days, and not more than one hundred eighty (180) days, before the conclusion of the initial two-year (2-yr.) period.

(d) Procedure for Seeking Hardship Extension. An application for a hardship extension shall be filed in writing with the Clerk and shall state the grounds for requesting an extension of time. Within ten (10) days after receiving the application, the Clerk shall schedule a public hearing on the application before the Hearing Officer, which public hearing shall be conducted within thirty (30) days after the Clerk's receipt of the application. Notice of the time and place of such public hearing shall be mailed to the applicant, shall be published at least ten (10) days before the hearing in a newspaper of general circulation published within the County, and shall contain the particular location for which the hardship extension is requested. At the hearing, all parties shall have the right to offer testimony, documentary and tangible evidence bearing on the issues; may be represented by counsel, and shall have the right to confront and cross-examine witnesses. The Hearing Officer shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. An extension under the provisions of this Section 21 shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all of the following findings or such other findings as are required by law.

(i) The applicant has made a substantial investment, including but not limited to lease obligations incurred in an arms-length transaction, in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another, conforming use; and such investment was made prior to the effective date of this ordinance; and

(ii) The applicant will be unable to recoup said investment as of the date established for termination of the use; and

(iii) The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with this Section 21.

(Ordinance § 21 (emphasis in original).)

Additionally, Floyd County Code § 2-19-7, regarding zoning, states, in relevant part:

(8) *Nonconforming use.* Any lawful use of land or buildings existing on the effective date of this chapter, or on the effective date of any subsequent amendment thereto, and located within a zoning district in which it would not be permitted as a new use under this chapter, is hereby declared to be a nonconforming use. Continuance of a nonconforming use shall be subject to all of the following provisions.

a. *Change of use.* A nonconforming use shall not be changed to any use except a conforming use. When a nonconforming use has been changed to a conforming use, it shall not be changed again to any nonconforming use.

b. *Extension or structural alteration.* A nonconforming use of land and/or a structure housing a nonconforming use shall not be extended or enlarged except in conformity with this chapter. This provision shall not be construed as preventing normal maintenance and repairs.

c. *Destruction.* A building or property containing a nonconforming use which is damaged by fire, flood, explosion, wind or other catastrophe in any amount equal to or greater than sixty (60) percent of the total property value . . . shall not be reconstructed except in conformity with the provisions of this chapter.

> d. *Discontinuance.* When a nonconforming use of any land or building has been discontinued for a period of twelve (12) consecutive months, it shall not be reestablished or changed to any use not in conformity with the provisions of this chapter.

(Pl.'s [sic] Mot. Summ. J. Ex. 13 (Floyd County Code § 2-19-7(8)) (emphasis in original).)

5. McLaughlin Affidavits

The Court observes that Plaintiffs have filed four affidavits by their expert Robert Bruce McLaughlin. The Court has reviewed the relevant affidavits and their numerous exhibits. In the interest of judicial economy and producing a timely Order, the Court simply summarizes those affidavits below. As an initial matter, for the reasons set forth supra Part II, the Court will not consider those portions of Mr. McLaughlin's affidavits which contain inadmissible hearsay, speculation, legal conclusions, and legal arguments.

a. First McLaughlin Affidavit

In his first affidavit, Mr. McLaughlin discusses several of the predicate documents cited in the Ordinance and attached as exhibits to Defendant's Answer. (See generally McLaughlin Aff. I.) According to Mr. McLaughlin, the following three of those documents contain no first-hand research, but

rely on the findings of earlier documents and misrepresent those documents: the 1989 Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses, the 1996 Environmental Research Group Report, and the 1994 St. Cloud, Minnesota document. (Id. ¶ 34.)

Specifically, Mr. McLaughlin criticizes the 1989 Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses as misstating a 1978 St. Paul, Minnesota study, (id. ¶¶ 36-38), and criticizes the 1996 Environmental Research Group Report for summarizing the above Minnesota Attorney General's report and also mischaracterizing the 1978 study, (id. ¶¶ 40-41).[10] According to Mr. McLaughlin, the 1989 Minnesota Attorney General's report could not rely on the underlying study to conclude that adult businesses negatively impacted surrounding areas because the underlying study itself included both sexually oriented businesses and businesses serving alcohol, and determined that no conclusions could be drawn specifically addressing sexually oriented businesses. (Id. ¶¶ 36-38.)

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[10] The Court observes that the Environmental Research Group Report is not cited as a predicate document in the Ordinance itself. (See generally Ordinance.)

Mr. McLaughlin avers that three additional documents cited in the Ordinance are studies prepared for an adult use or are academic articles, but does not explain why those studies are not applicable to the Ordinance or are inaccurate. (McLaughlin Aff. I ¶ 42.) Mr. McLaughlin also states that local government studies prepared through the mid 1980s would not have considered any off-site only adult uses. (Id. ¶ 44.)[11]

According to Mr. McLaughlin, the 1994 New York Times Square study and 1994 New York City study[12] did not find any evidence of harm caused by adult uses. (McLaughlin Aff. ¶ 46.) However, the Court has reviewed the 1994 Times Square study, and observes that the following findings were reported:

> • All survey respondents acknowledged the improvements in the area and voiced optimism about the future of Times Square even as they bemoaned the increase of adult establishments on Eighth Avenue. Many respondents felt that some adult establishments could exist in the area, but their growing number and their concentration on Eighth Avenue

[11] For the reasons set forth in the Court's March 5, 2007, Order, the Court declines to distinguish between on-site and off-site sexually oriented businesses in this case. (See Order of Mar. 5, 2007, at 74-76.)

[12] The Court observes that the 1994 New York City Study is not cited as a predicate document in the Ordinance itself. (See generally Ordinance.)

constitute a threat to the commercial prosperity and residential stability in the past few years.

- Although the study was unable to obtain data before the recent increase in adult establishments and, thus, unable to show if there's been an increase in actual complaints, there were, in fact, 118 complaints made on Eighth Avenue between 45th and 48th compared to 50 on the control blocks on Ninth Avenue between 45th and 48th. In addition, the study reveals a reduction in criminal complaints the further one goes north on Eighth Avenue away from the major concentration of these establishments.

- The rate of increase of total assessed values of the Eighth Avenue study blocks increased by 65% between 1985 and 1993 compared to 91% for the control blocks during the same period. Furthermore, acknowledging the many factors that lead to a property's increased value, including greater rents paid by some adult establishments, an assessment of the study blocks reveal that the rates of increases in assessed value for properties with adult establishments is greater than the increase for properties on the same blockfront without adult establishments.

- Many property owners, businesses, experts and officials provided anecdotal evidence that proximity (defined in various degrees) to adult establishments hurts businesses and property values.

(Answer Ex. B-26 at ii-iii (1994 Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area).)

Mr. McLaughlin also criticizes Dr. McCleary's Kennedale, Texas, analysis for failing to analyze the city's off-site adult video store, and for

instead analyzing crime before and after the opening of an adult bookstore in Montrose, Illinois. (McLaughlin Aff. I ¶ 48.) The Court observes that in his Kennedale report, Dr. McCleary reviews studies from several other cities in support of his theory that off-site sexually oriented businesses have the same crime-related secondary effects as similar on-site businesses. (Answer B-25 at 12-20.)[13] According to Mr. McLaughlin, he has come close to replicating Dr. McCleary's "post" Montrose analysis, but was unable to replicate Dr. McCleary's "pre" analysis. (McLaughlin Aff. I ¶ 49.) Mr. McLaughlin also criticizes the methodology used by Dr. McCleary in the above studies. (Id. ¶¶ 50-52, 57, 59.)

Mr. McLaughlin also criticizes the 2001 Spokane, Washington documents cited in the Ordinance as based on "self-selected comments and hearsay assertions." (McLaughlin Aff. ¶ 65.) The Spokane Documents include anecdotal evidence of criminal activity and negative impacts to the value of nearby businesses due to the opening of an adult bookstore. (Def.'s Answer Ex. B-15b (Minutes Spokane City Plan Commission) (including

[13] The Court observes that the Ordinance does not reference Dr. McCleary's Montrose, Illinois, or Kennedale, Texas studies. (See generally Ordinance.) Rather, those studies are referenced in Dr. McCleary's affidavit and expert report in this case. (See Aff. and Expert Report of Richard McCleary, Ph.D. ("McCleary Aff.").)

public testimony by neighboring business owners of female employees being rudely accosted, bookstore loiterers throwing rocks through windows or otherwise threatening people when asked to leave neighboring business premises, clientele with young children complaining, decrease in clientele, negative reactions from prospective business purchasers, increase in late-night activity in adult bookstore parking lot, possibly including prostitution, and exposure of children to pornography).) According to Mr. McLaughlin, he has studied the property values surrounding adult business in the Spokane, and determined that there is no evidence of decreased property values in the area around the four adult businesses at issue. (Id. ¶¶ 67, 69-74.) Mr. McLaughlin, however, did find a statistically significant higher overall percentage of occupant turnover in the area around those four businesses than in control group areas. (Id. ¶ 75-76.) Mr. Mclaughin also concluded that the subject areas are economically healthy based on the percentage of owner occupied properties and property turnover. (Id. ¶¶ 77-82.)

Finally, in Exhibits B and F to his first affidavit, Mr. McLaughlin discusses contradictory and inconclusive findings regarding local government adult use studies and summarizes secondary effects analyses

of take-home only adult video stores, respectively. (See generally McLaughlin Aff. I Exs. B & F.) The Court observes that Plaintiffs do not cite to or discuss those Exhibits in their combined summary judgment brief. It is not the responsibility of the Court to ferret through the extensive record in this case for support of Plaintiffs' position. Estate of Moreland v. Dieter, 395 F.3d 747, 759 (7th Cir. 2005) (stating that court will not scour record to locate evidence supporting party's legal argument and that perfunctory or undeveloped arguments are waived); Chattooga Conservancy v. Jacobs, 373 F. Supp. 2d 1353, 1376 (N.D. Ga. 2005) (stating that it is not court's responsibility to ferret out information contained in a massive record). Nevertheless, the Court has reviewed those documents and determines that they do not provide sufficient applicable evidence contradicting all of the rationales, findings, and studies set forth in the Ordinance. The Court observes that some of the studies reviewed in Exhibit B are inconclusive with regard to adverse secondary effects and thus do not contradict the Commission's findings or cited studies, examine sexually oriented businesses and businesses serving alcohol together and therefore are not applicable to the Ordinance at issue, or quote a mere paragraph from the

studies without summarizing the studies' overall findings in any meaningful fashion. (See McLaughlin Aff. I Ex. B.) The Court also observes that Exhibit F only addresses the issues of blight, "police data," and property values. (See Id. Ex. F.) Furthermore, for the reasons set forth in the Court's March 5, 2007, Order, the Court declines to distinguish between on-site and off-site sexually oriented businesses in this case. (See Order of Mar. 5, 2007, at 74-76.)

b. Second and Third McLaughlin Affidavits

In his second and third affidavits, Mr. McLaughlin discusses research and reports produced by Dr. McCleary, with regard to sexually oriented businesses in Los Angeles, California, and Sioux City, Iowa.[14] (See generally McLaughlin Aff. II; McLaughlin Aff. III.) Those affidavits and studies are discussed extensively in the Court's August 29, 2007, Order denying Plaintiffs' Motion to Strike Affidavit and Expert Report of Richard McCleary and for Sanctions Against Defendant. (Order of Aug. 29, 2007.) The Court adopts its discussion of those studies as if fully set forth herein.

[14] The Court observes that the Ordinance does not reference Dr. McCleary's studies of either city. (See generally Ordinance.) Rather, those studies are referenced in Dr. McCleary's affidavit and expert report in this case. (See McCleary Aff.)

c. Fourth McLaughlin Affidavit

In his fourth affidavit, Mr. McLaughlin discuses the location of Plaintiffs' store and alternative avenues of communication in Floyd County, the Ordinance's predicate documents, Dr. McCleary's affidavit and expert report and other work, and "foreign" studies and documents. (See generally McLaughlin Aff. IV.) For the reasons set forth supra Part II.C.1., the Court disregards the portions of Mr. McLaughlin's fourth affidavit discussing subject matter beyond possible adverse secondary effects of adult businesses, and those portions containing inadmissible hearsay, speculation, legal conclusions, and legal arguments.

According to Mr. McLaughlin, all of the studies cited in the Ordinance examine the alleged secondary effects of sexually oriented businesses located in urban environments and none of the studies examine businesses located in an entirely rural area. (McLaughlin Aff. IV ¶ 51.) Mr. McLaughlin criticizes Dr. McCleary's expert report with regard to the assumptions made by Dr. McCleary in his work. (Id. ¶¶ 60-66.) Mr. McLaughlin again criticizes Dr. McCleary's Montrose, Illinois, study. (Id. ¶¶ 69, 72, 92-94.) According to Mr. McLaughlin, Dr. McCleary also incorrectly stated in his affidavit and

expert report that the majority of adult uses in Greensboro, North Carolina, were take-out only businesses. (Id. ¶ 80-81.)[15] Similarly, Mr. McLaughlin avers that Dr. McLeary has not been consistent with regard to whether there are on-site or off-site adult uses in Garden Grove, California. (Id. ¶ 82-90.)[16] Mr. McLaughlin reiterates his objections to Dr. McCleary's Los Angeles work. (Id. ¶¶ 131, 133, 137.)[17]

Additionally, according to Mr. McLaughlin, a study of adult uses in St. Paul, Minnesota, published in April 1978 shows that there is no relationship between sexually oriented businesses and neighborhood deterioration. (McLaughlin Aff. IV ¶¶ 159, 162, 163, 166-167.)

Finally, Mr. McLaughlin makes conclusory statements discounting the Ordinance's predicate documents as a whole and without providing details

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[15] For the reasons set forth supra Part II.C.1, the Court does not consider Mr. McLaughlin's legal conclusion regarding whether the above discrepancy creates a genuine issue of material fact.

[16] For the reasons set forth in the Court's March 5, 2007, Order, the Court declines to distinguish between on-site and off-site sexually oriented businesses in this case. (See Order of Mar. 5, 2007, at 74-76.)

[17] The issues raised by Plaintiffs regarding Dr. McCleary's Los Angeles work are discussed extensively in the Court's August 29, 2007, Order denying Plaintiffs' Motion to Strike Affidavit and Expert Report of Richard McCleary and for Sanctions Against Defendant. (Order of Aug. 29, 2007.) The Court adopts its discussion of those studies as if fully set forth herein.

or more specific explanations with regard to the individual documents. For the reasons discussed supra Part II.C.1., the Court will not consider such conclusory statements. Likewise, for those same reasons, the Court will not consider Mr. McLaughlin's summaries of case law and other legal sources.

6. Floyd County's Parcel Analysis

There are at least thirty-eight parcels in Floyd County that contain enough land to accommodate a sexually oriented business that is at least 1,000 feet away from any parcel occupied by one of the land uses mentioned in Section 21 of the Ordinance and from any parcel zoned for residential use. (DSMF ¶ 9; PRSMF ¶ 9.)[18] There are at least approximately 760 acres in Floyd County that are eligible for a sexually oriented business in that they are at least 1,000 feet away from any parcel occupied by one of the land uses

[18] Plaintiffs do not state valid objections to the above fact, but rather respond with legal conclusions and speculation. Additionally, for the reasons set forth supra Part II.C.1., the Court does not consider those portions of Mr. McLaughlin's affidavits cited by Plaintiffs as valid evidentiary support for their objections. Consequently, Plaintiffs have not complied with Local Rule 56.1 and the Court deems the above fact admitted. The Court also concludes, however, that the results of this Order and the Court's determinations infra Part IV.D.2.b. would not change even if the Court accepted Plaintiffs' response as true and considered the portions of Mr. McLaughlin's fourth affidavit regarding alternative avenues of communication.

mentioned in Section 21 of the Ordinance and from any parcel zoned for residential use. (DSMF ¶ 10; PRSMF ¶ 10.)[19]

The total area of commercial and industrial zoned land in Floyd County is 11,767 acres. (DSMF ¶ 11; PRSMF ¶ 11.) The thirty-eight parcels and approximately 760 acres in Floyd County that are eligible for sexually oriented businesses under the Ordinance constitute approximately 6.5 percent of the commercial and industrial land in Floyd County. (DSMF ¶ 12; PRSMF ¶ 12.)[20]

Fourteen of the above parcels lack roadway frontage. (Plants Aff. ¶ 12.) However, twenty-four of the above parcels have roadway frontage and contain enough land to accommodate a sexually oriented business that is at least 1,000 feet away from any parcel occupied by one of the land uses mentioned in Section 21 of the Ordinance. (Id. ¶ 10.) Combined, those

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[19] For the reasons set forth supra note 18, the Court also deems the above fact admitted and observes that the results of this Order and the Court's determinations infra Part IV.D.2.b. would not change even if the Court accepted Plaintiffs' response as true and considered the portions of Mr. McLaughlin's fourth affidavit regarding alternative avenues of communication.

[20] For the reasons set forth supra note 18, the Court also deems the above fact admitted and observes that the results of this Order and the Court's determinations infra Part IV.D.2.b. would not change even if the Court accepted Plaintiffs' response as true and considered the portions of Mr. McLaughlin's fourth affidavit regarding alternative avenues of communication.

parcels constitute approximately 227 acres, (id.), and approximately two percent of the commercial and industrial land in Floyd County, (id. ¶ 11).

Between March 2002 and May 2006, no sexually oriented or adult businesses operated in Floyd County. (DSMF ¶ 13; PRSMF ¶ 13.) Plaintiffs are the only operators of an adult business in Floyd County since May 2006. (DSMF ¶ 13; PRSMF ¶ 14.) Marshall Plants, the GIS Manager for Rome and Floyd County, does not know of any one else who has indicated an interest in operating a sexually oriented or adult business in Floyd County. (Plants Aff. ¶ 6.)

B. Procedural Background

On August 17, 2006, Plaintiffs filed their Verified Complaint for Declaratory Judgment, Preliminary and Permanent Injunction, Damages, and Attorneys Fees. (Compl.) Plaintiffs seek a judgment declaring O.C.G.A. § 36-60-3 unconstitutional, declaring the Ordinance unconstitutional, and awarding Plaintiffs damages, costs, and reasonable attorneys' fees. (Id.) Plaintiffs' Verified Complaint states the following counts: (1) count one alleges that the definitions of "adult bookstore," "explicit media outlet," and "sexual conduct" contained in O.C.G.A. § 36-60-3 are unconstitutionally

overbroad; (2) count two alleges that O.C.G.A. § 36-60-3 is an unconstitutional prior restraint of expression; (3) count three alleges that O.C.G.A. § 36-60-3 is an unconstitutional prior restraint of expression because it fails to assure sufficient alternative avenues of communication for sexually explicit expression; (4) count four alleges that Floyd County has no authority to enforce O.C.G.A. § 36-60-3; (5) count five alleges that O.C.G.A. § 36-60-3 is unconstitutionally vague; (6) count six alleges that the Ordinance is an unconstitutional prior restraint of expression; (7) count seven alleges that the Ordinance effectively denies adult businesses a reasonable opportunity to open and operate; (8) count eight alleges that the Ordinance cannot defeat Plaintiffs' vested property rights; (9) count nine alleges that the Ordinance violates Plaintiffs' rights to due process and just compensation under the Fifth Amendment and Plaintiffs' rights to just compensation under the Georgia Constitution; (10) count ten alleges that the Ordinance violates Plaintiffs' due process rights and allows Floyd County officials to act arbitrarily and with excessive discretion; and (11) count eleven alleges that Floyd County's licensing fees violate the Equal Protection Clause. (Id. ¶¶ 35-93.)

On October 2, 2006, Floyd County filed its Answer and multiple Exhibits. (Docket Entry Nos. 5-8.)

On October 27, 2006, Plaintiffs filed their Motion for Preliminary Injunction. (Docket Entry No. 9.)

On November 27, 2006, Defendant filed its initial Motion for Summary Judgment and opposition to Plaintiff's Motion for Preliminary Injunction. (Docket Entry Nos. 18 & 19.)

On March 5, 2007, the Court denied Plaintiffs' Motion for Preliminary Injunction and denied without prejudice Defendant's initial Motion for Summary Judgment, observing that Defendant could refile its Motion for Summary Judgment at the close of discovery. (Order of Mar. 5, 2007.)

On May 7, 2007, Defendant filed its Renewed Motion for Summary Judgment with regard to all of Plaintiffs' claims. (Docket Entry No. 59.) Defendant stated that its Renewed Motion for Summary Judgment is supported by previously-filed supporting materials and incorporated those materials by reference. (Id.)

On June 27, 2007, the Court granted in part Plaintiffs' Second Motion to Compel Discovery with regard to Plaintiffs' Interrogatories 1, 2, and 18,

and directed Plaintiffs to respond to Defendant's Renewed Motion for Summary Judgment following their receipt of those responses. (Order of June 27, 2007.)

On August 29, 2007, the Court denied Plaintiffs' Motion for Leave to File Motion to Strike Affidavit and Expert Report of Richard McCleary and for Sanctions Against Defendant, and directed Defendant to supplement Dr. McCleary's expert report and Plaintiff's Interrogatories 1, 2, and 18. (Order of Aug. 29, 2007.) The Court reopened discovery for twenty days after Defendant provided the above supplemental information to Plaintiff for the limited purpose of allowing Plaintiffs the opportunity of deposing Dr. McCleary and directed Plaintiffs to respond to Defendant's Renewed Motion for Summary Judgment following any such deposition or Plaintiffs' receipt of the above information. (Id.)

