11</sup> We have not reported data for individual establishments for two reasons: first, the sample size is too small to be meaningful at that level; second, we want to focus on the larger issues, rather than on issues with the individual businesses – although we have made reference to the police call figures in the context of our reports on a handful of the individual establishments.

“**Book Stores**” includes adult bookstores all of which have video viewing booths.

“**Encounter and Touching Businesses**” include Diplomat Bath House, Kim’s Lingerie/Oriental Spa, Lorain’s, Rainbow Health Spa, Snapshots Nude Photograph (now closed), and Sun2 Health Spa.

“**Sex Shop**” includes Priscilla’s.

“**South Byrne Cluster**” includes five businesses that share a common address (135 South Byrne): Love Boutique (sex shop), Déjà vu (adult cabaret), Chang Mi Health Spa (massage), Pleasure Palace (adult book store with viewing booths), and Field House (bar/nightclub, now open only on weekends). These were lumped together for two reasons: first, for many of the reports, it was impossible to attach them to a particular establishment at that address; second, the cumulative number of police calls for this location accounts for 40% of all reported calls even after reducing the number of calls that appeared to be attributable to the Field House.

### Key – Incidents:

“**Violent**” includes robbery, all forms of assault, menacing, but not domestic violence<sup>12</sup>; “**Vehicle**” includes some vehicle thefts, although the vast majority involved vehicle-break-ins and thefts of property from the vehicles or other damage to a vehicle; “**Sex**” includes solicitation, prostitution, pimping, and “sexual imposition” – there were no rapes or similar sex crimes included in the reports that we received; “**Indecency**” includes incidents reported as public indecency; “**Other Theft**” includes shoplifting, petty theft (mostly cell phones and cash taken off tables or from employee lockers), as well as burglaries of the businesses; “**Drug**” includes all drug-related incidents, including at least one that involved drug paraphernalia but no reported drugs; “**Other**” includes a few liquor violations, one death by natural causes, a couple of incidents of sickness and a variety of other police calls.

<sup>12</sup> We excluded domestic violence from this category because the few instances reported at these businesses were clearly ones that followed the victim to the business and thus apparently had nothing to do with the business itself.

It is difficult to draw absolute conclusions about crime and sexually oriented businesses in Toledo without a control comparison to other types of businesses – something for which we had neither the data nor the budget. However, we have been able to identify some striking facts from this data set. The related findings are set out below.

### **Location of the Incidents**

Of the 338 incidents reported from 1999 through 2002, 294 occurred in businesses or clusters with live entertainment (87%). We found it very interesting that one establishment accounted for 30 percent of the reported incidents, while one location (South Byrne Cluster) accounted for another 39 percent of the reported incidents.

For 226 of the 338 incidents, we were able to determine the location at the addressed premises where the incident occurred.<sup>13</sup> Of the 226 incidents for which we could determine a location, one-half (113) occurred in the parking lot of the establishment. That is a very significant finding in terms of neighborhood impact. Some 55 of those occurred in the sprawling parking lot of the “South Byrne Cluster”.

Most of the parking lot problems occurred at the establishments or the cluster with live entertainment (101 of 113 incidents that clearly occurred in the parking lots). However, even within the live entertainment group there was significant variation. At one establishment (the one with by far the most police calls for an individual establishment), most of the problems occurred inside, with only 30 percent occurring in the parking lot; at another establishment which may maintain better controls inside the operation (and has far fewer calls), the problems tended to move outside, with 75 percent of the calls involving incidents in the parking lot. Three of the eight bookstores with viewing booths had parking lot incidents – two of them are under the same ownership. With one exception, the problems at the encounter and touching businesses stayed inside.

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<sup>13</sup> For a number of incidents it was not clear whether the reported incident occurred inside the building or in the parking lot.

### **The Effects of Clustering**

As shown on the table above, five businesses located at the South Byrne Cluster (135 South Byrne) accounted for 39 percent of the 338 incidents reported. We feel this number is under-counted, because we did not receive all reports for this address for 2001 and early 2002.<sup>14</sup> These five businesses account for 20 percent of the total businesses included in the crime analysis, but have 40 percent of the reported incidents. This reinforces findings from the City of St. Paul, Minnesota in a study it undertook in 1978. It found that “more than one adult entertainment businesses in an area is associated with a statistically significant increase in crime rate.”<sup>15</sup> These same findings have been reported in a number of other jurisdictions.

### **Types of Businesses**

There were some significant differences in police calls by types of business:

- Although the sexually oriented cabarets accounted for only 5 of the 25 businesses included in the crime study (or 20 percent), they were involved in 44 percent of the total police calls.
- The 8 bookstores accounted for 37 of the 338 police calls, but 4 stores had were attributed to 34 of the calls.
- In contrast, we were able to identify only one police call to one of the sex shops, and that was a telephone harassment complaint by an employee at the business that may or may not have related to the business and therefore not included in the tabulations.

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<sup>14</sup> We were told that the reports we received omitted those for the Field House.

<sup>15</sup> For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 62-63.

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As noted above, it is not entirely surprising that the large cabarets, which attract more people who stay longer, will have more police-related incidents. We make no value judgment about what an acceptable number of police calls to such an establishment might be – in considering the secondary impacts of these businesses, however, it is significant to note that the establishments with live entertainment are likely to have the greatest adverse impacts in terms of incidents requiring police response.

In contrast, there is nothing in the crime data that suggests that the sex shops have an effect on crime around them. With such establishments, the real issue is the first issue addressed in this section – the need to ensure that such businesses are located in places where children and individuals going about their daily business will not encounter them accidentally.

### **The Effects of Management**

There are wide differences among individual establishments within each category. Note that:

- Among the adult cabarets, excluding the South Byrne cluster, one establishment had 102 incidents, one had 25, two others had fewer than 8 and one had no incidents reported;
- Among the sexually oriented bookstores with video viewing booths, there were 37 reported incidents, of which 10 took place at one establishment and two others had 9 and 8, respectively;
- Of the 37 calls to the sexually oriented bookstores, 17 went to two stores under common ownership;
- Of the 37 calls to the sexually oriented bookstores, 15 went to two stores that are only 1 block apart;
- Three of the eight bookstores had no reported incidents;
- Of the 26 calls to the encounter and touching establishments, one establishment had 18 (or 69 percent) of the calls.

These findings reinforce the need for an effective licensing ordinance. If all establishments were as well managed as even the average establishment now located in Toledo, one would expect a substantial reduction in the number of police calls to these businesses.

### **Types of Incidents**

The types of incidents for which the police were called ranged from a number of relatively minor thefts (cell phones and car stereos) to one death by natural causes (in one of the touching establishments). The largest number of calls related to damage to, thefts from or thefts of vehicles. A few significant facts emerge:

- Most disturbing is the fact that 104 of the incidents, or 30 percent, involved violence;
- A relatively small number involved sex-related crimes – 14 (4 percent) pimping, prostitution and solicitation; and 10 (3 percent) public indecency;
- Of the 10 public indecency complaints, five arose at one of the adult cabarets and three at the adult theater, with the other two at non-specific locations in the South Byrne cluster. That means that there were no such incidents at any of the other live entertainment establishments or at any of the bookstores;
- Six of the sex-related complaints were attributable to one of the massage studios, and six others were attributable to the cluster of businesses on South Byrne;
- There were two solicitation complaints at the adult theater.