On November 19, 2007, Plaintiffs filed their cross-Motion for Summary and combined brief supporting Plaintiff's Motion and opposing Defendant's Renewed Motion for Summary Judgment. (Docket Entry No. 95.)

The briefing process for the parties' cross-Motions for Summary Judgment is complete and the Court finds that the parties' cross-Motions for Summary Judgment are ripe for resolution.

C. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) authorizes summary judgment when "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party seeking summary judgment bears "the burden of demonstrating the satisfaction of this standard, by presenting 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' that establish the absence of any genuine, material factual dispute." Bochese v. Town of Ponce Inlet, 405 F.3d 964, 975 (11th Cir. 2005) (quoting Fed. R. Civ. P. 56(c)), cert. denied, 126 S. Ct. 377 (2005). Once the moving party has supported its motion adequately, the non-movant has the burden

of showing summary judgment is improper by coming forward with specific facts that demonstrate the existence of a genuine issue for trial. Castleberry v. Goldome Credit Corp., 408 F.3d 773, 786 (11th Cir. 2005).

When evaluating a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Harris, 433 F.3d at 811. The Court also must "construe 'all reasonable doubts about the facts in favor of the non-movant.'" Michael Linet, Inc. v. Vill. of Wellington, Fla., 408 F.3d 757, 761 (11th Cir. 2005) (quoting Browning v. Peyton, 918 F.2d 1516, 1520 (11th Cir. 1990)). Further, "[i]ssues of credibility and the weight afforded to certain evidence are determinations appropriately made by a finder of fact and not a court deciding summary judgment." McCormick v. City of Fort Lauderdale, 333 F.3d 1234, 1240 n.7 (11th Cir. 2003). Finally, the Court does not make factual determinations. Jones, 370 F.3d at 1069 n.1 (citing Wooden, 247 F.3d at 1271 n.9).

D. Discussion

1. Claims Under O.C.G.A. § 36-60-3

As an initial matter, the Court observes that Plaintiffs make the following observation and admission before stating their arguments with regard to O.C.G.A. § 36-60-3:

> The Court has not held that Entice is and [sic] "adult bookstore," and not an "explicit media outlet." Nothing prevents Floyd County or the State of Georgia, either during the course of this litigation, or at some future time, from asserting that Entice does, in fact, meet the definition of "explicit media outlet." And the store does meet the statutory definition of "explicit media outlet" just as readily as it meets the definition of "adult bookstore."

(Pls.' Resp. Opp'n Def.'s Renewed Mot. Summ. J. at 4.)

a. Plaintiffs' Overbreadth Claims

In count one of their Verified Complaint, Plaintiffs allege that O.C.G.A. § 36-60-3's definitions of "adult bookstore," "sexual conduct," and "explicit media outlet" are overbroad. (Compl. ¶¶ 35-38.)

O.C.G.A. § 36-60-3 (the "Statute") defines "adult bookstore" as, "any commercial establishment in which is offered for sale any book or publication, film, or other medium which depicts sexually explicit nudity or

sexual conduct." O.C.G.A. § 36-60-3(a)(1). "Explicit media outlet" is defined as "any commercial establishment which has an inventory of goods that is composed of at least 50 percent of books, pamphlets, magazines, or other printed publications, films, or other media which depict sexually explicit nudity or sexual conduct." Id. § 36-60-3(a)(3). The Statute defines "sexual conduct" as,

> acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

Id. § 36-60-3(a)(4). Similarly, the Statute defines "sexually explicit nudity" as,

> a state of undress so as to expose the human male or female genitals or pubic area with less than a full opaque covering or the depiction of covered or uncovered male genitals in a discernibly turgid state which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

Id. § 36-60-3(a)(5).

The Statute then authorizes counties and municipal corporations "to enact for their respective jurisdictions, ordinances which shall have the effect of restricting the operation of adult bookstores, explicit media outlets, and adult movie houses to areas zoned for commercial or industrial purposes." O.C.G.A. § 36-60-3(b). The Statute, however, provides "that no explicit media outlet or adult movie house shall be located within 1,000 feet of any school building, school grounds, college campus, public place of worship, or area zoned primarily for residential purposes." Id.

A statute is unconstitutional under the First Amendment doctrine of overbreadth upon a showing that the law "punishes a 'substantial' amount of protected free speech, 'judged in relation to the statute's plainly legitimate sweep.'" Virginia v. Hicks, 539 U.S. 113, 118-19 (2003). Such a showing "invalidates *all* enforcement of that law, 'until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.'" Id. (emphasis in original).

In Virginia v. Hicks, the United States Supreme Court explained that it "provided this expansive remedy out of concern that the threat of

enforcement of an overbroad law may deter or 'chill' constitutionally protected speech-especially when the overbroad statute imposes criminal sanctions," and because "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech-harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." 539 U.S. at 119 (citations omitted).

While the First Amendment protects non-obscene sexually explicit speech, it provides no protection to obscene speech or material. Sable Commc'n of Cal., Inc. v. FCC, 492 U.S. 115, 126 (1989); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 69 (1973). Where a law regulates protected speech, but also legitimately regulates unprotected speech, there comes a point at which the chilling effect of an overbroad law on protected speech cannot justify prohibiting all enforcement of a law that reflects "legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct." Hicks, 539 U.S. at 119. The Supreme Court also explained in Hicks that,

> there are substantial social costs created by the overbreadth doctrine when it blocks application of a law to constitutionally

> unprotected speech . . . . To ensure that these costs do not swallow the social benefits of declaring a law "overbroad," we have insisted that a law's application to protected speech be "substantial," not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications, before applying the "strong medicine" of overbreadth invalidation.

Id. at 119-20. (emphasis in original) (citations omitted). Additionally, "the overbreadth claimant bears the burden of demonstrating, 'from the text of [the law] and from actual fact," that substantial overbreadth exists. Id. at 122 (quoting N.Y. State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 14 (1988)).

The Court addresses each of Plaintiffs' overbreadth claims below.

i. "Adult Bookstore"

In their Verified Complaint, Plaintiffs simply allege that the Statute's definition of "adult bookstore" is "unconstitutionally overbroad." (Compl. ¶ 36.)

Defendant argues that the above claim fails as a matter of law for the reasons set forth in the Court's March 5, 2007, Order denying Plaintiffs' Motion for Preliminary Injunction. Defendant also argues that there is no

case or controversy before the Court on this issue, and that the Statute's 1,000-foot rule does not apply to "adult bookstores."

Plaintiffs argue that the Statute's definition of "adult bookstore" is overbroad because the Statute enables counties to prohibit stores from operating outside commercial or industrial districts if they stock one book depicting sexually explicit nudity or sexual conduct. Plaintiffs also state that the Entice store meets the Statute's definition of "explicit media outlet" and therefore "the fact that the Statute does not impose the 1,000 foot limitation on 'adult bookstore' is of no consequence here, in regard to whether the Statute can be enforced against Entice." (Pls.' Resp. Opp'n Def.'s Renewed Mot. for Summ. J. at 4.)

Plaintiffs cite Sanders v. State, 231 Ga. 608, 203 S.E.2d 153 (1974), for the proposition that "[o]ne obscene book on the premises of a book store does not make an entire store obscene." 231 Ga. at 613, 203 S.E.2d at 157. In Sanders, the trial court issued an injunction closing a book store as a public nuisance due to three obscene publications, thus halting the future sale and distribution of other material which may not have been obscene. Id. The Supreme Court of Georgia held that "any statute or ordinance which

seeks to impose criminal or civil sanctions for the exercise of expression that is not obscene cannot withstand a proper constitutional attack for overbreadth." Id. at 614, 202 S.E.2d at 157.

For the following reasons, the Court concludes that no factual issues remain with regard to the above claim, and that, as a matter of law, O.C.G.A. § 36-60-3's definition of "adult bookstore" is not unconstitutionally overbroad or impacts Plaintiffs. Here, the plain language of the Statute clearly does not apply O.C.G.A. § 36-60-3's 1,000-foot locational limitation to "adult bookstores." Indeed, Plaintiffs concede this point in their response brief. Unlike the laws at issue in Sanders, Plaintiffs have failed to show how O.C.G.A. § 36-60-3 places any limitation or sanction whatsoever on the location or operation of "adult bookstores." With regard to "adult bookstores," O.C.G.A. § 36-60-3 simply authorizes counties and municipalities to enact ordinances which have the effect of restricting such venues to certain areas, but does not itself restrict the location or operation of "adult bookstores." Likewise, the Ordinance at issue here does not use the Statute's definition of "adult bookstore." Plaintiffs therefore have failed to show that the Statute threatens or deters protected free speech with

regard to adult bookstores and Plaintiffs' themselves. The Court therefore concludes that Plaintiffs' claim that O.C.G.A. § 36-60-3's definition of "adult bookstore" is unconstitutionally overbroad and that the Statute limits the location of such venues fails. Consequently, the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

ii. "Sexual Conduct"

In their Verified Complaint, Plaintiffs allege that the Statute's definition of "sexual conduct" is unconstitutionally overbroad because "it includes fully clothes [sic] conduct, any part of the female breast, and any part of the buttocks." (Compl. ¶ 38.)

Defendant argues that the Statue's definition of "sexual conduct" essentially defines obscenity under the test set forth by the United States Supreme Court in Miller v. California, 413 U.S. 15 (1973). Defendant also asserts that the Statute does not prohibit depictions of the above conduct or any other speech, but simply sets forth a minimum state-wide standard for separating certain establishments from sensitive land uses. Defendants contend that the Statute does not affect protected speech and does not prohibit speech.

Plaintiffs argue that there is no applicable state law that defines the term "sexual conduct," as required by the Miller test, and state that the Statute's definitions of "sexual conduct" and "sexually explicit nudity" substantially track the Miller language.

Plaintiffs cite This That & The Other Gift & Tobacco, Inc. v. Cobb County, Georgia, 439 F.3d 1275 (11th Cir. 2006), for the proposition that there is no applicable State law defining sexual conduct because the United States Court of Appeals for the Eleventh Circuit held that O.C.G.A. § 16-12-80, regarding the distribution of obscene materials, was unconstitutional as written.[21] In the above case, the

[21] O.C.G.A. § 16-12-80 states, in relevant part:

(a) A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so . . .

(b) Material is obscene if:

(1) To the average person, applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion;

(2) The material taken as a whole lacks serious literary, artistic, political, or scientific value; and

(3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined in subparagraphs (A) through (E)

Eleventh Circuit held that O.C.G.A. § 16-12-80's complete ban on the advertising of sexual devices violated the First Amendment because it was

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of this paragraph:

(A) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;

(B) Acts of masturbation;

(C) Acts involving excretory functions or lewd exhibition of the genitals;

(D) Acts of bestiality or the fondling of sex organs of animals; or

(E) Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.

(c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this Code section.

. . .

(e) It is an affirmative defense under this Code section that dissemination of the material was restricted to:

(1) A person associated with an institution of higher learning, either as a member of the faculty or a matriculated student, teaching or pursuing a course of study related to such material; or

(2) A person whose receipt of such material was authorized in writing by a licensed medical practitioner or psychiatrist.

(f) A person who commits the offense of distributing obscene material shall be guilty of a misdemeanor of a high and aggravated nature.

O.C.G.A. § 16-12-80.

more extensive than necessary, by including advertising to consumers lawfully entitled to purchase such products. Id. at 1280. The Eleventh Circuit's holding, however, did not turn on O.C.G.A. § 16-12-80's incorporation of the Miller test into its language. See generally 439 F.3d 1275.

For the following reasons, the Court concludes that no factual issues remain with regard to the above claim, and that, as a matter of law, O.C.G.A. § 36-60-3's definition of "sexual conduct" is not unconstitutionally overbroad. The Court is not persuaded by Plaintiffs' argument that there is no applicable law that defines the term "sexual conduct" as a result of the Eleventh Circuit's decision in This That & The Other Gift & Tobacco, Inc. O.C.G.A. § 36-60-3(a)(4) clearly defines that term. Additionally, in the above opinion, the Eleventh Circuit does not invalidate or even comment upon the use of the Miller language to define obscenity. Furthermore, the Statute's use of the Miller language to define "sexual conduct" and "sexually explicit nudity" limits the materials which meet those definitions to unprotected obscenity, and thus those terms do not include protected speech. The Court therefore concludes that Plaintiffs' claim that O.C.G.A. § 36-60-3's definition of "sexual

conduct" is unconstitutionally overbroad fails. Consequently, the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

iii. "Explicit Media Outlet"

In their Verified Complaint, Plaintiffs simply allege that the Statute's definition of "explicit media outlet" is "unconstitutionally overbroad." (Compl. ¶ 37.)

Defendant argues that the Statute's definition of "explicit media outlet" regulates unprotected speech--obscenity--and does not regulate a substantial amount of non-obscene speech. Defendant again cites the Court's March 5, 2007, Order to support its argument that Plaintiffs' overbreadth claim fails as a matter of law with regard to the above term.

Plaintiffs assert that the Statute's definition of "explicit media outlet" limits such establishments to those carrying materials meeting the definitions of "sexual conduct" or "sexually explicit nudity." According to Plaintiffs, the Statute limits its application exclusively to obscene materials and Defendants have not alleged or adduced evidence that Plaintiffs distribute obscene

materials. Plaintiffs assert that the Statute therefore is overbroad as to Plaintiffs' store and cannot be applied to Plaintiffs.

For the following reasons, the Court concludes that no factual issues remain with regard to the above claim, and that, as a matter of law, O.C.G.A. § 36-60-3's definition of "sexually explicit media" outlet is not unconstitutionally overbroad. For the reasons set forth supra Part IV.D.1.a.ii., the Court concludes that the Statute's definition of "sexual conduct" and "sexually explicit nudity" specifically refer to obscenity. The Court therefore agrees with Plaintiffs that the plain language of the Statute defines "explicit media outlet" as any commercial establishment with an inventory of at least fifty percent obscene media. In that respect, the Statute's 1,000-foot location restriction is limited to businesses with an inventory of at least fifty percent obscene goods; thus the Statute is only applicable to non-obscene goods to the extent that such goods are actually carried by "explicit media outlets." The Statute's 1,000-foot rule therefore does not punish a substantial amount of non-obscene, protected free speech when judged in relation to its legitimate application to unprotected obscenity. Nor have Plaintiffs shown that the Statute does not reflect legitimate state

interests in controlling constitutionally unprotected obscenity. Additionally, regardless of Defendant's allegations or evidence with regard to Plaintiffs' inventory, Plaintiffs have admitted that their store meets the statutory definition of "explicit media outlet," (Pls.'s Resp. Opp'n Def.'s Renewed Mot. for Summ. J. at 4), and therefore carries an inventory of at least fifty percent obscene media. The Court concludes that Plaintiffs have adduced no evidence either from the text of the Statute or from actual fact that O.C.G.A. § 36-60-3 limits a substantial amount of protected free speech with regard to "explicit media outlets," and Plaintiffs specifically. Consequently, Plaintiffs' claim that O.C.G.A. § 36-60-3's definition of "explicit media outlet" is unconstitutionally overbroad fails, and the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

b. The Statute Satisfies Constitutional Scrutiny

In count two of Plaintiffs' Verified Complaint, titled "O.C.G.A. § 36-60-3 Prior Restraint-Failure to Satisfy Constitutional Scrutiny," Plaintiffs allege that O.C.G.A. § 36-60-3 is content-based because its only purpose is to suppress speech, and that the Statute is not narrowly tailored to serve any compelling government interest. (Compl. ¶¶ 42-45.) In count two, Plaintiffs

further allege that, even if the Statute is not content-based, it is unconstitutional because it fails to satisfy the O'Brien test. (Id. ¶ 46.)

Defendant argues that the State has the authority to regulate the location of businesses to promote public health, safety, and welfare, and that the Statute's 1,000-foot location limitation regarding adult businesses serves a substantial government interest. Defendant also argues that the State's secondary effects interest in regulating the location of affected businesses is not related to the content of any protected speech that may be offered by such businesses. Defendant again contends that the Statute's location restriction is not overbroad because it does not regulate a substantial amount of protected free speech in relation to the legitimate regulation of unprotected obscenity. The Court observes that Plaintiffs fail to address Defendant's Renewed Motion for Summary Judgment with regard to count two of Plaintiffs' Verified Complaint.

As an initial matter, the Court observes that Plaintiffs label count two of their Verified Complaint as "prior restraint," but allege that the Statute is content-based and fails strict scrutiny. Such allegations are usually made under the First Amendment or the Fourteenth Amendment's Equal Protection

Clause. See R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 385 n.4 (1992); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 225-39 (1990). The Court therefore focuses on the actual issues alleged by Plaintiffs, rather than the label that Plaintiffs have assigned to count two.

The First Amendment protects non-obscene sexually explicit speech, but provides no protection to obscene speech or material. Sable Commc'n of Cal., Inc. v. FCC, 492 U.S. 115, 126 (1989); Paris Adult Theatre I, 413 U.S. at 69. In R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, the Supreme Court observed that the First Amendment only imposes "a 'content discrimination' limitation upon a State's prohibition of proscribable speech." 505 U.S. 387. According to the Supreme Court, "[t]here is no problem whatever, for example, with a State's prohibiting obscenity (and other forms of proscribable expression) only in certain media or markets, for although that prohibition would be 'underinclusive,' it would not discriminate on the basis of content." Id. The R.A.V. Court then illustrated the above distinction as follows: "A State might choose to prohibit only that obscenity which is the most patently offensive in its prurience-i.e., that which involved the most lascivious displays of sexual activity. But it may not prohibit, for example,

only that obscenity which includes offensive political messages." Id. at 388 (emphasis in original); see also Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 576 (2001) (holding that, "[e]ven when speech falls into a category of reduced constitutional protection, the government may not engage in content discrimination for reasons unrelated to those characteristics of the speech that place it within the category. For example, a city may ban obscenity (because obscenity is an unprotected category), but it may not ban 'only those legally obscene works that contain criticism of the city government.'" (citation omitted)) .

Furthermore, where a law regulates protected speech, but also legitimately regulates unprotected speech, there comes a point at which the chilling effect of an overbroad law on protected speech cannot justify prohibiting all enforcement of a law that reflects "'legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.'" Virginia, 539 U.S. at 119. According to the Supreme Court in Virginia v. Hicks,

> there are substantial social costs created by the overbreadth doctrine when it blocks application of a law to constitutionally unprotected speech . . . . To ensure that these costs do not swallow the social benefits of declaring a law "overbroad," we

> have insisted that a law's application to protected speech be "substantial," not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications, before applying the "strong medicine" of overbreadth invalidation.

Id. at 119-120 (emphasis in original) (citations omitted). Additionally, "the overbreadth claimant bears the burden of demonstrating, 'from the text of [the law] and from actual fact," that substantial overbreadth exists. Id. at 122 (quoting N.Y. State Club Ass'n, Inc., 487 U.S. at 14).

For the following reasons, the Court concludes that no genuine factual issues remain with regard to the above claim and that Plaintiffs have adduced no evidence showing that the Statute is a prior restraint or does not satisfy constitutional scrutiny.

First, Plaintiffs' failure to respond to Defendant's argument that it is entitled to summary judgment with regard to Plaintiffs' claim that O.C.G.A. § 36-60-3 is a prior restraint and fails to satisfy constitutional scrutiny constitutes Plaintiffs' abandonment of that claim. Under Local Rule 7.1 of the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is unopposed on that ground. See N.D. Ga. R. 7.1; Welch v. Delta Air Lines, Inc., 978 F. Supp. 1133, 1137 (N.D. Ga. 1997) ("Plaintiff's failure

to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims.").

Second, the Statute regulates obscenity, and does not discriminate against or in any way limit a content-defined subclass of obscenity. O.C.G.A. § 36-60-3's 1,000-foot rule applies to "explicit media outlets," such as Plaintiffs, and to "adult movie houses." Based on the Statute's definitions of those businesses, it is clear that such businesses deal in obscenity, but may also deal in non-obscene goods and films. However, an "explicit media outlet," by definition, has an inventory of at least fifty-percent obscene goods. O.C.G.A. § 36-60-3(a)(3). Similarly, an "adult movie house" shows "X" rated films on a regular, continuing basis. Id. § 36-60-3(a)(2). The Statute's 1,000-foot rule therefore only applies to those businesses dealing in a substantial amount of unprotected obscene media and films.

Furthermore, the Statute does not discriminate against or in any way limit a content-defined subclass of obscenity. Rather, O.C.G.A. § 36-60-3 simply limits the market where "explicit media outlets" and "adult movie houses" may peddle obscene goods and films--excluding such businesses from locating within 1,000 feet of any school building, school grounds,

college campus, public place of worship, or area zoned primarily for residential purposes. See O.C.G.A. § 36-60-3. Thus, O.C.G.A. § 36-60-3's 1,000-foot limitation on the location of such businesses near certain specific land uses is constitutional to the extent that the Statute regulates obscenity.

Fourth, Plaintiffs have not shown from the text of the Statute or from actual fact that O.C.G.A. § 36-60-3 limits a substantial amount of protected free speech. The Statute's 1,000-foot rule limits its definition of "explicit media outlets" and "adult movie houses" as discussed above; thus, the Statute is only applicable to non-obscene goods to the extent such goods are actually carried by those businesses. The Statute's 1,000-foot rule therefore does not punish a substantial amount of non-obscene, protected free speech when judged in relation to the 1,000-foot rule's legitimate application to unprotected obscenity. The Court agrees with Defendant that the State has the authority to regulate the location of businesses to promote public health, safety, and welfare, and Plaintiff has not shown that the Statute's 1,000-foot location limitation regarding adult businesses does not serve a substantial government interest. Consequently, O.C.G.A. § 36-60-3's 1,000-foot limitation on the location of "explicit media outlets" near certain

specific land uses is constitutional because the Statute does not regulate a substantial amount of protected free speech in relation to its legitimate regulation of unprotected obscenity.

For the above reasons, the Court concludes that no factual issues remain with regard to the above claim, and that O.C.G.A. § 36-60-3 is not a prior restraint and does not fail to satisfy constitutional scrutiny. Consequently, the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

c. County Enforcement of the Statute Does Not Violate Georgia Law

In count four of their Verified Complaint, Plaintiffs allege that Defendant "has no enforcement authority pursuant to O.C.G.A. § 36-60-3, and, therefore, cannot close Plaintiffs' business pursuant to said statute." (Compl. ¶ 52.)

Defendant cites the Court's March 5, 2007, Order denying Plaintiffs' Motion for Preliminary Injunction, to support its argument that the Statute authorizes local governments to enact regulations on the operation of certain adult businesses and confers on them the authority to punish violators of

such ordinances. Defendant also contends that it has not attempted to enforce the Statute, but merely maintains that the Statute forecloses Plaintiffs' claim that the operation of their store at its present location is or was lawful. Defendant argues that the lack of a specific enforcement provision in the Statute is not dispositive with regard to the State's ability to enforce the Statute, and that the Statute is not ambiguous. Defendants assert that there is no reason to look beyond the Statute's language or to draw inferences from the structure of the Georgia Code or the language of other Code sections.

Plaintiffs urge the Court to reconsider its Order of March 5, 2007, concluding that the Statute is enforceable by the State. Pursuant to Local Rule 7.2E., Motions for Reconsideration must be filed within ten days after entry of the order at issue. N.D. Ga. 7.2E. Plaintiffs did not file a Motion to Reconsider with regard to the Court's March 5, 2007, Order, and Plaintiffs' cross-Motion for Summary Judgment and brief were not filed until November 19, 2007. The Court therefore concludes that Plaintiffs' request for the Court to reconsider its March 5, 2007, Order is untimely. Nevertheless, the Court recognizes that the above issue impacts Plaintiffs' claim that they have a

vested right in their current use of the property and, in an abundance of caution, re-examines its prior ruling below.[22]

Plaintiffs argue that the Statute does not proscribe a penalty for violations of the Statute itself, but simply sets forth a penalty for violating an ordinance enacted pursuant to the Statute. Plaintiffs assert that the legislature clearly did not intend for the Statute itself to be enforced, and that neither the State nor Defendant can enforce the Statute itself. Plaintiffs point to the Statute's location in the Official Code of Georgia. According to Plaintiffs, no State powers are mentioned, referred to or granted by any other statutes set forth in Title 36, Chapter 60, and that those portions of the Georgia Code simply authorize local governments to enact ordinances. According to Plaintiffs, O.C.G.A. § 36-60-1 is the only statute in that Chapter directly enforceable by the State. Plaintiffs contend that, if the legislature had intended for the Statute itself to be enforced, then there would be no need for an ordinance to be enacted pursuant to the Statute, except for the purpose of enacting more stringent locational limitations.

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[22] The Court will address Plaintiffs' claim that they have a vested right in their current use of the property infra Part IV.D.2.c.

Plaintiffs also argue that some Georgia communities have imposed less stringent restrictions than those required by the Statute and impose restrictions regarding uses not listed in the Statute. Plaintiffs then cite multiple ordinances enacted by other jurisdictions in Georgia, and note the differences between those ordinances and the Statute at issue. The Court observes that those ordinances are not before this Court, and are not implicated in this litigation. The Court therefore focuses only on the Statute and Ordinance at issue in this Order.

The preamble to O.C.G.A. § 36-60-3 states as follows:

> AN ACT to amend Code Section 36-60-3 of the Official Code of Georgia Annotated, relating to the restriction of adult bookstores and movie houses to certain areas, so as to define certain terms; to prohibit the location of an explicit media outlet or adult movie house within 1,000 feet of a school building, school grounds, college campus, public places of worship, or area zoned primarily for residential use; to provide for applicability; to authorize more stringent local restrictions; to provide an effective date; to repeal conflicting laws; and for other purposes.

1997 Ga. Laws 305, pmbl. Sections (b) and (c) of O.C.G.A. § 36-60-3 state that:

> (b) the governing authority of each county and municipal corporation is authorized to enact, for their respective jurisdictions, ordinances which shall have the effect of restricting the operation of adult bookstores, explicit medial outlets, and

> adult movie houses to areas zoned for commercial or industrial purposes; provided, however, that no explicit media outlet or adult movie house shall be located within 1,000 feet of any school building, school grounds, college campus, public place of worship, or area zoned primarily for residential purposes. As used in this subsection, the term "school building" shall apply only to public or private school buildings. The distance requirement provided in this subsection for explicit media outlets and adult movie houses shall not apply to said locations which hold lawful permits or business licenses on July 1, 1997. In determining the distance requirements provided for in this Code section, the measurement shall be from the closest property line on which the adult bookstore, explicit media outlet, or adult movie house is located to the closest property line on which the school, college, religious institution, public place of worship, or area zoned primarily for residential purposes is located. Nothing in this Code section shall be construed so as to prohibit the adoption by the governing authority of any county or municipality of restrictions relating to the location of adult bookstores, explicit media outlets, and adult movie houses which are more stringent than the requirements of this Code section.
>
> (c) Any person, firm, or corporation violating any ordinance enacted pursuant to subsection (b) of this Code section shall be guilty of a misdemeanor. Each day of operation in violation shall be deemed a separate offense.

O.C.G.A. § 36-60-3(b)-(c). Additionally, the Act indicates that the amended Statute shall become effective on July 1, 1997. 1997 Ga. Laws 305, § 2.

In Effingham County Board of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 629 S.E.2d 501 (2006), the Georgia Court of Appeals explained that,

> [w]ell-established principles of statutory construction require that the literal meaning of the words of a statute must be followed unless the result is an absurdity, contradiction, or such an inconvenience that it is clear that the legislature must have intended something else. We must seek to effectuate the intent of the legislature, OCGA § 1-3-1(a), and to give each part of the statute meaning and avoid constructions that make some language mere surplusage. All parts of a statute should be harmonized and given sensible and intelligent effect, because it is not presumed that the legislature intended to enact meaningless language.

278 Ga. App. at 522, 629 S.E.2d at 502; accord In re J.V., 282 Ga. App. 319, 321, 638 S.E.2d 757, 759 (2006).

For the following reasons, the Court concludes that no genuine factual issues remain with regard to the above claim, and Plaintiffs adduced no evidence that Defendant does not have authority to enforce an ordinance enacted under the Statute, that Defendant has attempted to enforce the Statute against Plaintiffs, or that the State may not enforce the Statute's 1,000-foot rule.

First, the Statute clearly authorizes counties and municipalities to enact restrictive ordinances regarding the operation of certain adult businesses, and then prescribes the appropriate punishment for violation of any such ordinance. The terms of O.C.G.A. § 36-60-3 are clear and manifest a

legislative intent to confer the authority to punish violators of such ordinances on the enacting counties and municipal corporations.

Second, according to Defendant, it has not attempted to enforce the Statute's provision that "no explicit media outlet or adult movie house shall be located within 1,000 feet of any school building, school grounds, college campus, public place of worship, or area zoned primarily for residential purposes," O.C.G.A. § 36-60-3(b), against Plaintiffs, and Plaintiffs have not shown otherwise.

Third, the State itself may lawfully enforce the above provision. The Court is not convinced that the legislature did not intend the Statute itself to be enforced, or that the State itself may not enforce O.C.G.A. § 36-60-3(b)'s 1,000-foot rule. The preamble to the Statute shows the clear intent of the legislature to amend O.C.G.A. § 36-60-3 to prohibit the location of "explicit media outlets" and "adult movie houses" within 1,000 feet of certain uses throughout the State, and to allow local authorities to enact more stringent restrictions, should they so choose. Section (b) of the Statute specifically sets forth how the distance requirement is to be measured and excludes businesses holding permits or licenses on July 1, 1997, the date the

amended Statute took effect. Plaintiffs urge the Court to construe the Statute in a way that would render the above provisions mere surplusage unless a local government enacts an ordinance restricting adult businesses to areas zoned for commercial or industrial purposes. The Court does not presume that the legislature intended to enact meaningless language, and observes that the State may seek to enjoin violators of the Statute regardless of whether the Statute provides for a specific penalty regarding the 1,000-foot rule. Additionally, the Court is not convinced that the Statue's location within the Official Code of Georgia or the contents of surrounding statutes require the Court to ignore the plain and literal meaning of O.C.G.A. § 36-60-3(b).

The Court therefore concludes that Plaintiffs have not shown that Defendant may not enforce an ordinance properly enacted under the Statute, that Defendant has attempted to enforce the Statute itself against Plaintiffs, or that the Statute's 1,000-foot rule is ineffective unless a county or municipality has enacted an ordinance pursuant to the Statute. Consequently, the Court grants Defendants' Motion for Summary Judgment with regard to the above count.

d. The Statute Does Not Fail to Assure Sufficient Alternative Avenues of Communication

In count three of their Verified Complaint, Plaintiffs allege that O.C.G.A. § 36-60-3 fails to assure sufficient alternative avenues of communication for sexually explicit expression and therefore is an unconstitutional prior restraint both facially and as applied to Plaintiffs. (Compl. ¶¶ 47-78.)

Defendant cites the Court's March 5, 2007, Order, denying Plaintiffs' Motion for Preliminary Injunction with regard to the above claim. Defendant argues that the above claim is irrelevant because the Statute's locational restrictions do not regulate a substantial amount of free speech in relation to the Statute's legitimate regulation of unprotected obscenity. Defendant also argues that the Statute's 1,000-foot rule applies State-wide and therefore the effect of the rule in one particular jurisdiction is not the measure of the Statute's facial constitutionality. Defendant also contends that there are numerous locations in Floyd County where adult businesses are permitted to operate. Finally, Defendants also argue that ordinances which are not at issue here are irrelevant to this litigation.

Plaintiffs assert that enforcement of the Statute itself would require all adult bookstores, explicit media outlets and adult movie houses in Georgia to be located only in areas zoned for commercial or industrial purposes, and also would require adult movie houses and explicit media outlets to be located 1,000 feet from other specified uses. Plaintiffs argue that the locational restrictions in the Statute cannot possibly leave alternative avenues of communication in every Georgia community. Thus, according to Plaintiffs, the Court must interpret the Statute to apply only to jurisdictions that choose to enact ordinances pursuant to the Statute.

For the following reasons, the Court concludes that no factual issues remain with regard to the above claim, and that Plaintiffs' claim that the Statute is an unconstitutional prior restraint and does not ensure sufficient alternative avenues of communication must fail.

First, the Court disagrees with Plaintiffs' interpretation of the Statute as requiring that all "adult bookstores," "explicit media outlets," and "adult movie houses" in Georgia be located only in areas zoned for commercial or industrial purposes. For the reasons discussed supra Part IV.D.1.c., the Court simply concludes that the Statute requires "explicit media outlets" and

"adult movie houses" be located 1,000 feet away from certain uses set forth in the Statute. While the Statute enables local authorities to pass ordinances restricting adult businesses to areas zoned for commercial or industrial purposes, it does not itself impose such a restriction.

Second, the Statute does not regulate a substantial amount of protected speech and need not assure sufficient alternative avenues of communication for the unprotected speech that it does regulate. Additionally, there is no evidence that the Statute's 1,000-foot rule discriminates against certain obscenity due to its content, and Plaintiffs have not alleged as much. For the reasons discussed supra Part IV.D.1.b, the Statute's 1,000-foot rule only applies to "explicit media outlets" and "adult movie houses"--businesses with an inventory of at least fifty-percent obscene media and films--and does not discriminate against that unprotected speech based on its content. Plaintiffs have not explained why the Statute, which regulates a majority of unprotected speech, must ensure that there are alternative avenues of communication for that unprotected speech.

Third, to the extent that the Statute impacts protected speech, the Court concludes that there are sufficient alternative avenues of

communication for the location of the businesses at issue in Floyd County. The Court observes that the Statute will only impact protected speech to the extent that such speech is present in the inventory carried by "explicit media outlets" and "adult movie houses," which by definition consists of at least fifty-percent obscene media and films. The Court is not persuaded that it must consider whether the Statute leaves alternative avenues of communication in every Georgia community. Rather, the Court adopts the approach used by other Courts ruling on similar state statutes and determines whether the Statute leaves sufficient alternative avenues of communication in the affected area--Floyd County. See Ranch House, Inc. v. Amerson, 146 F. Supp. 2d 1180, 1213-13 (N.D. Ala. 2001) (stating that test is whether restrictions currently allow for alternative avenues of communication); Township of Saddle Brook v. A.B. Family Center, Inc., 156 N.J. 587, 596-97, 722 A.2d 530, 535 (1999) (examining whether state statute left alternative avenues of communication in relevant market area). For the reasons discussed infra Part IV.D.2.b, there are sufficient locations in Floyd County for the regulated businesses at issue. The Statute thus provides

sufficient alternative avenues of communication for adult businesses in Floyd County.

The Court therefore concludes that no factual issues remain with regard to the above claim, and that Plaintiffs claim that the Statute is an unconstitutional prior restraint and that there are not sufficient alternative avenues of communication in Floyd County for protected speech impacted by the Ordinance fails. Consequently, the Court grants Defendant's Motion for Summary Judgment with regard to the above claim.

e. The Statute is not Unconstitutionally Vague

In count five of their Verified Complaint, Plaintiffs allege that O.C.G.A. § 36-60-3 "contains terms that are so vague that persons of common intelligence must necessarily guess at their meaning and differ as to their application." (Compl. ¶ 53.)

Defendant argues that, based on the parties' briefs with regard to Plaintiffs' Motion for Preliminary Injunction, Plaintiffs' vagueness claim must fail. Defendant asserts that the Statute does not subject "adult bookstores" to any location limitation. Defendant also asserts that the terms "sexual conduct" and "sexually explicit nudity" permissibly incorporate the Miller test

within their definitions. The Court observes that Plaintiffs fail to address Defendant's Renewed Motion for Summary Judgment with regard to count five of Plaintiffs' Verified Complaint.

In Roth v. United States, 354 U.S. 476 (1957), the United States Supreme Court rejected arguments that federal and California obscenity statutes were imprecise and did not give adequate warning of the proscribed conduct where the statutes, respectively, made punishable the mailing of material that is "obscene, lewd, lascivious, or filthy," and the keeping for sale or advertising material that is "obscene or indecent." 354 U.S. at 491. Rather, the Supreme Court held that, where the above language applied to the materials according to their "impact upon the average person in the community" and whether it offended "the common conscience of the community by present-day standards," those statutes gave adequate warning of the proscribed conduct and marked sufficiently distinct boundaries for judges and juries to fairly administer the law. Id. at 490-491. The Roth Court also rejected the argument that because juries may reach different conclusions as to the same material, the statutes must be held to be insufficiently precise to satisfy due process requirements. Id. 491 n.30.

In Hamling v. United States, 418 U.S. 87 (1974), the Supreme Court restated its consistent holding that "the lack of precision is not itself offensive to the requirements of due process" and that the Constitution does not require impossible standards, but simply requires that the language "'conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.'" 418 U.S. at 111 (citations omitted). The Hamling Court also repeated its statement in Roth that the fact that "there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense . . . ." Id. at 114-15 (quoting Roth, 354 U.S. at 491-92).

For the following reasons, the Court finds that no factual issues remain with regard to the above claim, and that the Statute is not unconstitutionally vague as a matter of law. Plaintiffs' failure to respond to Defendant's argument that it is entitled to summary judgment with regard to Plaintiffs' claim that O.C.G.A. § 36-60-3 is unconstitutionally vague constitutes Plaintiffs' abandonment of that claim. Under Local Rule 7.1 of the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is

unopposed on that ground. See N.D. Ga. R. 7.1; Welch, 978 F. Supp. at 1137 ("Plaintiff's failure to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims.").

Additionally, Plaintiffs leave the Court to simply guess as to which terms in the Statute Plaintiffs contend are unconstitutionally vague. In its March 5, 2007, Order, the Court interpreted Plaintiffs' brief with regard to their Motion for Preliminary Injunction as arguing that the Statute's use of the Miller language in its definitions of "sexual conduct" and "sexually explicit nudity" results in definitions that are so vague that vendors would not know whether their operations fall within the Statute and thus may be restricted to certain areas by the county or municipality in which their business is located. For the reasons set forth in the Court's March 5, 2007, Order, Plaintiffs have not shown that the Statute or its terms are so vague that persons of common intelligence must guess at their meaning. (See Order of March 5, 2007.) As discussed in Roth, the incorporation of the Miller test for obscenity into the above definitions and the possibility that reasonable juries could differ as to what materials appeal to a prurient interest do not make the definitions unconstitutionally vague on their face. Furthermore, Roth and Hamling

addressed due process notice requirements of statutes criminalizing the distribution of obscene materials, and Plaintiffs have not shown that, in a First Amendment context, the incorporation of the Miller test into a statute is substantially likely to result in unconstitutionally vague language.

For the reasons set forth above and in the Court's Order of March 5, 2007, the Court therefore concludes that no factual issues remain with regard to the above claim, and that Plaintiffs' claim that O.C.G.A. § 36-60-3 is unconstitutionally vague must fail. (See Order of Mar. 5, 2007.) Consequently, the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

2. Claims Regarding Floyd County Ordinance 2006-002A

a. The Ordinance Satisfies Constitutional Scrutiny

In count six of their Verified Complaint, titled "Unconstitutional Prior Restraint-Failure to Satisfy Constitutional Scrutiny," Plaintiffs allege that the Ordinance is a content-based restriction because Floyd County does not require business licenses for any businesses other than adult businesses. (Compl. ¶ 54.) Plaintiffs also contend that Defendant enacted the Ordinance in response to Plaintiffs' business, and thus the governmental interest was

related to suppressing free expression. (Id. ¶ 63.) Plaintiffs further allege that, if the Ordinance is not content-based, it fails the O'Brien intermediate scrutiny test because the studies cited in the Ordinance are not relevant to Defendant or Plaintiffs, and because the Ordinance is not narrowly tailored. (Id. ¶¶ 62, 64.) Plaintiffs contend that there is no evidence to support Defendant's rationale for enacting the Ordinance. (Id. ¶ 58.)

Defendant argues that the Ordinance is content-neutral and was adopted to combat the adverse secondary effects of sexually oriented businesses. Defendant adopts the discussion in the Court's March 5, 2007, Order regarding the level of scrutiny applicable to the Ordinance. Defendant also asserts that the Court should reject any effort by Plaintiffs to allege illicit motives on the part of legislators because such allegations do not support a determination that a regulation is content-based.

Defendant also argues that the Ordinance satisfies intermediate scrutiny. Defendant asserts that a regulatory licensing ordinance for conduct commonly associated with expression is constitutional if it requires a licensing decision in a brief period of time and allows for prompt judicial review of the decision. Defendant contends that it had authority to enact the

Ordinance under its police powers. Defendant also contends that it enacted the Ordinance based on legislative evidence reasonably believed to be relevant to the secondary effects of sexually oriented businesses. According to Defendant, Plaintiffs have failed to introduce evidence rebutting all the rationales and evidence upon which the Ordinance was based, and have only attempted to refute studies regarding crime and property values. Defendant argues that it did not require evidence which differentiated between off-site and on-site adult businesses, but that its evidence also supports the regulation of off-site adult bookstores due to adverse secondary effects. Defendant also contends that it has submitted additional documents supporting its rationale for regulating sexually oriented businesses, including off-site businesses. Defendant argues that its interest in preventing such adverse secondary effects is content-neutral, and that the Ordinance is narrowly tailored to serve that interest.

Defendant also argues that the ordinance is narrowly tailored.[23] According to Defendant, the Ordinance regulates conduct in three ways: (1)

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[23] The Court observes that Plaintiffs and Defendant address the issue of alternative avenues of communication separately in their briefs. The Court therefore also addresses that issue separately in this Order infra Part IV.D.2.b.

prohibiting people from appearing totally nude, requiring semi-nude persons to remain on a stage at least six feet from patrons, and prohibiting such employees from knowingly touching patrons; (2) prohibiting sexually oriented businesses from operation between midnight and 6:00 a.m.; and (3) regulating where such businesses may operate. Defendant asserts, however, that Plaintiffs do not have standing to contest the first regulation because Plaintiffs claim that they operate a retail store and do not intend to have persons appear nude or semi-nude on their property. Nevertheless, Defendant also asserts that the above regulations are narrowly tailored and constitutional.