These facts significantly reinforce the separate findings regarding the importance of management controls and the value of licensing as a regulatory tool to ensure that establishments are well managed.

### **Effect on Property Values**

One of the concerns often expressed about sexually oriented businesses by neighborhood residents relates to the effect on property

values. For findings regarding that issue, we turn to two studies from other communities – one of which we designed.

The City of Rochester, New York, conducted a survey of 39 property appraisers to determine their perceptions of impacts of sexually oriented businesses on residential and commercial property values. This was important since most ordinances deal with sexually oriented businesses by requiring them to be separated by some specified distance (typically between 500 and 1500 feet) from certain categories of land-use. The Rochester survey attempted to find a relationship between distance and impacts on property values<sup>16</sup>.

Based on the results of the survey, appraisers in the Rochester, Monroe County area have the following views on the impact of sexually oriented businesses:

- Bars with nude servers or live entertainers clearly have the greatest negative impact on surrounding property values.
- Sexually oriented businesses have a measurable negative impact on the value of some neighboring property.
- There is significantly more negative impact on the value of neighboring residential property than on commercial property;
- The greatest impact on property values is on properties located on the same block;
- The impact on property value is less significant if located along the same street than if located on the same block; however, it is of greater significance than any particular distance separation;

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<sup>16</sup> For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000. Table 3-6, page 53, Table 3-7, page 54; Table 3-8, page 55, Table 3-9, page 55.

- Based on a combination of responses, if two properties are equi-distant from the same *studied business*, with one located on the same street as the *studied business* and the other on another street, the property located on the same street as the *studied business* will suffer greater impacts;
- The negative impact decreases with distance and stops somewhere between 1,000 and 1,500 feet<sup>17</sup>.

A study conducted in Indianapolis compared crime rates and “real estate value appreciation.” The study found that:

- The major crime rate in the study areas was 23 percent higher than in the control areas and 46 percent higher than in the police jurisdiction at large;
- The “sex-related crime rate” in the study areas was 46.4, or some 80 percent higher than the rate for the same crimes in the control areas over the same period;
- “Although the housing base within the Study Areas was of a distinctly higher value than that of the Control Areas, its value appreciated at only one-half the rate of the Control Areas’ and one-third the rate of Center Township as a whole during the period 1979-1982.”
- “Twice as many houses were placed on the market at substantially lower prices than would be expected had the Study Area’s market performance been typical for the period of time in question.”

This study also included responses from a national survey of appraisers where in some 75 percent responding “felt that an adult bookstore located within one block would have a negative effect on the value of both residential and commercial properties,” but that “at

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<sup>17</sup> For detailed results of the survey, see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.

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a distance of three blocks” the impact of an adult bookstore fell off sharply so that the impact was negligible on both residential and commercial.”<sup>18</sup>

### **Other Concerns about Secondary Effects**

As part of our study, a City Council member organized a meeting for interested citizens to talk with us and with city officials about secondary effects and other issues related to sexually oriented businesses in Toledo. The meeting took place in North Toledo on the evening of Wednesday, June 5, 2002.

The dominant theme of the evening was that the concentration of the sexually oriented businesses – particularly those with live entertainment – in North Toledo has an adverse effect on the quality of life. Other concerns included:

- Market elimination of neighborhood businesses from centers with adult entertainment, both because some customers were reluctant to go into the centers once the adult businesses located there and in part because businesses moved because of their own image concerns (although these comments were somewhat generic, the clear focus was on Platinum Show-girls, which is located in the corner of a strip mall);
- One resident expanded upon that theme and offered the hypothesis that some of the economic problems of the North-town Mall may be attributable to the growth of sexually oriented businesses in the area;
- Some neighbors complain that they can hear the entertainment from the live entertainment establishments until 3 a.m. on weekends;

- More than one resident indicated that they have seen prostitutes walking the streets in the area. The testimony suggested that the prostitutes may have been attracted to the area and not associated with any particular business. Two different residents reported that prostitutes had asked them for help – in one case to use a phone after her car stalled;
- One resident has observed scantily clad dancers from one business taking a break on a service road behind the business and adjoining a residential area; and
- Several neighbors complained about finding used condoms and tokens for the viewing booths in streets and parking lots, leading to difficult questions from their children about the uses of the devices.

### ***Zoning Issues***

#### **Status under Current Zoning**

The City has generally taken the position that many of the businesses are lawful nonconforming uses, because they pre-date the 1979 zoning ordinance that established the current rules. In the following table, we make a more detailed examination of the status of these businesses under the current zoning and separation rules.

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<sup>18</sup> “Adult Entertainment Businesses in Indianapolis: An Analysis,”1984; cited in see Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 58-59.

<b>Status of Sexually Oriented Businesses Under Current Zoning</b>						
	Address	Date Estab- lished as Adult Enter- tainment	Current Zoning	Within 500 feet of Sensitive Uses	Within 1000 feet of other Adult Enter- tainment	Notes
<b>Adult Cabarets</b>						
Club Chablis	5405 N. Detroit	N/A	C-3	YES	NO	Adult entertainment stopped
Club Ecstasy	5038 Lewis	N/A	C-3	YES	NO	Adult entertainment stopped
Déjà Vu	135 S. Byrne	Pre-1979 & 1990	C-3	NO	YES	Previously an adult motion picture theater
Hot Shotz	3835 N. Detroit	N/A	M-1	YES	NO	Adult entertainment stopped
Platinum Showgirls	5801 Telegraph	1996	C-3	NO	NO	Within 1000 feet of Scarlett's, but Scarlett's moved in on it
Scarlett's	5765 Telegraph	1997	C-3	NO	YES	Permitted to locate within 1000 feet by court ruling
Velvet Rope	4635 N. Detroit	2002	C-3	YES	NO	Opened in 2002 but not cur- rently adult
<b>Adult Theater</b>						
Westwood Art Theater	1602 Sylvania	Pre-1979	C-3	YES	NO	Residential uses nearby
<b>Adult Bookstores</b>						
Adult Pleasures	4404 North Detroit	Pre-1979	C-3	NO	NO	
Adult Videos	3107 West Alexis	Pre-1979	C-3	YES	NO	Residential uses nearby
Adult Videos/Jolly Trolley	5070 Telegraph	Pre-1979	C-3	NO	YES	Next door to Kim's Modeling
Adult Videos/G&L	1124 N. Reynolds	Pre-1979	C-3	YES	YES	Near to Reyn-dor News
Adult Videos/Woodville News	1634 Woodville	Pre-1979	M-2	YES	NO	Residential uses nearby

<b>Status of Sexually Oriented Businesses Under Current Zoning</b>						
	Address	Date Established as Adult Entertainment	Current Zoning	Within 500 feet of Sensitive Uses	Within 1000 feet of other Adult Entertainment	Notes
Adult Zone	5661 Telegraph	Post-1979	C-3	NO	YES	Next door to Lorain's
Pleasure Palace/Adult Books	135 South Byrne	Pre-1979	C-3	NO	YES	In same shopping center as 3 other adult uses
Reyn-dor News	1002 N. Reynolds	Pre-1979	C-3	YES	YES	Near to Adult Videos/G&L
<b>Sex Shops (not treated as SOBs under current ordinance)</b>						
Love Boutique	135 South Byrne	Post-1979	C-3	NO	YES	In same shopping center as 3 other adult uses
Priscilla's	4739 Monroe	2001	C-3	YES	NO	Opened 2001, not adult use under current ordinance
<b>Encounter/Touching Businesses</b>						
Chang Mi Health Spa	135 South Byrne	Pre-1979	C-3	NO	YES	In same shopping center as 3 other adult uses
Diplomat Bath House	1313 Summit	Post-1979	M-1	YES	NO	Not permitted in M-1
Kim's Lingerie Modeling	5070-1/2 Telegraph	Pre-1979	C-3	NO	YES	Next door to Adult Videos/Jolly Trolley
Lorain's Private Studios	5661 Telegraph	Post-1979	C-3	NO	YES	Next door to Adult Zone
Rainbow Health Spa	5205 Telegraph	Pre-1979	M-1	NO	YES	Not permitted in M-1
Snapshots Nude Photography	5701 Benore	Closed	M-2	NO	NO	Not permitted in M-2
Suns Health Spa	1722 West Laskey	Post-1979	C-3	NO	NO	

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As to location, of those currently operating as adult entertainment or similar businesses, the following businesses appear to conform to the current zoning and separation rules (although we have not made field measurements of the separation standards – see “recommendations”):

- Platinum Showgirls (Telegraph)
- Adult Pleasures (N. Detroit)
- Suns Health Spa (W. Laskey)

A number of video stores with viewing booths appear to be within 500 feet of residences, but unfortunately they were established prior to Toledo’s adult use ordinance. These are:

- Adult Videos (W. Alexis)
- Adult Videos/G&L (N. Reynolds)
- Adult News (Woodville)
- Reyn-dor News (N. Reynolds)

Of the other establishments, the following four adult entertainment establishments are in cluster at 135 South Byrne. Although the location is an appropriate for anyone one of them, or perhaps even two such businesses, the clustering of these businesses has clearly resulted in a compounding of the secondary effects and they should be treated as non-conforming uses for that reason:

- Déjà Vu
- Love Boutique
- Chang Mi Health Spa
- Pleasure Palace/Adult Books

In addition, the following current businesses are located within 1000 feet of one another:

- Lorain’s (shower massages/nude modeling) and Adult Zone (bookstore) adjoin one another and share parking, and Scarlett’s (exotic dancing) is one block away. Platinum Showgirls also appears to be within 1000 feet of Scarlett’s, but opened before Scarlett’s was permitted to located by a court decision

(the 1000 foot rule was not enforced because it was unclear in its drafting and has since been amended)

- Kim’s Lingerie Modeling and Adult Videos/Jolly Trolley adjoin one another and share parking
- The cluster of adult uses at 135 South Byrne (The Love Boutique, Déjà Vu, Chang Mi Health Spa and Pleasure Palace Adult Books);
- Adult Videos/G&L and Reyn-dor News, video rentals and viewing booths on N. Reynolds

Three local taverns – Hot Shotz, Club Chablis and Club Ecstasy – violated the current zoning ordinance’s ban against nude dancing in proximity to residential uses; the City has stopped the live entertainment at each since the time of our visits.

### ***Adult Cabarets***

There is a great deal of physical contact between customers and patrons at the adult cabarets. Although there is some variation among establishments, typical practices include:

- Lap dances, which typically take place in a backroom (at Déjà Vu they are conducted on couches that are visible from the room). The lap dances that we could observe at establishments where parts of the backroom were visible involved the dancer gyrating on a patron’s lap. We observed only male patrons engaging lap dances, although there were female patrons in most of the establishments. In some cases the dancer kept bikini bottoms on while writhing on the lap of a clothed customer but in other cases they were totally nude.
- Tip collections. The code for “I am ready to give you a tip” at most of the establishments is for the patron to come up along the edge of the stage. The dancer comes and sits in front of the patron and takes the tip. The most typical contact that we observed involved a dancer wrapping her breasts around the patron’s face and encouraging him (or occasionally her) to kiss the nipples. In some cases, the dancer would collect a tip

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from the (clothed) lap of a male patron, using her mouth to pick it up. In a few cases, the dancer presented her unclothed vagina to the lips of a male customer, by which means he apparently (it was difficult to see in detail) inserted the tip into that orifice. A good tip sometimes led the dancer to straddle the patron's lap and gyrate there – and the dancers at this point were typically completely nude.

- Solicitations. The solicitations for lap dances vary by establishment. At Déjà Vu, the manager signals on the P.A. system that it is time for couch dances and all of the dancers come onto the floor, nude on top, and walk around talking to customers, soliciting couch dances. Contact is usually only with hands on shoulders. At Scarlett's, it is common for a dancer simply to join a male at a table and sit in his lap, often between his legs, without initially saying anything; the pitch for the lap dance begins with physical contact and then evolves into a conversation about it. Platinum Showgirls combines some characteristics of each but seems to have less of a system. The solicitations at Club Chablis, Club Ecstasy and Hot Shotz were less formal and less structured.

Although we accept Judge Skow's determination that these actions do not technically constitute prostitution, we see a far closer relationship between these actions and prostitution than we do between these actions and dance. As Judge Skow himself noted"

The artistry at Déjà Vu bears as much relationship to serious dance as Boy George does to Vivaldi or Judith Krantz does to Dickens. And the Déjà vu dancers have only their gender in common with the ballerinas of the Ballanchine and Bolshoi...a point which they make with numbing and gynecological regularity umpteen hours a day, seven days a week. [*State of Ohio ex rel. Pizza v. Déjà Vu, Inc.*, Case No. 90-0417 (Ohio Court of Common Pleas, Lucas County, 1990), at 3-4].

We actually think that Judge Skow has to some extent over-generalized about the talents of the dancers. Some of the dancers we

observed clearly had a good deal of talent, and perhaps a majority had significant gymnastic ability. These expressive talents, however, were demonstrated on stage – as one would expect. Once they came off the stage, or leaned over the edge of the stage, any resemblance to dance as we know it ceased and the encounters with patrons became overtly sexual, rather than suggestive or expressive.

Acknowledging Judge Skow's interpretation of Ohio law, however, does not to us close the discussion. It has always been our understanding that the principal social objection to prostitution is that it involves the exchange of sexual contact for money. Although the law may require penetration or even climax to convict someone of prostitution, that does not, to us, remove the concerns that revolve around the sale of sex. If the women selling lap dances are not selling sexual contact, they are running the greatest scam in the world – because they are selling nothing, for quite a lot of money per minute. Although we cannot document the sexual results of the particular couplings that we saw, sociologists' who have interviewed lap dancers find that a significant number of male patrons achieve orgasm, leading to at least some potential exchange of bodily fluids, even through clothing. The point is not that we think that there should be further prosecutions of the dancers for prostitution – that would be futile. We do want Toledo policy-makers, however, to understand the nature of this contact and to evaluate whether it is acceptable behavior in a public establishment in Toledo.