The Court observes that Plaintiffs do not address Defendant's arguments that the Ordinance should be reviewed under the O'Brien intermediate scrutiny test, but immediately assert that Defendant has failed to demonstrate that the Ordinance meets the second O'Brien factor. Plaintiffs also do not address the first, third, and fourth O'Brien factors, or Defendant's arguments regarding those factors.[24] Rather, Plaintiffs argue

[24] The Court observes that Plaintiffs and Defendant address the issue of alternative avenues of communication separately in their briefs. The Court therefore also addresses that issue separately in this Order infra Part IV.D.2.b.

that Defendant failed to demonstrate that the Ordinance furthers a substantial government interest. Plaintiffs assert that the studies upon which Defendant relied cannot be reasonably believed to be relevant to Floyd County. Plaintiffs contend that their store is located miles out of town on a rural state highway and far from any other business or residential developments. Plaintiffs also contend that Defendant relied on studies that did not distinguish between off-site and on-site adult businesses, and that the one study cited by Defendant which makes the above distinction cannot be replicated. Plaintiff assert that the Commissioners therefore could not reasonably rely on the studies referenced in the Ordinance to regulate Plaintiffs' store. Plaintiffs claim that Defendant's expert report regarding Floyd County is internally inconsistent and question the reliability of Dr. McCleary's discussion of various studies, including his own studies.

Plaintiffs cite Flanigan's Enterprises, Inc. of Georgia v. Fulton County, 242 F.3d 976 (11th Cir. 2001), for the proposition that a local government must demonstrate that it reasonably relied upon evidence relevant to the problem addressed, and cannot reasonably rely on foreign studies when its own data demonstrate that those studies are not relevant to local conditions.

In the above case, a county commissioned study of sexually oriented businesses selling alcohol in the area found that such businesses caused little or no secondary effects as compared to other businesses selling alcohol. Id. at 979-80. The county then adopted an ordinance restricting location and operation of adult businesses selling alcohol based on the secondary effects studies of other cities. Id. at 980-81. The Eleventh Circuit held that the county could not rely upon those remote studies to support its interest in combating adverse secondary effects when the county's own study demonstrated that those foreign studies were not relevant to local conditions. Id. at 986. The Eleventh Circuit explained that a municipality is not required to perform empirical studies before enacting restrictions on adult entertainment, but, once it has conducted such studies, it may not ignore the results. Id.

Plaintiffs also cite Abilene Retail #30 v. Board of Commissioners of Dickinson County, Kansas, 492 F.3d 1164 (10th Cir. 2007), for the proposition that foreign studies of urban environments are not applicable to entirely rural areas. In Abilene Retail #30, the Tenth Circuit found that a dispute of material fact existed as to whether Dickinson County officials

could reasonably believe that the cases and studies cited in the ordinance at issue were relevant to the county's interests. 492 F.3d at 1174. The court noted that, although a lack of local evidence was not preclusive, the evidence cited in the ordinance consisted of secondary effects studies of urban areas and were not applicable to the entirely rural area regulated. Id. at 1174-75. The Tenth Circuit observed that the sole adult business in Dickinson County was located on a highway pullout far from any business or residential area, and thus the foreign studies cited in the ordinance did not establish a minimal connection to the secondary effects attendant to Dickinson County's existing sexually oriented business. Id. at 1176.

i. Applicable Level of Scrutiny

As an initial matter, the Court observes that Plaintiffs' failure to respond to Defendant's argument that the Ordinance is a content-neutral regulation of the secondary effects associated with sexually oriented businesses constitutes Plaintiffs' abandonment of their claim that the Ordinance is content-based. Under Local Rule 7.1 of the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is unopposed on that ground. See N.D. Ga. R. 7.1; Welch, 978 F. Supp. at 1137 ("Plaintiff's failure

to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims."). In an abundance of caution, however, the Court examines the Ordinance to determine whether the ordinance is content-based or content-neutral, and to determine the applicable constitutional analysis.

Regulations that restrict protected expression based on its content are subject to strict scrutiny. Artistic Entm't, Inc. v. City of Warner Robbins, 223 F.3d 1306, 1308 (11th Cir. 2000) (citing City of Erie v. Pap's A.M., 529 U.S. 277 (2000) (plurality opinion)). "[R]egulations that target undesirable secondary effects of protected expression are deemed content-neutral, and courts review them with an intermediate level of scrutiny known as the O'Brien test." Id. (citing City of Erie, 529 U.S. 277.)

To determine whether a given regulation that potentially limits speech is content-based or content-neutral, courts primarily look to the government's purpose in enacting the regulation. "The principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). The government's purpose

is the controlling consideration, and a regulation that serves purposes that are unrelated to the content of the expression is deemed neutral. Id. In that regard, courts are hesitant to inquire into legislators' motives, and will "not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." U.S. v. O'Brien, 391 U.S. 367, 383 (1968).

For the following reasons, the Court concludes that no factual issues remain with regard to Plaintiffs' claim that Defendant's licensing Ordinance is content-based, and that the Ordinance is a content-neutral regulation of the secondary effects associated with sexually oriented businesses and is therefore subject to intermediate scrutiny.[25] The Ordinance itself states that its purpose is to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of Floyd County's citizens, and to prevent negative secondary effects of such businesses, including crime, prostitution, negative property values, and urban blight. The Ordinance also states that it is not intended to suppress protected speech or activities. Additionally, the Court is not persuaded by Plaintiffs' allegations of illicit

[25] For the reasons set forth in its March 5, 2007, Order, the Court concludes that the Ordinance at issue is a licensing scheme and therefore applies the O'Brien intermediate scrutiny test. (See Order of Mar. 5, 2007.)

motives by one Commissioner. The Court therefore finds that the Ordinance is a content-neutral regulation. Consequently, the Court analyzes the Ordinance under the O'Brien intermediate scrutiny test below.

ii. The Ordinance Satisfies Intermediate Scrutiny

Under Georgia law, "[a] county may enact regulations to protect the health, safety, and general welfare of the public under its police powers." Board of Comm'rs of Atkinson County v. Guthrie, 273 Ga. 1, 3, 537 S.E.2d 329, 331-32 (2000). Additionally, O.C.G.A. § 36-60-3 authorizes the governing authority of each county to enact ordinances restricting the operation of adult businesses. O.C.G.A. § 36-60-3(b).

Under United States v. O'Brien, 391 U.S. 367 (1968), a content-neutral restriction on speech is valid

> if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the government interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

391 U.S. at 377.

A government need not conduct its own studies or produce new evidence before enacting an ordinance regulating adult businesses. City of Renton, 475 U.S. at 51-52. Rather, a government may rely on the evidence collected by other entities, "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." 475 U.S. at 51-52. That reasonable basis may be found in "the experiences of other cities, studies done in other cities, case law reciting findings on the issue, as well as their own wisdom and common sense." Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993, 997 (11th Cir. 1998); see also City of Erie, 529 U.S. at 297-98. Furthermore, it is not the Court's role to "apprise the wisdom" of legislative discretion or to serve as a "super legislature." Renton, 475 U.S. at 53 (quoting Young v. Am. Mini Theaters, Inc., 427 U.S. 50, 71 (1976)). The Court may not simply substitute its judgment for the government's, even if the government might have reached a different and equally reasonable conclusion regarding the relationship between adverse secondary effects and sexually oriented businesses. Daytona Grand, Inc. v. City of Daytona Beach, Fla., 490 F.3d 860, 881-82 (11th Cir. 2007).

In City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002), the Supreme Court affirmed the principle that governments are permitted to rely upon studies of their choice and to experiment with their own regulation of secondary effects of adult businesses, and clarified the evidence a municipality could use to support its rationale for an ordinance as follows:

> This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in Renton. If Plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.

535 U.S. at 438-39. A party challenging an ordinance also bears the burden of disproving each secondary effect interest that a regulation serves. See id. at 435-36 (holding that secondary effects evidence concerning crime was reasonably relied upon, even though evidence regarding relationship between property values and adult establishments was inconclusive).

As an initial matter, the Court observes that Plaintiffs failed to respond to Defendant's argument that the Ordinance satisfies the first, third, and

fourth prongs of the O'Brien test--that the regulation is within the constitutional power of the government, that the government interest is unrelated to the suppression of free expression, and that the incidental restriction of First Amendment freedoms is no greater than essential to further the government's interest. Plaintiffs' failure to respond constitutes an abandonment of their claim with regard to those factors, and, under Local Rule 7.1 of the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is unopposed on those grounds. See N.D. Ga. R. 7.1; Welch, 978 F. Supp. at 1137 ("Plaintiff's failure to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims."). The Court also concludes that the Ordinance satisfies the first, third, and fourth O'Brien factors.[26] With regard to the first factor, the Ordinance is within Defendant's police powers. The Ordinance itself states that its purpose is to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of Floyd County's

[26] The Court recognizes that the issue of alternative locations for sexually oriented businesses is relevant to the fourth O'Brien factor with regard to the Ordinance's regulation of the location of sexually oriented businesses. The parties address the issue of whether the Ordinance provides reasonable alternative avenues of communication separately in their briefs. The Court therefore also addresses that issue separately in this Order.

citizens, and to prevent negative secondary effects of such businesses, including crime, prostitution, negative property values, and urban blight. Likewise, for the reasons set forth supra Part IV.D.2.a.i., the third factor is satisfied because the above interests are unrelated to the suppression of free expression. With regard to the fourth factor, the Ordinance's restriction on nudity, performances, and touching does not affect Plaintiffs, nor do Plaintiffs contend as much. Consequently, the Court concludes that Plaintiffs' lack standing to challenge Section 18 of the Ordinance. See Tanner Adver. Group, L.L.C. v. Fayette County, Ga., 451 F.3d 777, 791 (11th Cir. 2006) (holding that plaintiff unaffected by Ordinance provision lacked standing to challenge that provision). Additionally, the Court observes that similar restrictions on nudity, performance stages, and touching have been upheld in other courts. See Fly Fish, Inc. v. City of Cocoa Beach, 337 F.3d 1301, 1308-09 (11th Cir. 2003); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358, 1365-66 (11th Cir. 1999); DLS, Inc. v. City of Chattanooga, 107 F.3d 403, 412 (6th Cir. 1997). The Court also concludes that the hours of operation regulation, which does affect Plaintiffs, allows sexually oriented businesses to operate eighteen hours daily and therefore is not substantially

broader than necessary to further Defendant's interests. See Lady J. Lingerie, Inc., 176 F.3d at 1365 (upholding ordinance allowing adult entertainment establishment to operate only fourteen hours daily). The Court also observes that Plaintiffs present no argument to the contrary. Similarly, Plaintiffs present no argument contesting Defendant's assertion that the Ordinance is narrowly tailored. Plaintiffs simply focus on the issue of alternative avenues of expression with regard to Section 21. For the reasons set forth below, the Court concludes that the Ordinance also meets the fourth O'Brien factor, and addresses the issue of alternative avenues of expression with regard to Section 21 separately infra Part IV.D.2.b. The Court therefore focuses on the second O'Brien factor below, specifically with regard to the Alameda Books burden-shifting analysis.

For the following reasons, the Court concludes that no genuine factual issues remain with regard to the second O'Brien factor, that the documentary evidence cited in the Ordinance fairly supports Defendant's rationales for the regulation, and that Plaintiffs have not shown that the evidence relied upon by Defendant does not support the Ordinance's rationales and have not

furnished evidence disputing even a majority of Defendant's factual findings or showing that Defendant's interests are not furthered by the Ordinance.

There is no question that Defendant's interests in mitigating the above secondary effects "are both important and substantial." Young, 427 U.S. at 80; see also Alameda Books, 535 U.S. at 434-36. The appropriate inquiry then is whether Defendant reasonably relied on pre-enactment evidence to concluded that the Ordinance furthers those interests.

The Court concludes that it was reasonable for Defendant to rely on the studies and case law set forth in the Ordinance when reaching its conclusion that the Ordinance would further each of Defendant's legitimate interests in reducing the above negative secondary effects of sexually oriented businesses. The Ordinance limits the location of sexually oriented businesses by requiring such businesses to be 1,000 feet from other such businesses and from churches, elementary and secondary schools, and residential areas. As stated in the Ordinance, the Commission's rationales in enacting the legislation were to separate sexually oriented businesses from sensitive land uses in order to minimize the impact of the secondary effects of such businesses on those uses, and to separate sexually oriented

businesses from each other in order to minimize secondary effects and to prevent a concentration of such businesses in one area. In support of the above rationales, the Ordinance cites numerous studies by other cities and case law involving the regulation of adult businesses. Based on that documentary evidence, the Commission found that sexually oriented businesses are associated with adverse secondary effects, including crime, prostitution, the spread of disease, lewdness, public indecency, obscenity, illicit drug use and trafficking, reduced property values, urban blight, litter, and sexual assault and exploitation. As discussed in the Court's March 5, 2007, Order, those documents include evidence of criminal activity and other negative impacts on surrounding areas due to adult bookstores and sexually oriented businesses. (See Order of Mar. 5, 2007 at 77-79.)[27] Additionally, unlike the adult business in Abilene Retail #30, Plaintiffs' business is not located in an entirely rural area far from any business or residential area. Rather, the undisputed evidence shows that Plaintiffs' business is located less than 1,000 feet from three parcels zoned suburban residential, at least

[27] In the interests of brevity and issuing an Order in a timely fashion, the Court does not provide a separate analysis of each of Defendant's predicate documents in this Order. The Court, however, has considered all of that evidence and only directly addresses those issues that are essential to the above determination.

two of which are occupied by residences. (DSMF ¶¶ 6-9; PRSMF ¶¶ 6-8.) The Court therefore is not convinced that the evidentiary basis for the Ordinance is not minimally connected to the secondary effects the Ordinance seeks to reduce.

Given the wealth of documentary evidence cited in the Ordinance, including studies produced by other cities and case law, as well as the Commissioners' own wisdom and common sense, the Commission had an adequate basis for concluding that limiting the location of sexually oriented businesses would prevent crime, prostitution, negative property values, urban blight, and other social costs associated with such establishments. The Court therefore concludes that Defendant has met its initial burden under the second O'Brien factor.

In accordance with the Alameda Books burden-shifting analysis, the Court next examines whether Plaintiffs have cast direct doubt on Defendant's rationales for and interests in enacting the Ordinance. For the following reasons, the Court concludes that Plaintiffs have failed to cast direct doubt on the above rationales for the Ordinance.

First, Plaintiffs have not demonstrated that the evidence cited in the Ordinance does not support Defendant's rationales and interests. Unlike the county in Flanigan's Enterprises, Defendant did not commission or conduct its own study of sexually oriented businesses and then rely on foreign studies to support its legislation. Neither have Plaintiffs produced a local study demonstrating that sexually oriented businesses have little or no secondary effects in Floyd County. Without such a local study, Defendant was free to rely on the evidence collected by other entities.

Even viewing Mr. McLaughlin's critiques of several of the studies referenced in the Ordinance in a light most favorable to Plaintiffs, Plaintiffs have not refuted even a majority of the pre-enactment studies and relied upon by the Commission to enact the Ordinance, or shown that the cited studies consist of "shoddy" data and do not support the Commission's rationales and interests. Indeed, the Court previously determined that Mr. McLaughlin incorrectly represents the 1994 Times Square study's findings and fails to explain why other "academic" studies are not applicable to the Ordinance's rationales or are inaccurate. Additionally, Mr. McLaughlin's critiques of Dr. McCleary's work are not applicable at this stage in the

Alameda Books burden-shifting analysis, as those studies are not cited by the Ordinance. Finally, Mr. McLaughlin's critiques of the 2001 Spokane documents focus on the issue of property values and ignore the evidence in those documents regarding crime, loitering, harassment, vandalism, prostitution, and exposure of children to pornography. Mr. McLaughlin, however, acknowledged that those documents showed a statistically significant higher overall percentage of occupant turnover in the area around sexually oriented businesses.

Second, Plaintiffs have not cited or furnished evidence that disputes all of the rationales, interests, and supporting factual findings set forth in the Ordinance. As discussed supra Part IV.A.5.a., Plaintiffs do not cite to or reference Mr. McLaughlin's discussion of allegedly contradictory and inconclusive findings regarding local government studies attached to his first affidavit in support of this argument. The Court again reiterates that it is not responsible for locating evidence in the record to support Plaintiffs' legal arguments. Nevertheless, the Court has reviewed those documents and determined that they do not provide sufficient applicable evidence to

contradict even a majority of the rationales, interests, and findings set forth in the Ordinance.

In his fourth affidavit, Mr. McLaughlin discusses an April 1978 St. Paul, Minnesota, study refuting a relationship between sexually oriented businesses and neighborhood deterioration. Viewing that evidence in a light most favorable to Plaintiffs, it may refute the Commission's findings and interests regarding the alleged negative impact of adult businesses on surrounding properties, such as urban blight; however, it is not enough to dispute the Commission's findings and interests with regard to the Commissions's other stated interests--crime, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, litter, and sexual assault and exploitation.

Third, for the reasons discussed above, the Court also is not convinced that the studies and case law cited in the Ordinance are inapplicable to Plaintiffs or Floyd County. There is no genuine factual dispute that Plaintiffs' store is located near residential developments, and thus Plaintiffs' arguments that the store is located in an entirely rural area simply are not persuasive. As discussed above, the Court is not convinced that the studies and case

law relied on by Defendant are irrelevant to Floyd County or to Plaintiff, as a off-site adult business. Furthermore, for the reasons set forth in its March 5, 2007, Order the Court declines to distinguish between on-site and off-site sexually oriented businesses in this case. (See Order of Mar. 5, 2007, at 74-76.)

The Court therefore concludes that Plaintiffs have failed to demonstrate that Defendant's evidence does not support its rationales for the Ordinance, or by furnishing evidence disputing the factual findings and showing that even a majority of Defendant's interests are not furthered by the Ordinance. Plaintiffs therefore have failed to cast direct doubt on Defendant's rationales for the Ordinance, and the Court need not proceed to the third prong of the Alameda Books burden-shifting analysis. Consequently, the Court concludes that the Ordinance satisfies the second O'Brien factor.

In sum, the Court concludes that the Ordinance is within Defendant's constitutional power, that Defendant reasonably believed that the evidence set forth in the Ordinance was relevant to the problems the Ordinance seeks to address, that the majority of the cited evidence fairly supports Defendant's

rationales for and interests in the Ordinance, that Plaintiff failed to cast direct doubt in those rationales and interests, that Defendant's interests are unrelated to the suppression of free expression, and that the Ordinance is narrowly tailored. Consequently, for the reasons set forth above, the Court determines that the Ordinance satisfies the four O'Brien factors. The Court separately addresses the issue of alternative avenues of communication with regard to Section 21 of the Ordinance infra Part IV.D.2.b.

b. The Ordinance Leaves Sufficient Alternative Avenues of Communication

In count seven of their Verified Complaint, Plaintiffs allege that the Ordinance "effectively denies adult businesses a reasonable opportunity to open and operate." (Compl. ¶ 66.)

Defendant argues that it has demonstrated that sufficient alternative avenues of communication exist under the Ordinance as a matter of law. Defendant contends that the Ordinance's 1,000-foot rule leaves at least thirty-eight parcels in Floyd County available for use by sexually oriented businesses, totaling approximately 760 acres, or 6.46 percent, of the land in Floyd County. Defendant also contends that Plaintiffs are the only adult or

sexually oriented business that has sought to operate in Floyd County since at least March 2002.

Plaintiffs argue that there are no alternative avenues of communication for adult uses under the Ordinance. Alternatively, Plaintiffs argue that there is a question of fact as to whether sufficient alternative avenues of communication are available under Floyd County's regulatory scheme. Plaintiffs dispute Defendant's contention that there are thirty-eight sites available for relocation by adult businesses and argue that, due to the Ordinance's requirement that adult businesses be located at least 1,000 feet from each other, there actually are only twelve to sixteen available sites. (Pl.'s Mot. Summ. J. at 37.) According to Plaintiffs, Defendant admits that fourteen of the thirty-eight identified sites are landlocked with no road frontage. Plaintiffs argue that the remaining twenty-four sites are not suited for any generic commercial use, and that the sites are zoned industrial and do not have street lights or sidewalks. Plaintiffs contend that most of the sites with existing industrial buildings could not provide sufficient parking for a retail establishment. Plaintiffs also contend that many of those sites are contaminated by hazardous waste or have deed restrictions precluding adult

uses. Plaintiffs assert that, in order to use the sites, Floyd County would be required to issue generic permits and that the codes governing the issuance of such permits are non-discretionary. According to Plaintiffs, the generic permit processes required for the development of raw land or the remodeling of an industrial facility are devoid of procedural safeguards and specific, brief time limits. Plaintiffs cite Lady J. Lingerie, Inc. v, City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999), in support of the above argument permits.

In Lady J. Lingerie, Inc., the city's ordinance required adult entertainment establishments to obtain an exception to operate in a particular area. 176 F.3d at 1361. The Eleventh Circuit observed that the city did not have a separate licensing procedure for adult establishments and therefore treated the required zoning exception as if it were a licensing scheme. Id. The Eleventh Circuit noted that licensing schemes are a form of prior restraint and give public officials the power to decide whether to permit expressive activity. Id. at 1361-62. The city's zoning laws permitted the board, at its discretion, to impose more restrictive requirements on certain applicants, lacked precise and objective criteria, failed to put any real time limits on the board's decision, and did not provide for prompt judicial

review. The Eleventh Circuit concluded that the city's land use code did not sufficiently limit the zoning board's discretion, but rather allowed it to covertly discriminate against such establishments. Id. at 1362.

As an initial matter, the Court notes that the inquiry into whether a regulatory scheme leaves reasonable alternative avenues of expression is part of the intermediate scrutiny analysis. Plaintiffs, however, have chosen to address this issue separately in their brief, and the Court therefore also addresses this issue separately.

Under Renton, an ordinance that restricts the location of adult entertainment establishments not only must serve a substantial government interest, but also must "leave open ample alternative avenues of communication." 475 U.S. at 50. Renton requires that an adult entertainment ordinance "refrain from effectively denying [adult businesses] a reasonable opportunity to open and operate . . ." Id. at 54.

The question of whether an ordinance leaves open reasonable alternative avenues of expression depends on how many sites are available. Lady J. Lingerie, 176 F.3d at 1361. Although the number of sites available under an ordinance is a factual question, whether a particular site is

available for use by an adult business and whether the sites available provide reasonable avenues for communicating a business' message is a question of law. Daytona Grand, Inc., 490 F.3d at 870-71.

Although the Supreme Court has not thoroughly explained what factors to consider when determining whether particular sites are reasonable for relocation, it suggested in Renton that adult entertainment establishments should be "on an equal footing with other prospective purchasers and lessees." David Vincent, Inc. v. Broward County, 200 F.3d 1325, 1333-34 (11th Cir. 2000) (quoting City of Renton, 475 U.S. at 54.); see also Boss Capital, Inc. v. City of Casselberry, 187 F.3d 1251, 1253-54 (11th Cir. 1999). However, commercial viability is not an appropriate consideration in making the above determination, and land deemed available in Renton included "'acreage in all stages of development from raw land to developed, industrial, warehouse, office, and shopping space.'" David Vincent, Inc., 200 F.3d at 1334 (quoting Renton, 475 U.S. at 53.)

The Eleventh Circuit has set forth the following general rules for determining whether land is available to adult businesses for First Amendment purposes:

> First, the economic feasibility of relocating to a site is not a First Amendment concern. Second, the fact that some development is required before a site can accommodate an adult business does not mean that the land is, per se, unavailable for First Amendment purposes. The ideal lot is often not to be found. Examples of impediments to the relocation of an adult business that may not be of a constitutional magnitude include having to build a new facility instead of moving into an existing building; having to clean up waste or landscaping a site; bearing the costs of generally applicable lighting, parking, or green space requirements; making due [sic] with less space that one desired; or having to purchase a larger lot than one needs. Third, the First Amendment is not concerned with restraints that are not imposed by the government itself or the physical characteristics of the sites designated for adult use . . . . It is of no import under Renton that the real estate market may be tight and sites currently available for sale or lease, or that property owners may be reluctant to sell to an adult venue.

David Vincent, Inc., 200 F.3d at 1334-35 (emphasis in original). Although the physical characteristics of a site or its current development could render relocation there unreasonable, examples of such unavailable sites include land under the ocean, airstrips of international airports, and sports stadiums. Id. at 1334.

The Eleventh Circuit also has "consistently recognized the importance of 'the correlation of available sites to existing adult businesses,'" Fly Fish, Inc., 337 F.3d at 1310, and has cited with approval the opinions of other Circuits holding that the number of sites available for adult businesses must

be greater than or equal to the number of adult businesses in existence at the time new regulations take effect, id. at 1310-11. Factors to be considered in that regard include, "'the community's population and size, the acreage available to adult businesses as a percentage of the overall size, the location of available sites, *the number of adult businesses already in existence*, and the number of adult businesses wanting to operate in the community in the future.'" Id. at 1311 n.21 (emphasis in original) (quoting Boss Capital, Inc., 187 F.3d, at 1254).

For the following reasons, the Court finds that no genuine issue of material fact remains as to the number of sites available under the Ordinance, and concludes as a matter of law that the available sites in Floyd County provide sufficient reasonable alternative avenues for sexually oriented and adult businesses to convey their message.

First, viewing the evidence in a light most favorable to Plaintiffs, the Court concludes that Defendant has produced evidence that at least twenty-four sites are available for use by sexually oriented businesses under the Ordinance, and that Plaintiffs have failed to meet their burden of coming forward with specific facts that demonstrate the existence of a genuine issue

in that regard. Plaintiffs' assertion that the Ordinance's requirement that such businesses must be located at least 1,000 feet apart, thus reducing the actual number of sites, is entirely speculative at this time. At present, Plaintiffs are the only sexually oriented or adult business in Floyd County, and Plaintiffs have adduced no evidence indicating that other such businesses are seeking to locate in Floyd County. As Plaintiffs are the only sexually oriented business in Floyd County, there is no reason why the number of sites would be limited by the Ordinance's restriction on two such businesses locating within 1,000 feet of each other. Furthermore, Plaintiffs' argument that fourteen of the thirty-eight sites are landlocked also is irrelevant. The existing case law is clear that acreage in all stages of development, including industrial land, may be deemed available, and thus considered as a site for relocation, and that the First Amendment is not concerned with a site's physical characteristics. Renton, 475 U.S. at 53-54; David Vincent, Inc., 200 F.3d at 1334. Plaintiffs do not contend that those sites are on par with the Eleventh Circuit's examples of sites to which relocation is unreasonable, including land under the ocean, airstrips of international airports, and sports stadiums. Nevertheless, and keeping in

mind that the Court must view the evidence in a light most favorable to Plaintiffs as the non-movants, the Court excludes the fourteen landlocked sites from its analysis regarding whether the sites identified by Defendant are reasonable alternative avenues of communication. The Court therefore now must determine whether the remaining twenty-four sites are legally available for relocation and whether there are sufficient available sites to provide reasonable avenues for sexually oriented businesses to communicate their message in Floyd County.

Second, the Court concludes that the remaining twenty-four sites are available for use by sexually oriented and adult businesses as a matter of law. Plaintiffs' argument that the sites identified by Defendant are not suited for any commercial use is irrelevant, as the case law is clear that commercial viability is not an appropriate consideration in making the above determination. Renton, 475 U.S. at 53-54; David Vincent, Inc., 200 F.3d at 1334. Additionally, the Court is not convinced that a lack of street lights, sidewalks, and sufficient parking, or the presence of hazardous waste and deed restrictions, make the sites unavailable. The fact that some development of a site is required, that a site may require the clean up of

hazardous waste, or that Plaintiffs would have to bear the costs of installing lighting and sidewalks or increasing parking are not impediments of constitutional magnitude. David Vincent, Inc., 200 F.3d at 1334-35 (citing cleaning up waste and installing lighting and parking as impediments that may not be of constitutional magnitude). Similarly, the First Amendment is not concerned with restraints that are not imposed by the government. See id. There is not enough evidence in the record, even considering the entirety of Mr. McLaughlin's fourth affidavit, to conclude that the physical obstacles to developing the sites are prohibitive. Nor does the record show that it would be impossible to fashion a lot to meet Plaintiffs' needs as a retail store through the purchase and division of the identified parcels. See id. at 1335.

Furthermore, Plaintiffs' concerns about obtaining the necessary permits to develop the sites for adult businesses are entirely speculative at this time. See David Vincent, Inc., 200 F.3d at 1335. Plaintiffs' citation to Lady J. Lingerie is not applicable to this case. Here, Defendant has enacted a licensing scheme for sexually oriented businesses which sets forth precise and objective criteria for the issuance of such licenses, (Ordinance § 5), gives officials a twenty day deadline within which to issue their decision

regarding licensing applications, (id.), requires a hearing to be held within twenty days after the denial, revocation, or suspension of such licenses, (id. § 11), requires written hearing decisions within five days, (id.), and provides for prompt judicial review of those decisions, (id.). For the reasons set forth above, the Court is not convinced that Defendant's generic permitting process is comparable to the unconstitutional zoning regulations in Lady J. Lingerie, Inc. The Court therefore concludes that the twenty-four sites identified by Defendant are "available" as a matter of law. The Court next determines whether the twenty-four available sites provide sufficient reasonable alternative avenues of communication.

Third, the Court concludes that the twenty-four sites available for use by sexually oriented and adult businesses provide reasonable avenues of communication for such businesses to convey their message. Plaintiffs admit that, as of May 2006, they are the only adult business that has operated in Floyd County. Additionally, as discussed above Plaintiffs have adduced no evidence to counter Defendant's assertion that no other such businesses have sought to locate in Floyd County or to show that other adult businesses are seeking to relocate to Floyd County. The number of sites

available to adult businesses in Floyd County therefore greatly exceed the number of adult businesses--here, only Plaintiffs' store--in existence at the time the Ordinance took effect and also clearly exceeds the number of adult businesses seeking to operate in the community--none. Additionally, those twenty-four available sites constitute approximately 227 acres, or approximately two percent, of the commercial and industrial land in Floyd County. (Plants Aff. ¶¶ 10-11). The Court therefore concludes that, as a matter of law, the twenty-four available sites identified by Defendant provide reasonable alternative avenues for Plaintiffs to convey their message.

For the reasons set forth above, the Court finds that there is no genuine factual issue that twenty-four sites are available for the location of sexually oriented businesses under the Ordinance, and concludes as a matter of law that those sites are legally available and provide more than sufficient reasonable alternative avenues of communication for sexually oriented and adult businesses to convey their message in Floyd County. Consequently, the Court grants Defendant's Motion for Summary Judgment with regard to the above claim.

c. Plaintiffs Do Not Have Vested Property Rights in Their Current Use

In count eight of their Verified Complaint, Plaintiffs allege that the "locational requirements contained in [the Ordinance] constitute zoning regulations subject to [Floyd County's] non-conforming use provisions contained in §2-19-7." (Compl. ¶ 69.) Plaintiffs also allege that their "substantial change in position by expenditure in reliance upon land use regulations in effect at the time they procured their building permit and opened for business conferred vested rights to continued use of Plaintiffs' property as an adult store." (Id. ¶ 73.)

Defendant argues that Georgia law compels the conclusion that the Ordinance is not a zoning ordinance. Defendant asserts that, pursuant to Georgia law, the Ordinance is not a zoning regulation because it does not regulate general uses of land through zones or districts, but rather applies to the particular activity of operating a sexually oriented business anywhere in Floyd County. Defendant contends that it has never changed the zoning designation of Plaintiffs' property, but rather simply enacted a licensing ordinance. According to Defendant, the Ordinance establishes a licensing

requirement and other regulations for sexually oriented businesses, including a requirement that such businesses not operate within 1,000 feet of certain uses.

Defendant also argues that they are entitled to summary judgment because Plaintiffs were not issued a building permit or certificate of occupancy for any adult business and because the Statute at issue prohibits Plaintiffs' store at its present location. Defendant asserts that the building permit and certificate of occupancy issued to Plaintiffs only indicate that Plaintiffs would operate a bookstore or video tape rental store, that the Ordinance does not prohibit those specific uses, and that neither document was issued for an adult bookstore or sexually oriented business. Defendant contends that Plaintiffs and their representatives did not disclose any plan or intent for an adult use during their interactions with the Rome/Floyd County Building Inspection Department, and that, regardless, Floyd County officials are required to issue or deny permits based on the information contained on permit application forms. Defendant also argues that Plaintiffs' building was ineligible for a sexually oriented business due to the Statute's 1,000-foot rule. Defendant argues that, as a result, any permit from Floyd

County to operate an adult business at Plaintiff's location would be void and would not confer any right to continue operating such a business.

Plaintiffs argue that they have a vested right to continue the present use of their property. Plaintiffs contend that their right is not contingent upon the Ordinance's characterization as a zoning or licensing regulation. Plaintiffs argue that they acquired vested zoning rights despite any ordinance enacted subsequent to their permit because they made substantial expenditures, incurred a total financial liability of over $594,000, and their use was allowable at the time their building permit was issued. Plaintiffs also contend that they were not required to designate their use as an adult business because, at the time Plaintiffs submitted their building permit application and zoning form, Floyd County did not require that adult businesses be identified as such, did not place any restrictions on the location of such businesses, and did not require such businesses to be licensed. According to Plaintiffs, their building permit was in compliance with Defendant's zoning ordinance and other ordinances at the time it was issued, Floyd County did not require them to designate what kind of bookstore or video tape rental store that they intended to open, and County

Commission Chairman John Mayes, Floyd County Manager Kevin Poe, and Rome/Floyd County Building Inspection Department Director Mike Ashley all were aware that Plaintiffs were planning to open an adult store. Plaintiffs argue that their right to use the property for an adult business therefore was vested because of the nonexistence of a restrictive ordinance at the time.

Plaintiffs also argue that the Statute, standing alone and absent an ordinance enacted thereunder, is not enforceable by Defendant and is not meant to apply directly to cities and counties. Plaintiffs also assert that neither the State nor Defendant can enforce the Statute against Plaintiffs because they have not been convicted or accused of obscenity, and because the Statute does not restrict the location of adult bookstores.

Plaintiffs cite an unpublished Eleventh Circuit case, Augusta Video, Inc. v. Augusta-Richmond County, 249 F. App'x 93 (11th Cir. 2007) (per curiam), for the proposition that a vested right is acquired in a particular property use despite any restrictions contained in an ordinance enacted subsequent to the issuance of a permit for the use. In Augusta Video, Inc., an adult bookstore's application for a special exception required by the city's zoning ordinance was denied. 249 F. App'x at 95. The bookstore did not

seek a licensing permit because the above application had been denied and proof of the special exception was required under the city's adult entertainment ordinance. Id. A district court enjoined the enforcement of the adult entertainment and zoning ordinances after holding that the special exception requirement violated the First Amendment because it gave the county commission too much discretion. Id. The county commission later amended the ordinances to eliminate the requirement and to change the zoning law to prohibit adult businesses from locating in the area at issue. Id. at 95-96. The new ordinances retained the requirement that applicants obtain business tax certificates and a licensing permit to operate an adult business. Id. at 96. The Eleventh Circuit held that because the special exception requirement was unconstitutional and because the adult bookstore met all of the other requirements of the zoning ordinance, the adult bookstore was entitled to have its use authorized by the county commission and was a lawful existing use that should be grandfathered into the location because it had taken substantial steps to open its business. Id. at 97-99. The Eleventh Circuit, however, also held that the above ruling did not allow the bookstore to open immediately for business. Rather, the Eleventh Circuit

explained that the bookstore must comply with the remaining valid zoning requirements of the original zoning ordinance and must obtain a business tax certificate and adult entertainment permit under the current adult entertainment ordinance. Id. at 99.

For the reasons set forth in its March 5, 2007, Order the Court applies Georgia law to Plaintiffs' vested property rights claim. (See Order Mar. 5, 2007.) Under Georgia law, "laws enacted pursuant to the police power for the public's protection may be modified without violating a constitutional prohibition against retrospective statutes." Goldrush II v. City of Marietta, 267 Ga. 683, 694, 482 S.E.2d 347, 358 (1997). Such modifications, however, cannot impinge upon vested rights. The Supreme Court of Georgia has explained vested rights as follows: "'To be vested, in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent.'" Goldrush II, 267 Ga. at 694, 482 S.E.2d at 358. (quoting Hayes v. Howell, 251 Ga. 580, 584, 308 S.E.2d 170, 175 (1983)); accord Board of Regents v. Roth, 408 U.S. 564, 577 (1972) (stating that "[t]o have a property interest .

. ., a person must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.")

With regard to zoning, the Supreme Court of Georgia has stated that

> [i]t is a tenant of zoning law that a property owner may acquire a vested right under a zoning ordinance which precludes retroactive application of zoning ordinances:
>
> "A landowner will be held to have acquired a vested right to continue in the construction of a building or structure and to initiate and continue a use despite a restriction contained in an ordinance, where, prior to the effective date of the ordinance, in reliance upon a permit theretofore validly issued, he had, in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations."

Goldrush II, 267 Ga. at 698, 482 S.E.2d at 360 (citations omitted) (quoting Barker v. County of Forsyth, 248 Ga. 73, 75-76, 281 S.E.2d 549, 552 (1981)). However, "[t]he issuance of a building permit results in a vested right only when the 'permit has been legally obtained and is valid in every respect.'" Union County v. CGP, Inc., 277 Ga. 349, 351, 589 S.E.2d 240, 242 (2003). "Where a permit is issued by a governing body in violation of an ordinance, even under a mistake of fact, it is void, and its holder does not acquire any rights; even a substantial expenditure in reliance on a void permit does not raise an estoppel." Id.

With regard to licenses, the Court has explained that, "[w]hile we have acknowledged the existence of 'constitutionally protected vested zoning rights,' of a property owner, under certain conditions, so as to preclude retroactive application of a *zoning* ordinance, the same is not applicable to *licenses* to conduct a business." Goldrush II, 267 Ga. at 698, 482 S.E.2d at 360 (citations omitted) (emphasis in original). In Goldrush II v. City of Marietta, adult business owners filed declaratory judgment actions against the city to prevent enforcement of a new ordinance prohibiting businesses from obtaining both a liquor license and an adult entertainment license for the same establishment. Id. at 683, 482 S.E.2d at 350-51. For several years, the adult businesses had obtained both licenses and had provided adult entertainment and served alcoholic beverages at the same locations. Id., 482 S.E.2d at 350. The businesses argued that they had spent substantial sums of money in reliance on the licenses and therefore had vested property rights in the renewal of both licenses which prevented the city from enacting retrospective laws that adversely affect their ability to provide both liquor and adult entertainment at the same locations. Id. at 693-97, 482 S.E.2d at 357-60. The Georgia Supreme Court held that the adult

businesses did not have vested rights to remain in business under the licensing regulations in existence at the time they received their initial licenses and that the businesses must meet the requirements in effect at the time they filed their annual licensing applications. Id. at 698, 482 S.E.3d at 361. The Goldrush II court explained that building permits are devices for ensuring compliance with zoning ordinances and create a vested right in existing zoning ordinances, but that business licenses do not typically serve such a function and do not bestow vested rights. Id. at 698, 482 S.E.2d at 360-61.

Additionally, due process requires that any licensing scheme enacted pursuant to the government's police power provide sufficient objective criteria to control the discretion of the governing authority and provide applicants with adequate notice of the criteria for issuance of a license. 267 Ga. at 693, 482 S.E.2d at 357. If a license is denied, revoked, or suspended, due process also requires notice and an opportunity to be heard. Id.

As an initial matter, the Court observes that Plaintiffs do not address Defendant's arguments that the Ordinance is a licensing ordinance and that summary judgment in favor of Defendant therefore is proper in that regard.

Rather, Plaintiffs simply state that the characterization of the Ordinance as a zoning or licensing law is irrelevant to their alleged vested rights. Plaintiffs' response and failure to respond to Defendant's argument that it is entitled to summary judgment with regard to Plaintiffs' claim that the Ordinance is a zoning ordinance results in Plaintiffs' abandonment of that claim. Under Local Rule 7.1 of the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is unopposed on that ground. See N.D. Ga. R. 7.1; Welch, 978 F. Supp. at 1137 ("Plaintiff's failure to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims."). Additionally, the Court addressed this issue in-depth in its March 5, 2007, Order. For the above reasons and those set forth in its March 5, 2007, Order, the Court concludes that the Ordinance constitutes a licensing ordinance under Georgia law. Consequently, the Court grants Defendant's Motion for Summary Judgment with regard to that claim. The Court next examines Plaintiffs' claim that they have a vested property right in their use of the property at issue.

For the following reasons, viewing the evidence in a light most favorable to Plaintiffs, as the non-movants, the Court concludes that, while

Plaintiffs may have acquired a vested right in their current zoning, Plaintiffs did not acquire a vested property right in their current use in light of Floyd County's licensing Ordinance and O.C.G.A. § 36-60-3.

First, viewing the evidence in a light most favorable to Plaintiffs, the Court concludes that Plaintiffs have not acquired a vested right to operate an adult bookstore or an adult video tape rental store in violation of Defendant's constitutional licensing Ordinance. For the purposes of this Order, the Court accepts Plaintiffs' assertions that they obtained a building permit and certificate of occupancy to build and operate an adult bookstore or adult video tape rental store.[28] Such permits, however, do not mean that Plaintiffs have a vested right in those uses in contravention of Defendant's valid licensing Ordinance. Rather, Plaintiffs' building permit and certificate of

[28] The parties disagree as to what Floyd County officials knew about the nature of Plaintiffs' store and whether the building permit and certificate of occupancy issued to Plaintiffs specifically authorized them to open an adult business. The Court concludes that the issue of what officials knew is a question of fact, and, given that Plaintiffs are the non-movant with regard to Defendant's Motion for Summary Judgment, the Court must view the facts in a light most favorable to Plaintiffs at this stage in the litigation. Additionally, Defendant has provided no case law in support of its argument that such documents must specifically state the type of business they authorize and that Floyd County officials' alleged knowledge about the store's purpose prior to issuing such documents is irrelevant. Consequently, for the purpose of ruling on Defendant's Motion for Summary Judgment, the Court accepts Plaintiffs' assertion that their building permit and certificate of occupancy were issued for an adult business.

occupancy simply mean that Plaintiffs are properly zoned to operate an adult bookstore or adult video tape rental store on their property and Plaintiffs therefore only have a vested right in the zoning ordinance existing at the time their permit was issued. As was required of the adult businesses in Augusta Video Inc. and Goldrush II, however, Plaintiffs still must obtain a license to operate their adult business under Defendant's valid licensing Ordinance.[29] This is true even though Defendant's licensing Ordinance was enacted after Plaintiffs began operating their business and even though Plaintiffs made substantial expenditures in their business under the ordinances in effect at the time.