It is important to understand, however, that a substantial part of the revenue in these establishments comes from the lap dances and other personal interactions. The dancers work as independent contractors, but the house takes a cut. Although one solution to the problems that we believe attend the extensive interaction between patrons and customers is to put the dancers on stage and make them stay there, it is important to understand that such an action would dramatically change the business. Drink prices and cover charges would have to rise. There would clearly be fewer dancers.

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### ***Video Arcades***

As we have found in other communities, we find a substantial number of operational problems at establishments with video arcades or video viewing booths. Several of these establishments have booths with “glory holes” between them. In one such establishment, there was a periodic “scramble” as male patrons came into the hallway, apparently sizing up other patrons, and then selected new booths from among those that were both occupied (or about to be so) and penetrated by glory holes.

We observed liquid stains (some old, some recent) on the walls and floors of video viewing booths, consistent with local police reports and studies from other communities indicating that sexual activity within the booths leads to the deposit of human semen and other bodily fluids in the booths.

Although at least one of the establishments used a combination of a warning buzzer and video cameras to control interaction among patrons in the video arcade area, others freely allowed interaction among them and made little attempt to control the number of persons in a booth or other activities.

At one establishment, we were informed that the female member of our team would not be allowed in the arcade area after 9 p.m. because of past problems with women soliciting patrons in the arcade (notwithstanding the fact that we saw only male patrons in the other video arcades, which had no such restrictions).

Many of the establishments purport to control access to the arcade by requiring that anyone entering the arcade pre-purchase tokens for use in the booths. Enforcement of this requirement varied widely by establishment and seemed to have little effect on patron behavior.

At one bookstore we observed a good deal of interaction among patrons in the back hall that provided access to the booths, with a periodic rotation of multiple customers among selected booths that had “glory holes.” In examining the police reports – which we did only after our field work was complete – we found that 10 of the 37 police

calls to adult bookstores during the reporting period went to this one store.

### ***Adult Movie Theater***

There is only one sexually oriented movie theater that we identified in Toledo, the Westwood Theatre. It includes a video rental store in the lobby. The theater itself was so dark that it was very difficult to determine how many patrons were in the theater or what they might be doing. One patron, however, was observed going up and down the aisles wearing only boxer-style undershorts and a t-shirt. He would go into a row and sit next to another patron and then engage him (they all appeared to be male) in conversation, then moving on. When we informed the manager about this partially clothed individual, the manager asked if he was sitting down. When we indicated that he was up and wandering around, the manager decided to go into the theater to investigate; our clear impression was that any state of undress was acceptable if the patron remained in a seat. Our observation was consistent with our subsequent review of police reports, which showed that there were three complaints of public indecency and two of solicitation at this establishment, accounting for 21 percent of all the sex-related and indecency police reports at the studied establishments.

We recognize that the theater is clearly protected by the First Amendment, but we found the apparent behavior in the establishment and the lack of management control over such activity to be disturbing. If the person we observed was not soliciting sex from other patrons – as we believe that he was – the current operation of the theater certainly provides an environment in which such solicitation could easily occur, with no observation and no management control.

### ***Massage Parlors***

As a policy in our work, we refuse to place ourselves out of public view with one or more workers in a sex business. All but one of the massage establishments in Toledo admits only one customer at a

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time and then only after payment of a stated massage fee that is matched by an equal tip. Proprietors will not allow anyone past the front door without the payment nor with anyone else along (one said that they would take couples by advance appointment). Thus, our ability to determine what occurs within those establishments was limited. We do know that there has been no evidence presented to the City by these establishments that employees or the owners holds a State of Ohio license to practice massage therapy.

There is certainly a local perception that these establishments serve as fronts for prostitution. A police investigation of Lorain's in December 2000 resulted in several prostitution and related charges and arrests, although none of the police reports that we examined documented actual penetration or even sexual relief through manipulation – on the other hand, the reports reflected lap dancing in which the “customer” wore underwear only and the dancer wore nothing and they showed that dancers encouraged customers to masturbate in their presence. During our visit at Lorain's we were briefed on the type of services offered. The staff indicated the “El Supremo” allowed the customer to go into a private room, get undressed and become “hot” at which time a dancer would come in and dance. Then she would take the customer into the shower and give him a shower massage. We cannot prove that they do or do not – but, if they are not selling sexual massage, we cannot identify any useful service that they provide that is not available from reputable sources.

Some of these establishments involve other legal problems. During the 39-month reporting period for which we examined police data, there were two separate reports alleging that employees at Rainbow Spa were attempting to rob customers, and there were two separate soliciting complaints there. The operators of Rainbow Spa were later charged with money laundering, coercion/enticement for prostitution and interstate transportation for purposes of prostitution. In addition, none of these massage parlors have challenged their treatment as “adult entertainment” establishments under the current Toledo zoning ordinance, which appears to be at least a tacit acknowledgment of the types of services that they offer.

We do not believe that massage parlors have First Amendment protection. This view is further supported in a federal court of appeals statement – ...“massage parlors, conversation parlors and call services, which have no First Amendment protection” [*Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123, 139 (3d Cir. 1993)]. Another federal appellate court rejected a massage parlor's First Amendment challenge, as well as a vagueness challenge, to an ordinance setting out a dress code for the operation [*Mini Spas, Inc., v. South Salt Lake City Corp.*, 810 F.2d 939 (10th Cir. 1987)].

We note, however, that the State of Ohio licenses the practice of massage therapy as part of its larger program of licensing medical and related professions. See Ohio Rev. Code §4731.16. To earn a license, a practitioner must meet minimum educational requirements from an approved school that requires hundreds of supervised practice (see O.R.C. §§4731.09 and 4731.19) and pass an examination:

Each examination shall be given in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, diagnosis, and any other subjects appropriate to the limited branch of medicine for which certification is requested as the board may require, except that applicants for certificates to practice massage therapy shall not be examined in pathology.

We have been able to identify no useful public purpose that the massage establishments licensed by the City as “adult entertainment” establishments serve. We note in these comments that Ms. Cooper is a regular patron of certified massage therapists of the sort licensed by the State of Ohio and certified by two national professional organizations. She is a great believer in the value of massage therapy when performed by trained and certified or licensed practitioners. We simply cannot find any benefit to the City or its residents from allowing other persons, with little or no training and education, to provide massage services, whether sexual or not.

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## ***Retail Sex Businesses***

Although there are eight establishments in Toledo that consider themselves adult bookstores, all have video viewing booths that provide on-premises entertainment. We find in Toledo, as we have found elsewhere, that the addition of video viewing booths to a bookstore or video rental store provides a form of on-premises sexually oriented entertainment that should be zoned and regulated accordingly. A true adult book or video store would simply involve the retail sale or rental of videos, without on-premises consumption. The on-premises consumption of the entertainment leads patrons to remain on the premises longer and to have more opportunity to interact with other patrons – whether for sexual purposes or otherwise – thus making such a use a higher impact use than a simple retail establishment.