In Goldrush II, prior to the city's new licensing ordinance, the plaintiff adult businesses were able to use their properties to provide adult entertainment and to serve alcoholic beverages. The Supreme Court of Georgia held that, unlike vested rights granted by zoning ordinances, the businesses did not obtain vested rights in those uses free from other regulations regardless of their substantial investments in reliance upon using

[29] For the reasons set forth supra Parts IV.D.2.a.-b., and infra Part IV.D.2.e., the Court concludes that the Ordinance is constitutional.

their properties for adult entertainment and to sell alcohol. Similarly, here, any vested rights Plaintiffs have in their present zoning, which both parties agree did not change, does not give Plaintiff a vested right to use their property free from future valid licensing schemes that may apply to Plaintiffs, such as the Ordinance at issue.[30] Furthermore, unlike the ordinance in Augusta Video, Inc., for the reasons set forth supra Part IV.D.2.a-b, the Court concludes that Defendant's licensing Ordinance is constitutional.

Second, the Court therefore concludes that no genuine factual dispute remains regarding the nature of Plaintiffs' store or its proximity to land zoned primarily for residential purposes, and that Plaintiffs consequently have no vested right in their present use pursuant to the Statute's 1,000-foot rule regarding explicit media outlets. The Court agrees with Plaintiffs that the Statute does not prohibit their functioning simply as an adult bookstore. Here, however, Plaintiffs have admitted that they are an explicit media outlet under the Statute, (Pls.'s Resp. Opp'n Def.'s Renewed Mot. for Summ. J. at

[30] For the reasons discussed above and in the Court's March 5, 2007, Order, the Ordinance is a licensing scheme and is not a device for ensuring compliance with zoning in Floyd County. (See Order of Mar. 5, 2007.) The Court also observes that the Ordinance provides specific criteria for the issuance of adult business licenses and provides notice, an opportunity to be heard, and an appeals process in the event that a license is denied, suspended, or revoked. (See Ordinance §§ 5, 11.)

4 ("the store does meet the statutory definition of 'explicit media outlet' just as readily as it meets the definition of 'adult bookstore.'")), and there is no genuine dispute that Plaintiffs are located less than 1,000 feet from several residences and areas zoned suburban residential. For the reasons set forth supra Part IV.D.1., the Court concludes that the Statute is not unconstitutional, that the Statute's 1,000-foot rule regarding explicit media outlets applied to Plaintiffs at the time their permit and certificate of occupancy were issued regardless of whether Defendant had enacted an ordinance pursuant to the Statute, and that the State can enforce the Statute against Plaintiffs.[31] The Court therefore concludes that, even assuming Plaintiffs' permit gives them a vested right to operate an adult bookstore or an adult video tape rental store, Plaintiffs do not have a vested right in their current operation as an explicit media outlet because any such right granted by a Floyd County permit was void in light of existing State law at the time.

For the reasons set forth above, the Court concludes that Plaintiffs did not acquire a vested property right to use their property in violation of valid

[31] The Court observes, and Plaintiffs do not argue otherwise, that the undisputed facts show that Plaintiffs' current use of the property at issue does not predate the Statute's 1,000-foot rule.

future licensing ordinances or as an explicit media outlet in violation of O.C.G.A. § 36-60-3. Consequently, the Court grants Defendant's Motion for Summary Judgment with regard to the above claim.

d. The Ordinance Does Not Effect an Unconstitutional Taking

In count nine of their Verified Complaint, titled "O.C.G.A. §2006-002A Violates Due Process-Unconstitutional Taking," Plaintiffs allege that Defendant enacted the Ordinance for improper motive and without rational basis, that the Ordinance's amortization provision cannot compensate Plaintiffs for their investments, that the Ordinance will result in a substantial diminution of the value of Plaintiffs' property, and that Plaintiffs' property is unsuited for other profitable uses. (Compl. ¶¶ 78-81.)

Defendant argues that the Ordinance does not effect an actual taking or the total destruction of all economically beneficial use of Plaintiffs' property. Defendant asserts that nothing in the Ordinance imposes an actual physical invasion of Plaintiffs' building or land, a destruction of all economically beneficial uses of the land, or an interference with the property that is tantamount to a physical invasion.

The Court observes that Plaintiffs fail to address Defendant's Renewed Motion for Summary Judgment with regard to count nine of Plaintiffs' Verified Complaint. Plaintiffs' failure to respond to Defendant's argument that it is entitled to summary judgment with regard to Plaintiffs' claim that the Ordinance violates the Due Process Clause and effects an unconstitutional taking results in Plaintiffs' abandonment of that claim. Under Local Rule 7.1 of the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is unopposed on that ground. See N.D. Ga. R. 7.1; Welch, 978 F. Supp. at 1137 ("Plaintiff's failure to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims.").

In any event, the Court is not persuaded by Plaintiffs' takings claim. The takings clause of the Fifth Amendment prohibits Floyd County from condemning "private property . . . for public use, without just compensation." U.S. Const. amend. V. The clause applies whenever government action renders property worthless. Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1014-16 (1992) (government action effectively condemns landowner's property if it denies him "all economically beneficial or productive use" of his

property.”). Similarly, the Georgia constitution provides that “private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.” Ga. Const. art. 1, § 3, ¶ I(a). Plaintiffs have not alleged that the Ordinance prevents all beneficial uses of their property. Viewing the evidence in a light most favorable to Plaintiffs, their allegations that a taking has occurred because their chosen use of the property may no longer be permitted and the Ordinance’s amortization clause cannot compensate them for their investments simply do not constitute a taking under the United States or Georgia Constitutions. See Rymer v. Douglass County, 764 F.2d 796, 801 (11th Cir. 1985) (“an otherwise valid exercise of the police power is not a taking simply because the regulation deprives the owner of the most beneficial use of his or her property”); Nasser v. City of Homewood, 671 F.2d 432, 438 (11th Cir. 1982) (holding that neither deprivation of most beneficial use of land nor severe decrease in property value is taking); Threatt v. Fulton County, 266 Ga. 466, 470, 467 S.E.2d 546, 550 (1996) (rejecting plaintiffs’ argument that land and water use plan requiring buffer zone around river banks effected taking where there was no showing that regulation deprived plaintiffs of any or all economially viable or

beneficial use of their property); see also SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1278 (5th Cir. 1988) (holding that police power of municipality is broad and includes restricting uses of property and rejecting claim that ordinance constituted taking because amortization provisions were inadequate and because ordinance did not prevent all reasonable uses of plaintiff's property); Centerfold Club, Inc. v. City of St. Petersburg, 969 F. Supp. 1288, 1307-08 (M.D. Fla. 1997) (holding that city ordinance limiting location of adult establishments did not effect taking of businesses that were prevented from operating because property was not deprived of all beneficial use).

The Court therefore concludes that no material factual issues remain with regard to the above claim, and that Plaintiffs' claim that the Ordinance violates the Due Process Clause and effects an unconstitutional taking on Plaintiffs must fail. Consequently, the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

e. The Ordinance's Amortization Provision Does Not Violate Due Process

In count ten of their Verified Complaint, Plaintiffs allege that the Ordinance "provides no definition or standards for 'financial hardship'," and thus "allows county officials to act arbitrarily and with excessive discretion." (Compl. ¶¶ 85-86.) According to Plaintiffs, the Ordinance directly contradicts Floyd County zoning code § 2-19-7, regarding nonconforming uses. Plaintiffs also allege that disparities in the Ordinance "render [the Ordinance] violative of due process in that a reasonable person is not on notice of whether he can continue to operate his business" and "allows county officials to act arbitrarily and with excessive discretion." (Id. ¶ 89-90.)

Defendant argues that the Ordinance's amortization provision does not apply to Plaintiffs. According to Defendant, Plaintiffs admit that they operate an explicit media outlet, as defined by the Statute, within 1,000 feet of an area zoned suburban residential violates state law, and therefore Plaintiffs did not legally operate their business prior to the date that the Ordinance took effect. Alternatively, Defendant argues that the Ordinance is valid because it requires Floyd County to permit any lawful nonconforming use for

at least two years, requires Floyd County to grant an extension for a reasonable period of time commensurate with the investment if the business demonstrates financial hardship, and sets forth the criteria to be considered when a business seeks a hardship extension. Defendant also asserts that the Ordinance is not a zoning regulation, does not conflict with the Floyd County zoning code, and does not change the zoning code or the zoning districts in which any use is allowed. Defendant also contends that Plaintiffs' store is not an lawful nonconforming use, and, regardless, amortization of nonconforming uses is permissible.

Plaintiffs argue that, although locational restrictions may be validly imposed in a licensing ordinance, nonconforming uses are only created through rezoning and have never been created by a licensing ordinance. According to Plaintiffs, Defendant's arguments that Plaintiffs are a nonconforming use that can be amortized must fail. Plaintiffs reason that, if Defendant is correct with regard to the Statute's 1,000-foot rule, Plaintiffs never operated legally and therefore cannot be a nonconforming use, and, if their operation was legal, Plaintiffs cannot be a nonconforming use because there has been no change in the zoning of the property at issue.

Plaintiffs also argue that Floyd County cannot amortize the use of its property through a licensing ordinance, and that their vested interest in the property at issue proscribes amortization.

The Supreme Court of Georgia explains nonconforming uses as follows:

> Nonconforming uses are uses of structures which were existing prior to the enactment of an ordinance rendering them nonconforming. However, our courts have been very careful to distinguish between *legal* nonconforming uses and *illegal* nonconforming uses. For example, the court in Troutman v. Aiken, 231 Ga. 55, 96 S.E.2d 585 (1957), stated that a nonconforming use for drag races on Sundays was not legally nonconforming, because the Sunday races were illegal without a special permit, and the property owner had never secured the necessary permit. And in Ralston Purina Co. v. Acrey, 220 Ga. 788, 791, 142 S.E.2d 66 (1965), the court stated: "Hence, even a nonconforming use would not be protected unless it appeared that it was lawful at its inception." Similarly, the court affirmed the trial court in Tucker v. City of Atlanta, 211 Ga. 157, 84 S.E.2d 362 (1854), in holding that, even though a permit for general repairs had been issued to the Tuckers, it could not be used to illegally enlarge a nonconforming use, because such construction was in violation of the zoning laws regarding nonconforming uses.

Corey Outdoor Adver., Inc. v. Board of Zoning Adjustments of City of Atlanta, 254 Ga. 221, 226-27, 327 S.E.2d 178, 184 (1985) (emphasis in original). Additionally, as discussed supra Part IV.D.2.c., due process requires that

licensing schemes provide sufficient objective criteria to control the discretion of the governing authority.

For the following reasons, the Court concludes that no genuine factual issue remains with regard to the above claim, and that Plaintiffs' claim that the Ordinance violates their due process rights must fail.

First, the Court agrees with Defendant that Section 21 of the Ordinance, referred to by the parties as the Ordinance's amortization provision, is not applicable to Plaintiffs. For the reasons set forth supra Parts IV.D.1, and IV.D.2.c., Plaintiffs' operation as an explicit media outlet was not a legal use of their property under the Statute's 1,000-foot rule. Plaintiffs therefore were not lawfully operating their business prior to the effective date of the Ordinance; thus, their business was not a legal nonconforming use under the Ordinance, and Plaintiffs acquired no vested property rights in that use.

Second, the Ordinance's amortization provision does not conflict with Floyd County's zoning code. For the reasons set forth in the Court's March 5, 2007, Order, the Court concludes that the Ordinance is a licensing scheme and is not a zoning regulation. (See Order of Mar. 5, 2007.) The

Ordinance also does not change section 2-19-17 of the Floyd County zoning code, or affect the zoning of property under that code. Additionally, the Court is not convinced that a licensing regulation cannot create or amortize a nonconforming use. The case law cited by Plaintiffs clearly defines nonconforming uses as "structures which were existing prior to the enactment of an ordinance rendering them nonconforming." Corey Outdoor Adver., Inc., 254 Ga. at 226, 327 S.E.2d at 184; see also BBC Land & Dev., Inc. v. Butts County, 281 Ga. 472, 473, 640 S.E.2d 33, 34 (2007) (quoting Corey Outdoor Adver., Inc., 254 Ga. at 226, 327 S.E.2d at 184, for above proposition). Furthermore, as the Supreme Court of Georgia explained in BBC Land & Development, Inc. v. Butts County, although vested rights cannot be divested without the consent of the person to whom it belongs, "[a] nonconforming use is not so indefeasible since '[a] governing authority can require a nonconforming use to be terminated in a reasonable time. [Cits.]'" BBC Land & Dev., Inc., 281 Ga. at 473, 640 S.E.2d at 34 (citations omitted in original); cf. David Vincent, Inc., 200 F.3d at 1332 & n.11 (holding that the Constitution does not require either waiver provision or grandfather clause for existing nonconforming businesses and noting that courts frequently

uphold action of new zoning regulations to existing adult businesses with amortization period). Therefore, even if Plaintiffs were legally operating an adult bookstore on the site, Plaintiffs would simply be a legal nonconforming use and subject to the Ordinance's amortization provision.

Third, the Court concludes that Section 21 of the Ordinance does not allow officials to act arbitrarily and with excess discretion. The Court observes that Plaintiffs do not address Defendant's argument that the amortization provision is not vague and sets forth criteria for hearing officers considering hardship extensions. Indeed, section 21(d)(i) through (iii) sets forth the findings the hearing officer must make in order to approve the extension, including: that the applicant made a substantial investment,[32] that the property or structure cannot be readily converted to another conforming use, that the investment was made prior to the effective date of the Ordinance, that the application will be unable to recoup the investment by the date established for termination of the use, and that the applicant made a good faith effort to recoup the investment and to relocate the use to a

[32] The Court observes that subsection (d)(i) further defines substantial investment as including but not limited to lease obligations. (Ordinance § 21(d)(i).)

conforming location. (Ordinance §21(d)(i)-(iii).) The Court also observes that subsection (d) of that section requires the clerk to schedule a hearing within ten days of receiving an application for a hardship extension, requires that the hearing be held within thirty days after the application is received, and requires the hearing officer to issue an opinion within ten days after the hearing. (Id. § 21(d).) That section also provides for notice to the applicant, as well as public notice, and allows all parties to offer testimony and other evidence, to be represented by counsel, and to confront and cross-examine witnesses. (Id.) Given the above criteria, the Court is not convinced that the Ordinance allows Floyd County officials to act arbitrarily and with excessive discretion. Rather, the Court concludes that the above provision is adequately precise and sufficiently limits the hearing officer's discretion.

Fourth, the Court is not convinced that Sections 17 and 21 of the Ordinance conflict and thus do not provide a reasonable person with notice that the Ordinance is applicable to his business. Section 17 clearly states that sexually oriented businesses and employees are granted a defacto license for a period of ninety days after the Ordinance takes effect and must conform to the Ordinance at the end of that period. (Ordinance § 17.)

Section 21(c) then sets forth the procedures to be taken in the event that a sexually oriented business does not conform to the requirements set forth in Section 21(a) of the Ordinance. (Id. § 21(c).)

The Court therefore concludes that no genuine factual issues remain with regard to the above claim, and Plaintiffs' claim that the Ordinance violates their due process rights must fail. Consequently, the Court grants Defendant's Motion for Summary Judgment with regard to the above claim.

f. The Ordinance Does Not Violate the Equal Protection Clause

In count eleven of their Verified Complaint, Plaintiffs allege that the Ordinance imposes fees based on the content of expression and violates the Equal Protection Clause. (Compl. ¶ 92.)

Defendant argues that the Ordinance imposes minimal license and renewal fees on sexually oriented businesses and that those fees are content-neutral and serve Defendant's interest in preventing and abating the negative secondary effects of sexually oriented businesses by supporting the administration of Defendant's regulations on those businesses. The Court observes that Plaintiffs fail to address Defendant's Renewed Motion for

Summary Judgment with regard to count eleven of Plaintiffs' Verified Complaint.

In Cox v. State of New Hampshire, 312 U.S. 569 (1941), the Supreme Court held that licensing fees were not unconstitutional where such fees were collected to meet administrative expenses incident to the regulation of the licensed activity. 312 U.S. at 577; accord I.D.K., Inc. v. Ferdinand, 277 Ga. 548, 551, 592 S.E.2d 673, 675-76 (2004). The Supreme Court also has held that local governments may regulate adult entertainment establishments differently than other businesses if the regulation is content-neutral and aimed at ameliorating the secondary effects caused by such establishments. See Young, 427 U.S. at 70-71.

For the following reasons, the Court concludes that no material factual issues remain with regard to the above claim, and that the Ordinance does not violate Plaintiffs' rights under the Equal Protection Clause.

First, Plaintiffs' failure to respond to Defendant's argument that it is entitled to summary judgment with regard to Plaintiffs' claim that the Ordinance violates Plaintiffs' rights under the Equal Protection Clause constitutes Plaintiffs' abandonment of that claim. Under Local Rule 7.1 of

the Northern District of Georgia, Defendant's Renewed Motion for Summary Judgment is unopposed on that ground. See N.D. Ga. R. 7.1; Welch, 978 F. Supp. at 1137 ("Plaintiff's failure to respond to Defendant's argument alone entitles Defendant to summary judgment on these claims.").

Second, Plaintiffs have not alleged or shown that the Ordinance has been administered in a discriminatory manner, or that the fees imposed exceed the amount necessary to enforce the Ordinance.

Third, for the reasons set forth supra Part IV.D.2.a., the Ordinance is content-neutral, and Plaintiffs have not shown that Defendant's interest in preventing the secondary effects of adult businesses does not adequately support the Ordinance, or that the Ordinance is not aimed at combating the adverse secondary effects associated with adult businesses.

The Court therefore concludes that no genuine factual issues remain with regard to the above claim, and that Plaintiffs' claim that the Ordinance violates their rights under the Equal Protection Clause must fail. Consequently, the Court grants Defendants' Renewed Motion for Summary Judgment with regard to the above claim.

V. Plaintiffs' Motion for Summary Judgment

A. Factual Background

The Court incorporates the factual background discussion set forth supra Part IV.A. into the discussion of the facts relevant to Plaintiffs' cross Motion for Summary Judgment.

B. Procedural Background

The Court incorporates the procedural background discussion set forth supra Part IV.B. into the procedural background discussion for purposes of Plaintiffs' cross Motion for Summary Judgment.

C. Summary Judgment Standard

The Court applies the same standard as set forth supra Part IV.C. when evaluating Plaintiffs' cross Motion for Summary Judgment.

D. Discussion

In their cross Motion for Summary Judgment, Plaintiffs specifically seek summary judgment with regard to their claims that the Ordinance violates Plaintiffs' vested property rights and that the Ordinance's amortization provision cannot divest Plaintiffs of those alleged rights. (Pls.' Mot. Summ. J. at 1.) In their supporting brief, however, Plaintiffs argue that they are

entitled to summary judgment with regard to the two claims set forth above and with regard to their claims that the Ordinance fails to provide reasonable alternative avenues of communication and fails to serve a substantial government purpose. (Pls.' Resp. Opp'n Def.'s Renewed Mot. for Summ. J. at 1-2.)

The Court observes that Plaintiffs filed a combined brief opposing Defendant's Motion for Summary Judgment and supporting of their cross Motion for Summary Judgment. Plaintiffs' arguments addressed supra Part IV.D.2 with regard to Defendant's Motion for Summary Judgment on the above claims are the same as those Plaintiffs proffered in support of their cross Motion for Summary Judgment. For the reasons set forth supra Part IV.D.2., and, even viewing the facts in the light most favorable to Plaintiffs, the Court concludes that Plaintiffs' cannot prevail on their claims that the Ordinance violates Plaintiffs' vested property rights, that the Ordinance's amortization provision cannot divest Plaintiffs of those alleged rights, that the Ordinance fails to provide reasonable alternative avenues of communication, and that the Ordinance fails to serve a substantial government purpose.

Consequently, the Court denies Plaintiffs' cross Motion for Summary Judgment.

VI. Conclusion

ACCORDINGLY, the Court **GRANTS** Defendant's Renewed Motion for Summary Judgment [59], **DENIES** Plaintiffs' Motion for Leave to File Motion for Sanctions for Filing Affidavit in Bad Faith [94], **DENIES** Plaintiffs' cross Motion for Summary Judgment [95], and **GRANTS IN PART AND DENIES IN PART** Defendant's Notice of Objection to Evidence and Motion to Disregard [114], as set forth in the above Order. The Court **DISMISSES** this case, and **DIRECTS** the Clerk to **CLOSE** the case.[33]

IT IS SO ORDERED, this the 14th day of March, 2008.

UNITED STATES DISTRICT JUDGE

[33] For the reasons set forth in the above Order, all of Plaintiffs' claims fail on the merits. Consequently, the Court may properly dismiss this case, as Plaintiffs therefore cannot obtain the declaratory judgments, injunctions, damages, and fees that they seek. Additionally, Defendant has a pending Motion to Compel Payment. (Docket Entry No. 125.) The Court will address that Motion in due course.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

10950 RETAIL, LLC d/b/a LOVE SHACK,	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	FILE NO. 1:06-CV-1923-TWT
FULTON COUNTY, GEORGIA, et al.,	)	
Defendants.	)	

~~PROPOSED~~ ORDER ON DEFENDANTS' MOTION FOR INJUNCTIVE RELIEF

The instant matter is currently before this Court on motion of the Defendants seeking injunctive relief in the form of an Order closing the establishment owned and operated by the Plaintiff at 10950 State Bridge Road (Johns Creek Love Shack).* For the reasons stated herein, the Defendants' motion is hereby granted.