The City's current ordinances do not appear to treat The Love Boutique and Priscilla's as sexually oriented businesses. Both are clearly marketing sex and should be so regulated. We note that both are well-managed stores – by far the cleanest and best merchandised of the retail establishments we visited in Toledo. As sex businesses, they are excellent and relatively low-impact. They are, nevertheless, sex businesses and should be separated from sensitive uses such as residences, schools and religious institutions. Only one police call went to one of these retail businesses during the 39-month reporting period. This was a non-violent incident that was not clearly attributable to the business.

## ***Alternative Media Avenues***

Much of the growth of the sex business in recent years and much of the activity in Toledo appears to deal with sexually oriented movies, videos and DVDs. Such materials are available in the so-called adult bookstores in Toledo, but they are also available in other venues:

### **Westwood Theatre**

Westwood Theatre. The Westwood Theatre is likely to continue to operate as a sexually oriented movie theater, although we recom-

mend licensing and better controls on the activities there. It thus furnishes and should continue to furnish one alternative avenue through which people can enjoy sexually oriented videos.

### **Mainstream Media Stores**

Other Media Stores. The City of Toledo has at least 16 mainstream video stores that provide separate rooms with hardcore videos. These include Family Video with four establishments, Video Connection with seven establishments inside the city and eight in nearby communities, Video News' three stores, Video Cave's one store and Galaxy Videos' one store. Each of these that we visited has a separate room with hardcore, sexually oriented material available to rent to persons 18 and older.



The sizes of the backrooms were typically somewhere between 5 and 10 percent of the floor area of the store, with the stock in the rooms appearing to account for less than 10 percent of the total stock of the store. Two of the Video Connection stores we visited had separate rooms that consumed upwards of 30 percent of the floor area. However, unlike Family Video where permanent walls create the backrooms, Video Connection creates the separate adult area with movable partitions and apparently adjusts the sizes of the rooms to meet demand in different locations. We found a significant percentage of the customers of these stores in the adult area. Leo's Books in downtown Toledo has a separate section of adult materials magazines, located on two racks near the back of the store. The material appears to be largely soft-core, although most of it was sealed and we did not attempt to open the material to determine its exact content.

- We separately recommend that the above media stores be allowed to continue to provide these materials to their Toledo customers (and others) exactly as they do now. This is not just a single “alternative avenue” but in fact a whole system of streets, boulevards and avenues that provides the same sort

of hardcore material available in the “adult bookstores with video viewing booths” but in a far more appealing setting.

- Family Video and many other video stores rent VCRs, thus making this material available to people who may not own a VCR. The cost of renting a VCR and 2 adult movies is about \$15, compared to a cost of roughly a dollar for every two minutes or so of material viewed in the viewing booths.
- In addition, most mainstream bookstores such as Barnes and Noble carry some inventory that falls within the widely used definitions of sexually oriented material. This material ranges from art books to marriage manuals, and from self-help guides to adult-interest magazines. We recommend that the City make no effort to regulate or limit the distribution of these materials through these mainstream sources.
- We found in our Toledo hotel rooms, as we have found in hotels in other cities, a wide range of pay-per-view channels, some of which include material that can be considered hard-core (although to date such material typically excludes the “money shot,” which is the final measure of true hard-core). We separately recommend that the City make no effort to regulate or limit the display of such materials in the privacy of a hotel room, which we equate to the privacy of a home.

We have enumerated here only those “alternative avenues” that are located within and subject to the regulation of the City of Toledo. Today, of course, the Internet has become a major source of hard-core and soft-core pornography, available to an increasing percentage of the population. Many local cable systems and all of the satellite television providers have adult channels and hard-core pay-per-view movies. There are a number of mail-order businesses that distribute sexually oriented media, ranging from traditional purveyors of pornography to an upscale operator like Adam & Eve, (<http://www.adameve.com>), which offers an array of sex toys, lotions, and wild clothing, as well as books and videos.

## Recommendations

### *Applicable Definitions*

We recommend that the City adopt the following definitions (a few of which are already included in the moratorium ordinance) and use these as the basis for applying the special location and separation requirements to these businesses:

*Lingerie modeling or photography studio* means an establishment or business which provides the services of live models modeling lingerie, bathing suits, or similar wear or without clothing to individuals, couples or small groups in a room smaller than 600 square feet.

*Massage* means touch, stroking, kneading, stretching, friction, percussion and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).

*Massage therapy* means the profession in which a State of Ohio certified massage therapist applies massage techniques with the intent of positively affecting the health and well-being of the client, and may adjunctively (i) apply allied modalities, heat, cold, water and topical preparations not classified as prescription drugs, (ii) use hand held tools or devices designed as t-bars or knobbies, and (iii) instruct self care and stress management. "Manual" means by use of hand or body.

*Media* means anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, other magnetic media, and undeveloped pictures.

*Motion picture arcade booth* means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines or periodicals) for observation by customers therein. The term “booth,” “arcade booth,” “preview booth,” and “video arcade booth” shall be synonymous with the term “motion picture arcade booth”.

*Primary live entertainment* means that entertainment that characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.

*Sadomasochistic practices* mean flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

*Sex shop* means a an establishment offering goods for sale or rent and that meets any of the following tests:

- (1) It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items make up more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area; or,
- (2) More than five percent (5%) of its stock in trade consists of sexually oriented toys or novelties; or,
- (3) More than five percent (5%) of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

*Sexual conduct* means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttock or fe-

male breast of a person for the purpose of arousing or gratifying the sexual desire of another person.

*Sexual gratification* means sexual conduct as defined herein.

*Sexually oriented acts* means sexual conduct as defined herein.

*Sexually oriented business* is an inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented motion picture theater; motion picture arcade; bathhouse; massage parlor or shop; and/or sex shop. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the zoning code or other applicable ordinances.

*Sexually oriented cabaret* or *sex oriented cabaret* means a building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment which constitutes the “primary live entertainment” is distinguished or characterized by an emphasis on the exhibiting of “specific sexual activities” or “specified anatomical areas” for observation by customers therein.

*Sexually oriented cinema*, *sexually oriented motion picture theater*, or *sex oriented cinema* means a cinema or motion picture theater which shows hard-core features on more than half the days that it is open, or which is marketed as or offers features described as “adult”, “XXX”, or sexually oriented.

### ***Book or Media Store***

We recommend that book, video and other media stores in which sexually oriented media constitutes less than 10 percent of the inventory or in which such media constitutes more than 10 percent but less than 40 percent of the inventory and occupies less than 40 percent of the floor area and is maintained in a separate, access-controlled room, be treated simply as retail stores and be allowed in any location where such stores are allowed.

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To facilitate the adoption of this recommendation, we provide the following definitions for use in the Zoning Code:

- A book or media store which devotes less than ten percent (10%) of its floor area or ten percent (10%) of the number of items in inventory to sexually explicit material shall be treated for zoning purposes as a retail establishment.
- A book or media store which devotes more than ten percent (10%) of its floor area or ten percent (10%) of the number of items in inventory to sexually-explicit material, but which devotes less than forty percent (40%) of its floor area and less than forty percent (40%) of the number of items in inventory to sexually-explicit material shall be treated for zoning purposes as a book or media store and not as a sex-oriented media store, provided that it meets the following conditions:

All sexually explicit material shall be maintained in a room that is separated from other material by an opaque wall that extends to the ceiling or eight feet above the floor, whichever is less;

Access to the room containing the sexually explicit material shall be through an opaque door;

The room containing sexually-explicit material shall be posted with a notice indicating that only persons 18 years of age or older are allowed in the room;

Access to the room will be physically limited to adults through control of access by an employee of the store, through use of an access release located at least 66 inches off the floor, or through constant monitoring of the room by an employee on duty through electronic means or through a window or mirror providing visibility into the room from the manager's or cashier's work station.

This recommendation regarding book and media stores protects and clearly makes legal a number of existing operations in Toledo that provide alternative avenues for the distribution of adult media protected by the First Amendment.

## ***Zoning Recommendations***

### **Zoning - Suitable Locations**

The City must provide a reasonable number of locations in which sexually oriented businesses protected by the First Amendment can lawfully operate. The locations that best balance the needs of the industry and the concerns of the community are locations that:

- Are not on the same block with predominantly residential uses or districts or with other sensitive uses, discussed below;
- Are not located along major pedestrian routes, particularly not those that are likely to be frequented by children;
- Are generally surrounded by other intense commercial or other nonresidential uses; and
- Do not result in a significant concentration of the businesses in one area.

Combining all of these concerns with the obvious desire of the industry to have locations that are reasonably accessible and reasonably visible suggests that they are best located in:

- Strip shopping centers in intensely commercial areas (not in strip centers that back up to residential uses);
- In freestanding buildings along major arterials with little pedestrian traffic (and again, not in such areas where the commercial is only a half-block deep and there are residences behind them).

Many of the existing businesses in Toledo are in exactly such locations. As the City adopts its new zoning ordinance, we recommend that the zoning districts and the table of permitted uses be combined in such a way that locations along major arterials become legal – subject to separation requirements.

### **Zoning – Separation of Sex Businesses from One Another**

We have in other places recommended that no two sex businesses be allowed within a specified distance of each other. Yet in Toledo we

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found that The Love Boutique and Déjà Vu are compatible and complementary uses. A key issue is that The Love Boutique is clearly a retail operation and thus allowing these two uses to co-locate eliminates the pressure for one of them to locate elsewhere. There are two other sex businesses in that center. One is a massage parlor, which we have recommended banning. The other is one of the least attractive of the adult bookstores and video arcades. Three businesses, however, seems excessive even if they are clean operations.

Thus, we recommend that the City consider modifying its separation requirement between businesses to allow the co-location or even neighboring location of an establishment with on-premises entertainment (including a video arcade as on-premises entertainment) and a purely retail shop. Thus, a true adult bookstore – without the arcade – could be located near an adult cabaret, and the current combination of video rentals and the adult movie theater would clearly be lawful. This recommendation does not suggest the co-location of two sexually oriented uses with on-site entertainment.

If the City is treating video viewing booths as an accessory use to an adult bookstore, we would recommend that this practice be discontinued. As noted elsewhere, we typically find extensive problems associated with establishments with video viewing booths and suggest that they be severely restricted – particularly in light of the fact that the same sort of entertainment is available through so many other alternative avenues that pose fewer public health and other policy concerns. If the City is to allow future establishments with viewing booths, they should be permitted only in locations that would allow adult theaters and should be regulated as such – because they, also, include on-premises entertainment.

The City's current separation standard of 1,000 feet has worked in such a way that it has allowed a reasonable number of locations in the City. However, there is a very real perception that there is a clustering of adult cabarets in Northeast Toledo. Although some appear to meet the current 1,000 foot separation distance from each other, we recommend that the City consider a 1,500 foot separation dis-

tance among sex businesses offering on-premises entertainment, including video arcades.

We believe that, if the massage parlors are eliminated, the 1,000-foot separation requirement for businesses without on-site entertainment will otherwise be workable. We make that recommendation with a caveat, however. We do not have a complete zoning map of the City and do not know what the new zoning boundaries will look like. We assume that in evaluating this recommendation, the City will recognize the need to allow some additional sites for businesses protected by the First Amendment.

After reviewing the police reports for 1999, 2000, 2001 and the first part of 2002, we are concerned about the concentration of troublesome activity at the complex at 135 South Byrne. Although all of the uses located there may be lawful nonconforming uses that would not be subject to the separation standards, we would recommend that the City seriously consider incentives or other techniques to break up this concentration of such uses – in particular, separating the Field House and Déjà vu would appear to be an important step in reducing undesirable activity in the area. We express no opinion on how that might be accomplished, but we suggest that it should be a reasonable priority.

### **Zoning – Separation of Sex Businesses from Sensitive Uses**

The separation of sexually oriented businesses from such sensitive uses as residences, schools and houses of worship is an essential element of an effective regulatory program. As the City learned when public officials heard from concerned residents about the location of Priscilla's across from Notre Dame Academy, such standards must apply to a broad range of sexually oriented businesses – including “sex shops” like Priscilla's. Such separation is important to place the businesses in locations where they remain accessible to customers but where citizens who are offended by such businesses will not unwittingly encounter them in the course of walking their dogs, walking to the bus stop, or traveling to schools or worship services.

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In addition, one of the secondary effects of such businesses relates to the activities that move outside the businesses. As noted in our discussion of the police reports, fully one-half of the police calls that could be placed in a specific location at these businesses involved incidents in the parking lots. Neighbors of the businesses with live entertainment reported encountering scantily clad dancers and prostitutes on the streets near and even behind the establishments. Neighbors of the bookstores with video arcades reported finding used condoms and tokens for viewing booths along the streets – leading to questions from children about the purposes of those devices.

The City of Toledo, like many older cities, has a linear pattern of zoning and land use – often, major arterials are lined with commercial uses/zoning backing up to older residential areas. Therefore, we believe that, as currently measured, a 500-foot separation requirement from residential and other sensitive land uses is the maximum that the City can realistically enforce and still allow a reasonable number of sites. The separation should be measured at least from property zoned primarily for residential use. One issue that will require additional study is the extent to which the businesses ought to be separated from residential uses in non-residential zones. Our understanding of the current practice in Toledo is that even isolated residences in industrial or heavy business zones are considered in implementing the separation from sensitive uses. Where there is a cluster of such uses, there are good public policy reasons to take such an approach. On the other hand, implementing an absolute separation requirement from any single residence in any location may unduly restrict the number of sites and actually eliminate from consideration some sites that may otherwise make perfectly good sense. One possible approach is to use a weighted measure of land-uses and to impose the separation requirement from any residence located in a predominantly residential zoning district or in a cluster of residential uses that occupies 50 percent or more of the land on a block or a minimum of two acres (or some other reasonable measure).