BACKGROUND AND FACTUAL FINDINGS

This suit represents a challenge to the actions of Fulton County Government with regard to the Plaintiff's establishment. On or about July 12, 2006, the Plaintiff, 10950 Retail, LLC d/b/a Love Shack (hereinafter Plaintiff) sought to apply for a business occupational tax certificate from Fulton County. At the time it attempted to submit its application, it was advised

* The court has supplemental jurisdiction as to the Defendants' counterclaim pursuant to 28 U.S.C. § 1367(a). TWT

that it would need a statement from the Department of the Environment and Community Development that it was properly zoned for an adult bookstore.

Some time after that initial encounter, the Plaintiff's representatives went to the Department of the Environment and Community Development to seek an approval of zoning. At that time, the Plaintiff was advised of the necessary requirements for obtaining a zoning approval.

By letter dated July 14, 2006, the Plaintiff was further advised by Terry Todd, the acting director of the Fulton County Department of the Environment and Community Development, that it would be necessary for the Plaintiff to seek a rezoning to an M-1 or M-2 (industrial) zoning district, and obtain a use permit in order to be properly permitted within Fulton County. The Plaintiff did not appeal the decision of Terry Todd to the Fulton County Board of Zoning Appeals as was allowed by the Fulton County Code. It instead filed this action.

On October 4, 2006, this Court entered an Order denying the Plaintiff's request for a temporary restraining order and mandamus relief. In doing so, this Court found that the Plaintiff lacked a substantial likelihood of success on the merits due to the fact that the issues were not yet ripe for

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judicial review and the fact that the Love Shack had entered into an agreement with Fulton County whereby it agreed to bring no further challenges to any Fulton County ordinances.

Some time after that Order, the Plaintiff again sought a rezoning and use permit or an appeal from the earlier decision that they were an adult bookstore from Fulton County. The ~~Love~~ Plaintiff was again advised in a letter from Terry Todd that no rezoning, use permit, or appeal could be had due to the fact that all rezonings and appeals had been stayed for any location in the newly incorporated city of Johns Creek. Furthermore, the letter pointed out that, pursuant to Fulton County Code, no action could be taken regarding the property due to the fact that the property was now the subject of a pending lawsuit.

Faced with this, the Plaintiff on November 29, 2006, opened its doors to the public without a business occupational tax certificate from the County and in violation of the Fulton County Zoning Resolution which requires an adult use permit and a rezoning to an industrial district. The Defendants seek closure of this store.

CONCLUSIONS OF LAW

The "grant or denial of a preliminary injunction is a decision within the sound discretion of the district court."

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Sierra Club v. Georgia Power Co., 180 F.3d 1309, 1310 (11th Cir. 1999); United States v. Lambert, 695 F.2d 536, 539 (11th Cir. 1983). To justify a preliminary injunction, the moving party must plainly establish four preconditions: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a showing that plaintiff will suffer irreparable injury if an injunction does not issue, (3) proof that the threatened injury to plaintiff outweighs any harm that might result to the defendants, and (4) a showing that the public interest will not be disserved by grant of a preliminary injunction. Cunningham v. Adams, 808 F.2d 815, 819 (11th Cir. 1987); Johnson v. United States Dep't of Agric., 734 F.2d 774, 781 (11th Cir. 1984). The preliminary injunction is an extraordinary and drastic remedy not to be granted until the movant clearly carries the burden of persuasion as to the four prerequisites. The burden of persuasion in all of the four requirements is at all times upon the ~~plaintiff~~ movant. United States v. Jefferson County, 720 F.2d 1511, 1519 (11th Cir. 1983), quoting Canal Authority of State of Florida v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974); accord Cunningham, 808 F.2d at 819; Zardui-Quintana v. Richard, 768 F.2d 1213, 1216 (11th Cir. 1985).

As an initial matter, the Court notes that Fulton County

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has standing to seek the instant relief. The Plaintiff has argued that the City of Johns Creek and not Fulton County should be the proper party seeking injunctive relief. This Court notes, however, that pursuant to legislation creating Johns Creek, the County maintains all zoning, permitting and licensing authority over the City of Johns Creek until such time as Johns Creek notifies the County that it will assume those functions. That has not yet happened and the County may bring this action seeking to stop the Love Shack from currently violating its ordinances.

The County has shown a substantial likelihood that it will succeed on the merits. The Love Shack is currently operating without proper zoning and without a business occupational tax certificate, both necessary requirements for operation. Although the Love Shack argues that the County has improperly deemed it to be an adult bookstore[1], ~~the failure to properly obtain a final decision regarding this determination~~, the general presumption that the government is acting properly[2] and pursuant to its authority, and the fact that the County, through

[1] The designation of an adult bookstore triggers the need for rezoning and a use permit.
[2] See Epps v. State, 134 Ga.App. 429 (1975); Campbell v. The State, 136 Ga.App. 338 (1975).

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numerous lawsuits in both Federal and State Court with the Love Shack, is particularly familiar with the Love Shack as a business entity, compel this Court to find that the County would likely succeed on the merits regarding its designation of the Love Shack as an adult bookstore.

The County has further shown that it will suffer irreparable injury if an injunction does not issue. Although the Plaintiff argues that the County has other remedies available, the reality is that the County has no meaningful remedy at law other than the issuance of an injunction to stop the continued violation of its ordinances. In addition, case law has long established the negative effects adult businesses have on communities. Goldrush II v. City of Marietta, 267 Ga. 683, 482 S.E.2d 347(1997); see, e.g., City of Erie v. Pap's A.M., 529 U.S. 277 (2000); Barnes v. Glen Theatre, 501 U.S. 560; Sammy's of Mobile, 140 F.3d 993 (11th Cir. 1998). These cases establish the nature of the harm in this case and justify the issuance of a closure order until such time as the Love Shack has been properly approved by Fulton County or Johns Creek.

Moreover, as noted above, the proof of the threatened harm to the County outweighs any harm to the Plaintiff. Indeed, it is difficult to see how the closure of the Love Shack until such

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time as it complies with the laws of the County could possibly harm its establishment. By issuing a closure order, this Court is merely requiring the Love Shack to do what every other business entity within Fulton County is required to do - get proper permitting.

Finally, the issuance of an injunction would not disserve the public interest. Indeed, the public is entitled to have businesses comply with all business licensing and permitting requirements. These requirements preserve the public health, safety and welfare of all County citizens. The failure to comply, as the Love Shack has done here, disserves the public interest and harms the quality of life of all its citizens.

It is hereby ORDERED that the Love Shack close its retail establishment located in Johns Creek until such time as it obtains proper zoning and permitting from either Fulton County or the City of Johns Creek or until further order of this Court. **

So Ordered, this 21 day of December, 2006.

Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

** This closure order applies as long as the Plaintiff offers for sale a significant amount of adult, sexually explicit media or sex toys, material. TWT

CITY OF BROOKHAVEN, GA SOB REGS 002750

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

10950 RETAIL, LLC d/b/a LOVE SHACK,	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	FILE NO. 1:06-CV-1923-TWT
FULTON COUNTY, GEORGIA, et al.,	)	
Defendants.	)	

PROPOSED ORDER FINDING 10950 RETAIL d/b/a LOVE SHACK IN CONTEMPT

The above matter is currently before this Court on motion of the Defendants seeking to have this Court find the Plaintiff in contempt for violating this Court's December 21, 2006, Order. For the reasons stated herein, the Defendant's Motion for Contempt is granted.

Finding of Contempt

At issue in this contempt proceeding is the parties' interpretation of a provision in this Court's December 21, 2006, Order which provides that the Love Shack shall close its retail establishment "as long as the Plaintiff offers for sale a significant amount of adult, sexually explicit media or sex toys, material". The Plaintiff has offered that it has reduced

its stock in trade to approximately 5% "adult" related material. The Defendants do not seriously challenge this statement, but rather argue that by their own admission, the Plaintiffs still offer over 2300 adult DVD's and 1600 sex toys, and that this is a "significant amount" within the meaning of this Court's December Order.

"A finding of civil contempt -- willful disregard of the authority of the court -- must be supported by clear and convincing evidence." Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1296 (11th Cir. 2002) (citing McGregor v. Chierico, 206 F.3d 1378, 1383 (11th Cir. 2000)). "The clear and convincing evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order." Id. "In determining whether a party is in contempt of a court order, the order is subject to reasonable interpretation, though it may not be expanded beyond the meaning of its terms absent notice and an opportunity to be heard." Id., (citing United States v. Greyhound Corp., 508 F.2d 529, 537 (7th Cir. 1974); Doe v. Bush, 261 F.3d 1037, 1063-64 (11th Cir. 2001); Reynolds v. Roberts, 207 F.3d 1288, 1300-01 (11th Cir. 2000)).

The Court is satisfied that the Defendants have shown by clear and convincing evidence that the Plaintiffs currently offer a significant amount of adult, sexually explicit material, for sale at the Love Shack such that they are in contempt of this Court's December 21, 2006, Order. Although the Plaintiffs have presented evidence that they have reduced their stock such that there is no longer a "significant portion" of their stock in trade as sexually explicit material, this Court intentionally used the term "amount" rather than "portion" or "percentage" in an effort to avoid the type of merchandise manipulation the Plaintiff has engaged in here. This Court did not want the Plaintiff to be able to add inventory to reduce the percent of stock in trade – precisely what the Love Shack has done in violation of this Court's Order. There is no reasonable interpretation that would categorize over 2300 adult DVD's and 1600 sex toys offered for sale as an insignificant amount. For this reason, the Plaintiffs are in contempt.

Relief Granted

In order to secure compliance with this finding, this Court will impose a fine of $1000 per day from the effective date of the December 21, 2006, Order, until 12:01 a.m., Friday, January

5, 2007. This Court will suspend such fine, however, provided the Love Shack fully and completely complies with all Court Orders by 3:00 p.m., Thursday, January 4, 2007. By way of further clarification, significant amount shall mean an amount that is significant in number, regardless of percentage of merchandise. The Love Shack, to comply with this Order, shall close its doors to the public or reduce its stock in trade such that it no longer offers for sale a significant amount of adult, sexually explicit media or sex toys, material.

Finally, this Court's December 21, 2006, and any fines or additional requirements imposed pursuant to this Order, shall terminate on 12:01 a.m., ~~Saturday~~ Friday, January ~~6~~ 5, 2007.

TWT

So ORDERED, this 4 day of January, 2007.

Thomas W. Thrash

THOMAS W. THRASH, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Edward W. Nottingham

Civil Action No. 99-N-1696

Z.J. GIFTS D-4, L.L.C., a Colorado Limited Liability Company d/b/a CHRISTAL'S,

Plaintiff,

vs.

CITY OF LITTLETON, an incorporated home rule municipal corporation,

Defendant.

ORDER AND MEMORANDUM OF DECISION

(Filed Mar. 31, 2001)

This case involves numerous constitutional challenges to a city ordinance that regulates adult entertainment businesses. Plaintiff Z.J. Gifts alleges that Chapter 14 of the Littleton Municipal Code deprives it of its right to freedom of speech and due process secured by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, as well as Article II, Sections 10, 15 and 25 of the Colorado Constitution, in violation of 42 U.S.C.A. § 1983 (West 1994 & Supp. 2000). This matter is before the court on: (1) Defendant's "Motion for Summary Judgment" filed June 15, 2000; and (2) Plaintiff's "Brief in Support of Plaintiff's Cross Motion for Partial Summary Judgment and In Opposition to Defendant's Cross Motion for

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Summary Judgment" filed July 24, 2000. Jurisdiction is based on 42 U.S.C.A. § 1983.

FACTS

1. General Background

Z.J. Gifts is a Colorado limited liability company doing business under the name "Christal's" at 6502 South Broadway in the City of Littleton. (Mem. Br. in Supp. of Def.'s Mot. for Summ. J., Statement of Facts ¶12 [filed June 15, 2000] [hereinafter "Def.'s Br."]; *admitted at* Br. in Supp. of Pl.'s Cross Mot. for Partial Summ. J. and in Opp'n to Def.'s Cross Mot. for Summ. J., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 12 [filed July 24, 2000] [hereinafter "Pl.'s Br."].) Defendant City of Littleton is a home-rule municipal corporation organized under the laws of the state of Colorado. (Pl.'s Br., Statement of Undisputed Facts ¶ 3; *admitted at* Def.'s Reply Br. in Supp. of Mot. for Summ. J. and Def's Resp. Br. in Opp'n to Pl.'s Cross-Mot. for Summ. J., Def.'s Resp. to Pl.'s Statement of Undisputed Facts ¶ 3 [filed Aug. 24, 2000] [hereinafter "Def.'s Reply"].)

On July 20 and August 3, 1993, the Littleton City Council held public hearings regarding the Ordinance ("Chapter 14") at issue in this case. (Def.'s Br., Statement of Facts ¶¶ 1, 2; *admitted at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶¶ 1, 2.) At these hearings, city council members reviewed land use summaries from other cities that documented the adverse secondary impacts that adult entertainment establishments have on adjacent and nearby properties. (*Id.*, Statement of Facts ¶¶ 3, 9; *admitted at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶¶ 3, 9.) The council members also

heard testimony regarding the deleterious effects that adult entertainment businesses have on surrounding businesses, property values, and crime rates. (*Id.*, Ex. A [Ordinance].) Based on these findings and others, the Ordinance was passed by a vote of council members on August 3, 1993. (*Id.*, Statement of Facts ¶ 11; *admitted in relevant part at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 11.)

The City of Littleton covers 7,860 acres of land, which are divided into residential, business, and industrial zones. (*Id.*, Statement of Facts ¶ 4; *admitted in relevant part at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 4.) Of the 7,860 acres in Littleton, 75.5% is zoned for residential use, 5.3% is zoned for business, and 1.3% is zoned for industrial use. (*Id.*, Statement of Facts ¶ 4; *admitted in relevant part at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 4.) Of the land that is zoned for business or industrial uses, 19.8% is zoned in the I-1 or I-2 districts. (*Id.*, Statement of Facts ¶ 4; *admitted in relevant part at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 4.) Plaintiff's business is located in the B-2 district, which is located in a business zone rather than an industrial zone. (Pl.'s Br., Statement of Undisputed Facts ¶ 4; *admitted at* Def.'s Reply, Def.'s Resp. to Pl.'s Undisputed Facts ¶ 4.)

2. *Chapter 14*

Section 3-14-1 of Chapter 14 states that "purpose and intent of this Chapter is to regulate adult businesses, to promote the health, safety, morals and general welfare of the citizens of the City, and establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult businesses within the City,

thereby reducing or eliminating the adverse secondary effects from such adult businesses." (Compl. for Prelim. and Permanent Injunctive Relief, Declaratory Relief, Damages, and Att'ys Fees, Ex. A [Chapter 14] [filed Aug. 25, 1999] [hereinafter "compl."].)

Section 3-14-4 requires all persons who conduct an adult business to obtain an annual adult business license. (*Id.*, Ex. A [Chapter 14].) Section 3-14-8 requires the city clerk to approve or deny any application for an adult business license within thirty days of the date the application is filed with the city clerk. (*Id.*, Ex. A [Chapter 14].) Under section 3-14-8, the city clerk is compelled to deny a license application for eight detailed reasons:

1. The applicant is under the age of twenty-one years;
2. The applicant has made a false statement upon the application or has given false information in connection with an application;
3. The applicant or any holder of any class of stock, or a director, officer, partner or principal of the applicant has had an adult business license revoked or suspended anywhere within the State within one year prior to the application;
4. The applicant has operated an adult business which has determined to be a public nuisance under State law or this Code within one year prior to the application;
5. A corporate applicant is not in good standing or authorized to do business in the State; or

6. The applicant is overdue in the payment to the City of taxes, fees, fines or penalties assessed against him/her or imposed against him/her to an adult business;

7. The applicant has not obtained required sales tax license;

8. The applicant has been convicted of a specified criminal act.

(*Id.*, Ex. A [Chapter 14].) In the event the city clerk denies a license, the city clerk must make written findings of fact stating the reasons for the denial. (*Id.*, Ex. A [Chapter 14].) An applicant who has been denied a license has the right to a hearing before the city manager within thirty days of the denial. (*Id.*, Ex. A [Chapter 14].) The order of the city manager is final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). (*Id.*, Ex. A [Chapter 14].)

3. *Procedural History*

On August 25, 1999, plaintiff filed a six-count complaint against defendant for alleged violations of its First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. (Compl. ¶ 27.) Plaintiff alleges that Chapter 14 of the Littleton Municipal Code is unconstitutional for a variety of reasons. (*Id.* ¶¶ 26-54.) Plaintiff seeks a declaration that Chapter 14 is unconstitutional, a permanent injunction prohibiting Littleton from enforcing Chapter 14, and damages. (*Id.*, Prayer for Relief.)

On June 15, 2000, defendant moved for summary judgment. (Mot. for Summ. J. [filed June 15, 2000].) Defendant contends that Chapter 14 of the Littleton Municipal Code is not unconstitutional because it is a

legitimate time, place and manner restriction designed to serve a substantial governmental interest and it does not unreasonably limit alternative avenues of communication. (Def.'s Br. at 17-28.) Defendant also argues that plaintiff is an adult business store as defined under Chapter 14 and is, therefore, subject to the provisions of Chapter 14, (*Id.* at 10-17.)

On July 24, 2000, plaintiff moved for summary judgment on a variety of grounds. (Pl.'s Br. at 1.) By way of illustration and not limitation, plaintiff argues that Chapter 14 is a content-based regulation and a prior restraint on speech subject to strict judicial review. and that Chapter 14 lacks procedural safeguards required under the First Amendment case law. (*Id.* at 6-10, 10-29). Plaintiff also argues that it is not an adult entertainment establishment as defined by Chapter 14. (*Id.* at 39-47.)

ANALYSIS

1. *Legal Standard*

Under rule 56(c), the court may grant summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511 (1986); *Concrete Works, Inc. v. City & County of Denver*, 36 F.3d 1513, 1517 (10th Cir. 1994). The moving party bears the initial burden of showing an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554 (1986). "Once the moving party meets this burden,

the burden shifts to the nonmoving party to demonstrate a genuine issue for trial on a material matter." *Concrete Works, Inc.*, 36 F.3d at 1518 (citing *Celotex Corp.*, 477 U.S. at 325, 106 S. Ct. at 2554). The nonmoving party may not rest solely on the allegations in his or her pleadings, but must instead designate "specific facts showing that there is a genuine issue for trial." *Celotex Corp.*, 477 U.S. at 324, 106 S. Ct. at 2553; Fed. R. Civ. P. 56(e). The court may consider only admissible evidence when ruling on a summary judgment motion. *See World of Sleep, Inc. v. La-Z-Boy Chair Co.*, 756 F.2d 1467, 1474 (10th Cir. 1985). The factual record must be viewed in the light most favorable to the nonmoving party. *Concrete Works, Inc.*, 36 F.3d at 1518 (citing *Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc.*, 912 F.2d 1238, 1241 [10th Cir. 1990]).

2. *Interpreting Chapter 14*

Initially, I must determine whether Z.J. Gifts is an adult entertainment business as defined by Chapter 14. Section 3-14-2 defines an adult bookstore or novelty store as a commercial establishment which devotes a "significant or substantial" portion of its stock-in-trade or interior floor space to the sale, rental or viewing of items which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. (*Id.*, Ex. A [Chapter 14].) Section 3-14-2 defines specified anatomical areas as "(a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or (b) Human male genitals in a discernible turgid state, even if completely and opaquely covered." (*Id.* ¶ 12; *admitted at* Answer and Jury Demand ¶ 6 [filed Sept. 15,

1999] [hereinafter "Answer"].) Section 3-14-2 defines specified sexual activities:

> (a) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (c) masturbation, actual or simulated; (d) human genitals in a state of sexual stimulation, arousal, or tumescence; or (e) excretory functions as part of or in connection with any of the activities set forth in subsections (a) through (d) of this definition.

(*Id.* ¶ 13; *admitted at* Answer ¶ 6.)

The term "significant or substantial" is not defined by the Littleton Municipal Code. (*Id.* ¶ 18; *admitted in relevant part at* Answer ¶ 9.) Plaintiff contends that Littleton's failure to define the term "significant and substantial" renders Chapter 14 unconstitutionally vague and overbroad. (Pl.'s Br. at 39-47.) Alternatively, plaintiff requests that I define the term "significant and substantial" in such a manner so that plaintiff does not fall under its definition. (*Id.*) After reviewing the case law and evidence in this case, I find that plaintiff is an adult entertainment establishment subject to the regulations under Chapter 14.