Because of the risk of unintended contact between pedestrians and sexually oriented businesses, we suggest that the City may want to consider using a greater separation requirement but measuring it

along pedestrian routes (which can be computed on a GIS system by following property boundaries along public rights-of-way). Using that measure, it may be possible to increase the separation distance to 750 feet, which would reduce the incidence of businesses located less than a block from a residence along the same street.

In addition, we recommend that the City prohibit any of these businesses from locating on the same block as any land zoned for primarily residential uses and, perhaps, from other clusters of property used for residential purposes but not including mixed-use zones that allow retail on the main floor and residential above.

### **Zoning – Conforming Status**

There should be serious consideration to amending the zoning ordinance (or using the zoning ordinance update) to allow these uses in at least some of the areas now zoned M-1; this would be likely to have the effect of bringing one or two businesses into conformance.

In addition, it appears that a few of the businesses are currently located in relatively appropriate places that conform with the current zoning regulations. It would be desirable as part of the new zoning ordinance to create an administrative review through which the precise zoning status of these businesses can be determined; to the extent that they conform with proposed locational and separation requirements, they should be issued Certificates of Occupancy as conforming uses, rather than being treated as nonconforming uses -- regardless of the dates on which they were established.

Because of the tendency of sexually oriented businesses to expand into auxiliary enterprises (such as the addition of viewing booths to retail bookstores), any Certificates of Occupancy issued through this process or in the future should be very specific as to the character of the use permitted – e.g., “retail sales and rentals of media;” “movie theater;” “live entertainment.”

Note that these recommendations are not intended to create conforming status for closed video viewing booths – see separate recommendations on that subject.

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## *Licensing Recommendations*

### **General**

We recommend that the City adopt a comprehensive licensing ordinance for certain sexually oriented businesses and employees/contract workers. Specifically, we recommend below detailed licensing provisions for all of the following:

- All sexually oriented businesses with on-premises entertainment, including video arcades;
- All managers of licensed sexually oriented businesses;
- All entertainers in licensed sexually oriented businesses, whether such entertainers are employees or independent contractors.

We recommend that the comprehensive licensing system include clear criteria for granting the licenses, including an automatic grant of a temporary license to allow all existing businesses to continue to operate pending completion of the licensing process. The licensing ordinance must, under applicable court decisions, contain:

1. Objective criteria for granting or denying the license;
2. A clear (and relatively short) time limit on the review period for a license application, ending in an actual decision; and
3. An available direct appeal to the courts without significant additional local procedures.

To make the licensing ordinance effective, we recommend that it be based on a point system, similar to that used for drivers' licenses, under which even minor infractions, if repeated or continued, can lead to a process for suspension or even revocation of the license.

There are two important principles that should govern the entire licensing ordinance:

1. Each licensed establishment should be required to have a licensed manager on duty at all times, with the name and license of that manager clearly posted. This recommendation

ensures that any law enforcement officer or other inspector entering the establishment can either find a responsible person in charge or cite the establishment for violating the ordinance;

2. Management should be responsible for ensuring conformance with the operating criteria applicable to the premises by all persons using the premises. In other words, a violation on the premises will be considered management's problem, regardless of whether an owner or manager was directly involved in the violation.

Specific recommendations for licensing criteria follow.

### **Licensing – Criteria for Background Checks**

Background checks should be required for individual license applicants and for owners of establishments; if the establishment is incorporated, the background checks should include control persons, as typically defined under the Internal Revenue Code or other, objective, business-related law. Persons disqualified from holding such licenses should include:

1. Anyone convicted of a sex-related crime or a crime against the person within the past 10 years;
2. Anyone incarcerated during the past 10 years for a sex-related crime or a crime against the person, unless the conviction on which such incarceration was based has been over-turned;
3. Anyone convicted of or incarcerated for an offense involving the unlawful distribution or consumption of alcohol within the past 5 years, unless the related conviction has been over-turned; and
4. Anyone who has had a similar license in Toledo or another community revoked within the past 3 years;

### Licensing – Criteria for All Licensed Establishments

We strongly recommend application of at least the following operating criteria to adult cabarets:

1. There should be no prostitution or solicitation of prostitution on or about the premises;
2. There should be no dealing in or consumption of drugs or other unlawful substances on or about the premises;
3. There should be no loitering inside the premises or in the immediate vicinity outside the premises;
4. There should be no sex acts, including masturbation, on the premises, regardless of whether there is payment for such sex acts;
5. There should be no discharge of bodily fluids outside the restrooms;
6. There should be no one under the age of 18 on the premises for any reason;
7. Operators should be held accountable for incidents in the parking lot, although probably to a lower standard than inside the business. The intent would be to encourage at least the large entertainment establishments to maintain security guards in the parking lots to reduce the incidence of violence, thefts and other anti-social activity in those locations.

### Licensing – Criteria for Adult Cabarets

We recommend the following operating criteria for adult cabarets:

1. At a minimum, the City Council should give serious consideration to eliminating lap dances, in which a nearly-nude dancer gyrates on the lap of a customer;<sup>19</sup>

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<sup>19</sup> A California court has upheld a no-touching rule in such establishments. *Tily B., Inc. v. City of Newport Beach*, 69 Cal. App. 4th 1, 81 Cal. Rptr. 2d 6 (1998), reh'g denied, review denied, 1999 Cal. LEXIS 1621.

2. We recommend that the City Council consider, as a broader alternative, a rule that requires that dancers perform on the stage, which should be separated from the audience by a vertical rise of at least 30 inches and by a barrier that either keeps the dancers 30 inches or more from the edge of the stage or keeps the customers 30 inches or more from the edge of the stage;<sup>20</sup>
3. There should be no touching between dancers and customers (alternatively, there may be hand-to-hand touching for the purposes of tipping)<sup>21</sup>;
4. If lap dancing is allowed, any individual dance performances should take place in a public area (as in *Déjà Vu*) rather than in a backroom<sup>22</sup>.

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<sup>20</sup> The 6<sup>th</sup> Circuit has upheld just such a rule, imposing a three-foot separation distance between the customers and the stage. *Déjà Vu of Nashville, Inc., v. Metropolitan Gov't of Nashville-Davidson County*, 2001 U.S. App. LEXIS 26007 (6th Cir.2001), at 34-35. See, also, *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997) (upholding 6 foot spacing).

<sup>21</sup> A federal court in Florida has upheld a requirement that required that dancers maintain a separation distance from customers when they were unclothed or partially unclothed. *T. Marc. Inc. v. Pinellas County*, 804 F. Supp. 1500 (M.D. Fla. 1992).

<sup>22</sup> *Lady J. Lingerie v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999), cert. denied, 2000 U.S. LEXIS 2386 (April 3, 2000). Although the city lost on several counts in this suit, the court upheld a requirement that entertainment take place in a space of at least 1000 square feet. The court said in part:

We also conclude that the 1000 square foot rule is valid. See *Jacksonville, Fla. Adult Ent. & Serv.Code §§ 150.301(g) & (h)* (reprinted in appendix). Ample evidence, from Jacksonville and elsewhere, supports the district court's finding that illegal and unhealthy activities take place in small rooms at adult entertainment establishments. One thousand square feet is not that large, so we can't say that this rule is substantially broader than necessary.

Note that the most enforceable form of this rule is a “dancers on stage, customers in the audience, no touching” rule. Anything else opens up a number of gray areas. Nevertheless, it would be possible to work with the industry to structure a rule that eliminated lap dancing but that allowed some contact through which dancers could obtain tips.

Making management responsible for enforcement of the operating criteria is critical in making a recommendation like this work. It is simply not practicable for the City to have enforcement officers on the premises at all times to ensure that there is continued conformance with this rule.

### **Licensing – Criteria for Massage Parlors**

We recommend that the City repeal its current licensing ordinance for massage parlors and replace it with one that requires all operators and employees performing massages to be licensed by the state – as licensed massage therapists or as medical professionals or paraprofessionals authorized to provide massage or physical therapy.

If the City rejects this recommendation and continues to provide local licensing for massage operators who do not meet state standards, the City should re-examine the status of Lorain’s under the local massage licensing ordinance.

### **Licensing – Criteria for Sexually Oriented Theaters**

In addition to the general criteria applicable to all licensed establishments, we recommend that the operating criteria for sexually oriented motion picture theaters also include:

1. A requirement that there be low-level lighting maintained on in the theater at all times that there are customers present;
2. That management use windows, mirrors or video cameras to monitor activities in the theater at all times.

### **Licensing – Criteria for Video Arcades**

Although there are some logical provisions in the City’s current business regulation ordinance for video arcades, the ordinance itself

is incomplete and inadequate. We recommend that the City repeal the current ordinance and replace it with operating criteria for video arcades that include:

1. Removal of the doors from the booths, with a reasonable period of delay for implementation. Although we realize that the industry may challenge such a requirement again, we believe that this is an issue over which it is worth litigating, in a properly framed ordinance and backed by this study. Note that such requirements have been upheld in a number of courts;<sup>23</sup>

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<sup>23</sup> An Ohio court has upheld such an ordinance, based on findings similar to those made in our field study:

Between January and March of 1992, undercover officers with the Fayette County Sheriff’s Department and the South Central Ohio Task Force investigated the adult video arcade Interstate operated at 9017 West Lancaster Road in Octa. The arcade contained thirty-two viewing booths, each equipped with a bench, a menu of sexually explicit videos, and a coin-operated video monitor. During the investigation, officers collected samples of semen and pubic hair from various viewing booths. Officers also observed what appeared to be dry semen stains on the walls, floors, and video monitors. Officers described the presence of employees who swept and mopped the floors and collected used paper towels and tissues from the video booths and adjoining hallway.

*Interstate Indep. Corp. v. Zoning Bd. of Appeals of Fayette County & Village of Octa*, 123 Ohio App. 3d 511, 704 N.E.2d 611, 613-614 (1997), appeal dismissed, 81 Ohio St. 3d 1443, 690 N.E.2d 15, cert. denied, 525 U.S. 814, 142 L. Ed. 2d 39, 119 S. Ct. 50 (1998).

*Scope Pictures, Inc., v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); see earlier decisions of *Doe v. City of Minneapolis*, 898 F.2d 612 (8th Cir. 1990); and *Postscript Enters. v. City of Bridgeton*, 905 F.2d 223 (8th Cir. 1990).

*Wall Distribs, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986) (upholding ordinance prohibiting and making a criminal offense the exhibition of films in enclosed booths: all viewing areas in movie arcades must be

2. Modification of L-shaped booths (probably within a one-year period) to make the insides of the booths visible from the aisle (the design of these booths is such that elimination of the doors does not accomplish the intended purpose);
3. Permanent elimination of glory holes between booths, including reinforcement of the walls with metal plates to prevent patrons from re-drilling such holes or the design of booths to prohibit any common walls shared between booths (this style of booth was found at the Adult Zone);
4. Implementation of a one person per booth rule;
5. Installation in all of the establishments of a video monitoring system such as that now used in two or three of the stores, so that management can constantly monitor activity in the arcade area;
6. Imposition of minimum lighting standards for the hallways outside the booths; and
7. Implementation of sanitation standards for the booth areas and hallways around them.

### ***Bathhouses***

We did not have access to the Diplomat (a bathhouse) to fully understand the extent of the operations at this establishment. We would,

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visible from a continuous main aisle and must not be obscured by any curtain, door, wall, or other enclosure).

*Chez Sex, Inc., v. Poritz*, 297 N.J. Super. 331, 688 A.2d 119 (App. Div.) , cert. denied, 694 A.2d 114 (N.J.), cert. denied, 522 U.S. 932 (1997), upholding a state statute that prohibited showing the videos in booths.

*Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123, 140 (3d Cir. 1993).

See also *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243, 1245-1246 & n.2 (9th Cir. 1982) (upholding a city ordinance requiring that booths be open to and visible from a continuous aisle).

however, recommend that if this establishment is being licensed as a massage parlor that it be subject to the requirement that the operators and other employees providing massage services be licensed massage therapists.

### ***Uses that Might be Banned***

We recommend that the City seriously consider banning sexually oriented massage parlors and any other establishment offering massages by persons not licensed by the State Medical Board. As noted in the Findings, we have identified no useful public purposes that these establishments serve. Because they have been held not to have First Amendment protection<sup>24</sup>, and because the state has essentially occupied the field of regulating legitimate massage therapy, there is simply no reason for the City to continue to permit this use and to give it an aura of legitimacy with a City license.

We recommend that the City ban any additional video arcades by prohibiting the showing of sexually oriented videos or movies for a fee in an enclosed space smaller than 120 square feet. Note that this restriction would not affect hotel room movies or pay-per-view movies offered to people in their homes.

### ***Other Recommendations***

We note the following facts:

- One of the live entertainment establishments accounted for 30 percent of the police calls to all of the 26 establishments during the 39-month period for which we reviewed the data.

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<sup>24</sup> A federal court of appeals has referred to “massage parlors, conversation parlors and call services, which have no First Amendment protection.” *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123, 139 (3d Cir. 1993). Another federal appellate court rejected a First Amendment challenge, as well as a vagueness challenge, to an ordinance setting out a dress code for massage parlors. *Mini Spas, Inc., v. South Salt Lake City Corp.*, 810 F.2d 939 (10th Cir. 1987).

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- One massage establishment has two separate police reports indicating that employees have tried to rob customers and two other incidents involving solicitation.
  - Another massage establishment accounts for 75 percent of the police calls to such establishments, and four of the police reports involved sex-related offenses.
  - The adult movie theater has accounted for 21 percent of the total complaints for public indecency and/or solicitation complaints at all of these businesses over the 39 months.

Our observations at each of these establishments were entirely consistent with the police reports. Without expressing any opinion about the viability of such an approach, we would recommend that City enforcement officials and state prosecutors examine possible ways to address the continuing problems at these four establishments under nuisance or other existing laws. The closure or even substantial reduction of the problems at these four establishments would significantly reduce Toledo's problems with the secondary effects of sexually oriented businesses.