(a) *Void for Vagueness Doctrine*

Under the void for vagueness doctrine, a plaintiff may challenge a legislative enactment by arguing that it does not provide adequate notice of proscribed conduct. *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 56, 96 S. Ct. 2440, 2446 (1976); *15192 Thirteen Mile Road, Inc. v. City*

of Warren, 626 F. Supp. 803, 818 (E.D. Mich. 1985). This doctrine serves a three-fold purpose. *15192 Thirteen Mile Road*, 626 F. Supp. at 818. First, by requiring legislatures to provide adequate notice of prohibited conduct, the doctrine ensures that innocent citizens will not unknowingly become subject to the imposition of criminal penalties. *Greyned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S. Ct. 2294, 2298-99 (1972). Second, the vagueness doctrine ensures that legislative bodies will not improperly delegate authority or discretion to law enforcement officials. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839 (1972). By requiring legislatures to provide minimal guidelines to govern law enforcement, the vagueness doctrine protects against the imposition of criminal sanctions based on personal predilections of individual policemen, prosecutors or judges. *Kolender v. Lawson*, 461 U.S. 352, 358, 103 S. Ct. 1855, 1859 (1983). Third, the vagueness doctrine prevents vague laws from chilling First Amendment expression. *15192 Thirteen Mile Road*, 626 F. Supp. at 818.

An ordinance must "delineate its reach in words of common understanding so that ordinary people can understand what conduct is prohibited." *Cameron v. Johnson*, 390 U.S. 611, 616, 88 S. Ct. 1335, 1338 (1968); *Acorn v. City of Tulsa, Okla.*, 835 F.2d 735, 740 (10th Cir. 1987). In *Smith v. Goguen*, 415 U.S. 566, 94 S. Ct. 1242 (1974), Justice Powell wrote that:

> [t]he doctrine incorporates notions of fair notice or warning. Moreover, it requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement. Where a statute's literal scope, unaided by a narrowing

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> state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts.

Id. at 573, 94 S. Ct. at 1247. The general test for vagueness applies with particular force in review of laws dealing with speech. *15192 Thirteen Mile Road*, 626 F. Supp. at 818. "Stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech." *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620, 96 S. Ct. 1755, 1760 (1976) (quoting *Smith v. California*, 361 U.S. 147, 151, 80 S. Ct. 215, 217 [1959]).

The void for vagueness doctrine focuses on whether an ordinance is drafted in such a manner that the very existence of the ordinance may cause persons not before the court to refrain from engaging in constitutionally protected speech. *Young*, 427 U.S. at 59, 96 S. Ct. at 2447; *Broadrick v. Oklahoma*, 413 U.S. 601, 611-14, 93 S. Ct. 2908, 2915-17 (1973). The vagueness doctrine is justified by the overriding importance of maintaining a free and open market for the interchange of ideas. *Id.*, 96 S. Ct. at 2447. With these principles in mind, I now address plaintiff's argument that Chapter 14 is void for vagueness because Littleton failed to define the term "significant or substantial."

In *15192 Thirteen Mile Road*, the plaintiff made a similar challenge to a Detroit ordinance that used the term "significant or substantial." 626 F. Supp. at 818. The court held that the term significant or substantial is reasonably specific and precise, "bearing in mind that unavoidable imprecision is not fatal and celestial precision is not necessary." *Id.* at 819 (quoting *Hart Book Stores,*

Inc. v. Edminsten, 612 F.2d 821, 833 [4th Cir. 1983]). The court noted that the term substantial has been used in numerous statutory schemes. *Id.* (noting that the term "substantial" appears in the United States Code roughly 1157 times and "substantial portion" appears fifty-one times in the United States Code); *Busch v. Service Plastics, Inc.*, 261 F. Supp. 136, 141 (N.D. Ohio 1966).

I am persuaded by the court's opinion in *15192 Thirteen Mile Road* that the term "significant or substantial" is constitutionally precise. Chapter 14 clearly defines the conduct, services and activities that it considers to be adult in nature. The determination of how many of these services are required for one to become an adult entertainment business is a difficult line-drawing problem that is best resolved by the courts on a case-by-case basis. Furthermore, Chapter 14 is not so vague that its very existence would cause persons not before the court to refrain from engaging in constitutionally protected speech. *Id.*, 96 S. Ct. at 2447. The free and open market for the interchange of ideas in Littleton has not been affected by the clarity of Chapter 14.

Even if I were inclined to strike Chapter 14 as unconstitutional because of Littleton's failure to define the term significant or substantial, which I am not, the Supreme Court decision in *Young* prevents me from doing so. In *Young*, the plaintiffs made a similar challenge to a zoning ordinance as plaintiff has made in this case. The plaintiffs in *Young* did not attack the specificity of the definition of "specified sexual activities" or "specified anatomical areas," but rather argued that they could not determine how much of the described activities may be permissible before it falls within the scope of the ordinance. *Young*, 427 U.S. at 56, 96 S. Ct. at 2446. The Supreme Court

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denied the plaintiffs challenge on two grounds. *Id.* at 56-57, 96 S. Ct. at 2446. First, the Court stated that it was unnecessary to consider the validity of the plaintiffs' arguments, for even if there may be some uncertainty about the effect of the ordinance on other litigants, the ordinance unquestionably applied to the plaintiffs. *Id.*, 96 S. Ct. at 2446. The Supreme Court noted that the plaintiffs offered adult fares on a regular basis, and therefore, any element of vagueness in these ordinances did not affect the plaintiffs. *Id.*, 96 S. Ct. at 2446. Second, the court stated that, in any event, the plaintiffs did not have standing to challenge the constitutionality of the ordinance because the plaintiffs' rights were not affected. *Id.*, 96 S. Ct. at 2446.

Similarly, in this case, it is unnecessary to address plaintiff's void for vagueness argument because even if there may be some uncertainty about the effect of the ordinance on other litigants, the ordinance unquestionably applies to plaintiffs. Plaintiff admits that it prohibits children under the age of eighteen from entering its store. (Def.'s Br., Statement of Facts ¶ 31; *admitted at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 31.) Accordingly, plaintiff obviously considers itself to be in the business of selling goods and services for adult use only. Furthermore, plaintiff admits that, at the very least, thirty-three percent of its inventory is adult in nature.[1] (*Id.*, Statement of Facts

[1] Plaintiff's estimate that thirty-three percent of its business is adult or sexual in nature appears to be far below the actual figure. Defendant has submitted evidence suggesting that the portion of plaintiff's inventory that is sexual and adult in nature is closer to fifty percent. (Def.'s Br., Ex. D [Video], Ex. E [Photographs], Ex. F [Inventory List], Ex. G [Expert Reports].) After reviewing the photographs

(Continued on following page)

¶ 32; *admitted at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 32.) One-third of a store's inventory can hardly be considered insubstantial. Accordingly, I find that Chapter 14 unquestionably applies to plaintiff in this case.

Furthermore, plaintiff does not have standing to challenge the precision of the language contained within Chapter 14. In *Young*, the Supreme Court stated that the plaintiffs did not have standing to challenge the constitutionality of the ordinance because the plaintiffs' rights were not affected. *Id.*, 96 S. Ct. at 2446. The court stated that if the "statute's deterrent effect on legitimate expression is not both real and substantial, and if the statute is readily subject to a narrowing construction by the state courts, the litigant is not permitted to assert the right of third parties." *Id.*, 96 S. Ct. at 2446. Chapter 14 is not a total ban on operating adult entertainment businesses in Littleton, nor does it have a real and substantial deterrent effect on legitimate expression. Furthermore, the "significant or substantial" term in Chapter 14, at the very least, is readily subject to a narrowing construction by the state courts of Colorado. Accordingly, consistent with the Supreme Court's opinion in *Young*, I find that plaintiff does not have standing to challenge the constitutionality of Chapter 14 under the void for vagueness doctrine.

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taken of the display cases in plaintiff's store and the video segment touring the store, I find plaintiff's argument that it is not an adult entertainment establishment frivolous at best. To define plaintiff as anything other than an adult entertainment business would be absurd and totally devoid of any basis on the record.

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(b) Void for Over breadth Doctrine

Unlike the void for vagueness doctrine, the overbreadth doctrine is not rooted in due process notions of fair notice. *15192 Thirteen Mile Road*, 626 F. Supp. at 821. Rather, its purpose is to ensure that governmental actions "to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *Id.* (quoting *NAACP v. Alabama*, 377 U.S. 288, 307, 84 S. Ct. 1302, 1313 (1958). A plaintiff has standing to challenge a legislative enactment on overbreadth grounds as long as the legislation is capable of reaching constitutionally protected speech. *Broadrick*, 413 U.S. 601, 93 S. Ct. 2908. "Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect . . . cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe." *Alderman v. U.S.*, 394 U.S. 165, 174-75, 89 S. Ct. 961, 970-71 (1969).

Although the two doctrines are conceptually distinct, plaintiff has largely intertwined its vagueness and over breadth arguments. Because plaintiff's argument most closely resembles a void-for-vagueness challenge, I find that the crux of plaintiff's challenge to Chapter 14 is that it is impermissibly vague. Nevertheless, even if plaintiff meant to challenge Chapter 14 on the ground that it is over-broad, this argument must fail. Littleton clearly specified the conduct that Chapter 14 regulates. The terms "specified sexual activities" and "specified anatomical areas" are clearly defined under Chapter 14. Littleton has not attempted to regulate conduct under Chapter 14 that

is outside the scope of its constitutional authority. It is undisputed that Littleton has the power to regulate the time, place, and manner which people operate an adult entertainment business in Littleton. *Young,* 427 U.S. at 56, 96 S. Ct. at 2446. As for the term "significant or substantial," the courts can prevent the over-broad application of Chapter 14 that otherwise might arise from an over-inclusive interpretation of the term "significant or substantial" simply by giving the term its reasonable and intended meaning.

(c) "Significant or Substantial"

Plaintiff requests that I define the term "significant or substantial" in a manner such that it does not fall under the definition of an adult entertainment business. In support of its argument, plaintiff emphasizes that it sells cross-over or secondary products in conjunction with its undeniably predominant stock of adult goods. Despite plaintiff's attempt to portray itself as merely a retail store that also sells adult products, I find that, under the facts of this case, plaintiff is an adult entertainment business as defined under Chapter 14 of the Littleton Municipal Code. As I indicated above, thirty-three percent is a significant or substantial portion of a store's inventory. Furthermore, after reviewing the photographs taken of the display cases in plaintiff's store and the video segment touring the store, I find plaintiff's argument that a significant or substantial

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portion of its inventory is not adult in nature frivolous at best.[2]

3. Constitutional Challenges to Chapter 14

Plaintiff brings this suit under section 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws [of the United States], shall be liable to the party injured . . .

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[2] It appears as though plaintiff in this case was also the plaintiff in *Z. J. Gifts v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998). In *Z. J. Gifts*, the issue of whether Z. J. Gifts was operating an adult entertainment business was uncontested. *Id.* at 686 (stating "given the uncontroverted sexual nature of Z. J. Gifts' business, we are convinced the city has met its burden"). I am disturbed by the frivolous and incredulous arguments asserted by plaintiff in this case. I remind counsel of the provisions of Fed. R. Civ. P. 11:

> By presenting to the court . . . a . . . written motion, . . . an attorney . . . is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; [and]
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

42 U.S.C.A. § 1983. Plaintiff alleges that Chapter 14 of the Littleton City Code deprives plaintiff of its right to freedom of speech and due process secured by the First, Fifth, Ninth and Fourteenth Amendments to the Untied States Constitution. (Compl. ¶¶ 27, 30.)

The First Amendment provides that Congress "shall make no law . . . abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST amend. I. The Fourteenth Amendment makes that prohibition applicable to the State of Colorado. *Meyer v. Grant,* 486 U.S. 414, 420, 108 S. Ct. 1886, 1891 (1988). "The freedom of speech and of the press which are secured by the First Amendment against abridgment by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State." *Thornhill v. Alabama*, 310 U.S. 88, 95, 60 S. Ct. 736, 740 (1940).

The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484, 77 S. Ct. 1034, 1308 (1957). The freedom of speech guaranteed by the Constitution embraces the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. *Grant*, 486 U.S. at 420, 108 S. Ct. at 1891. Courts have recognized that governmental limitations which limit expressive interests strike "[a]t the heart of the First Amendment." *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 641, 114 S. Ct. 2445, 2458 (1994). Like most rights, however, plaintiffs' first amendment rights are not absolute. *Buckley v. American*

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Constitutional Law Foundation, Inc., 525 U.S. 182, 191, 119 S. Ct. 636, 642 (1999); *Buckley v. Valeo*, 424 U.S. 1, 45, 96 S. Ct. 612, 647 (1976); *American Constitutional Law Foundation, Inc. v. Meyer,* 120 F.3d 1092, 1097 (10th Cir. 1997); *Krislov*, 226 F.3d at 859. Courts are "aware that First Amendment doctrine must be informed by the complex tangle of social, political, and cultural interests in limiting speech as well as protecting it, for the tension between the individual rights and community needs is at the core of every First Amendment issue." *Z. J. Gifts v. City of Aurora*, 136 F.3d 683, 685 (10th Cir. 1998).

Plaintiff makes several unsubstantiated arguments in support of its contention that Chapter 14 is unconstitutional. (Pl.'s Br. at 10-49.) Rather than address each and every unsubstantiated argument plaintiff makes, I will briefly discuss the case law that dictates the result in this case. Despite plaintiff's attempts to escape the grips of Chapter 14, I find that Chapter 14 is constitutional and applies to plaintiff in this case.

a. Chapter 14 Zoning Regulations

As an initial matter, I must determine whether Chapter 14 is a content-based or a content-neutral zoning regulation. Content-based restrictions on speech – those which suppress, disadvantage, or impose differential burdens upon speech because of its content – are subject to the most exacting scrutiny. *Turner*, 512 U.S. at 642, 114 S. Ct. at 2459; *Z. J. Gifts*, 136 F.3d at 685. The Supreme Court has long held that regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment. *See City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 45, 106 S. Ct.

925, 928 (1985); *Carey v. Brown*, 447 U.S. 455, 462-63, 100 S. Ct. 2286, 2291 (1980); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S. Ct. 2286, 2289 (1972). Conversely, content-neutral regulations pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue because they are unrelated to the content of the speech. *Turner*, 512 U.S. at 642, 114 S. Ct. at 2459; *Z. J. Gifts*, 136 F.3d at 685. Content-neutral regulations are accordingly subject to intermediate scrutiny. *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293, 104 S. Ct. 3065, 3068-69 (1984); *Z. J. Gifts*, 136 F.3d at 685. Content-neutral time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication. *City of Renton*, 475 U.S. at 45, 106 S. Ct. at 928; *Clark*, 468 U.S. at 293, 104 S. Ct. at 3069; *Young v. American Mini Theatres, Inc.,* 427 U.S. 50, 96 S. Ct. 2440 (1976).

In determining whether an ordinance is content-neutral and subject to intermediate scrutiny, the city's purpose in enacting the ordinance is the controlling consideration. *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S. Ct. 2746, 2754 (1989); *Z. J. Gifts*, 136 F.3d at 685-86. If the regulation "serves purposes unrelated to the content of expression it is considered neutral, even if it has an incidental effect on some speakers or messages but not others." *Id.* at 791, 109 S. Ct. at 2754; *City of Renton*, 475 U.S. at 47-48, 106 S. Ct. at 928-29; *Z. J. Gifts*, 136 F.3d at 686. The city may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. *Mosley*, 408 U.S. at 95-96, 92 S. Ct. at 2289-90. On the other hand, however, "[i]t is a familiar principle of

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constitutional law that [the Supreme Court] will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383-84, 88 S. Ct. 1673, 1683 (1968).

Despite plaintiff's attempt to subject Chapter 14 to strict judicial scrutiny, the Supreme Court and the Tenth Circuit have made it abundantly clear that ordinances such as the one in this case are not subject to strict scrutiny. *See City of Renton*, 475 U.S. at 45, 106 S. Ct. at 928; *Clark*, 468 U.S. at 293, 104 S. Ct. at 3069; *Young*, 427 U.S. at 52, 96 S. Ct. at 2442; *Z. J. Gifts*, 136 F.3d at 685-86. The Supreme Court has long held that city zoning ordinances which place limits on the location of adult uses are valid exercises of the city's police powers. *Young*, 427 U.S. at 62-63, 96 S. Ct. at 2448-49. Though such regulations treat adult uses differently from other uses based on their sexually explicit nature, they are designed to prevent crime, maintain property values, and preserve the equality of urban life. *City of Renton*, 475 U.S. at 48, 106 S. Ct. at 929. So long as cities do not use "the power to zone as a pretext for suppressing expression, attempts to regulate the adverse effects associated with sexually oriented businesses are properly classified as content-neutral." *Z. J. Gifts*, 136 F.3d at 686 (quoting *City of Renton*, 475 U.S. at 54, 106 S. Ct. at 932). Accordingly, because ordinances zoning adult uses are intended to curb the secondary effects of those uses on surrounding communities and burden free speech interests only incidentally, they are generally reviewed as content-neutral regulations subject to a less stringent standard of review. *Id.*

Properly analyzed as a content-neutral regulation, Littleton's zoning ordinance survives constitutional scrutiny if Littleton can establish that the ordinance is

narrowly tailored to serve a significant governmental interest and leaves open ample alternative channels of communication. *See City of Renton*, 475 U.S. at 45, 106 S. Ct. at 927-28. For the following reasons, I hold that Chapter 14 is narrowly tailored to serve a significant governmental interest and leaves open ample alternative channels of communication.

(i) Significant Governmental Interest

The Supreme Court has long held that Littleton's stated interests in circumscribing the adverse secondary effects of sexually oriented businesses must be accorded high respect. *See City of Renton*, 475 U.S. at 45, 106 S. Ct. at 928; *Clark*, 468 U.S. at 293, 104 S. Ct. at 3069; *Young*, 427 U.S. at 52, 96 S. Ct. at 2442; *Z. J. Gifts*, 136 F.3d at 685-86. The record clearly establishes that the City of Littleton intended to regulate the harmful secondary effects of sexually oriented businesses. (Def.'s Br., Ex. A [Chapter 14, attach. 1 (Transcript of City Council Hearing on August 3, 1993), attach. 2 (Case Law Summaries Reviewed by City Council)].) The city council reviewed several land use summaries which found that adult businesses increase crime rates, lower property values, and reduce the quality of life in a community. (Def.'s Br., Statement of Facts ¶ 3; *admitted at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 3.) Accordingly, I find that Littleton has a significant governmental interest in regulating the time, manner and place in which adult entertainment establishments operate their business.

Furthermore, Littleton need not wait for sexually oriented businesses to locate within its boundaries, depress property values, increase crime, and spread sexually

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transmitted diseases before it regulates those businesses. *Z. J. Gifts,* 136 F.3d at 687. Littleton may, and in fact did, rely on the experience of other cities to determine whether the harm presented by sexually oriented businesses are real and should be regulated. *Id.* Moreover, Littleton need only rely upon evidence reasonably believed to be relevant to the problem that the city addresses. *City of Renton*, 475 U.S. at 51-52, 106 S. Ct. at 931. If Littleton can show that the ordinance affects that category of businesses shown to produce the unwanted secondary effects, the ordinance will stand. *Id.* at 52, 106 S. Ct. at 931. Based on my review of the record, I find that Littleton enacted Chapter 14 to regulate the secondary effects of adult businesses, and that Littleton has a significant governmental interest in regulating these secondary effects.

(ii) Narrowly Tailored

Time, place and manner regulations must be narrowly tailored, but "need not be the least restrictive or least intrusive means of doing so." *Rock Against Racism*, 491 U.S. at 798, 109 S. Ct. at 2757-58. "So long as the means chosen are not substantially broader than necessary, an ordinance is narrowly tailored if the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation. *Id.* at 799, 109 S. Ct. at 2758-59. It is not the court's function to appraise the wisdom of the city's decision. *City of Renton*, 475 U.S. at 52, 106 S. Ct. at 931. Because legislative bodies are entitled to reasonable inferences suggested by the legislative record before them, the court simply determines whether the ordinance affects only categories of businesses reasonably believed to produce at least some of the unwanted secondary effects the city seeks to regulate. *Turner*, 512

U.S. at 666, 114 S. Ct. at 2471. Courts must allow cities like Littleton a reasonable opportunity to experiment with solutions to serious problems. *Young*, 427 U.S. at 71, 96 S. Ct. at 2453.

Based on evidence already cited herein, I find that Littleton reasonably believes that adult entertainment businesses produce at least some of the unwanted secondary effects the city seeks to regulate, and that Chapter 14 is narrowly tailored to eliminate or minimize the secondary effects of adult entertainment businesses.

(iii) Ample Alternative Avenues of Communication

The First Amendment requires only that Littleton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult entertainment business within the city. *City of Renton*, 475 U.S. at 54, 106 S. Ct. at 930. Plaintiff cannot dispute that it has a reasonable opportunity to operate its business in Littleton. Chapter 14 is not a total ban on adult businesses. Sexually oriented businesses may locate within the city's industrial zone, which comprise approximately 1.3% of the city's land. *See Lakeland Lounge of Jackson, Inc. v. City of Jackson,* 973 F.2d 1255, 1260 (5th Cir. 1992) (holding that 1.2% of the land constitutes reasonable alternative avenues of communication) *cited with approval in Z. J. Gifts*, 136 F.3d at 688. Furthermore, there is not another adult entertainment business in the City of Littleton. (Def.'s Bar., Statement of Facts ¶ 35; *admitted at* Pl.'s Br., Pl.'s Resp. to Def.'s Undisputed Facts ¶ 35.) Accordingly, the restriction under Chapter 14 prohibiting plaintiff from operating an adult entertainment business within one

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thousand feet of another adult entertainment business does not restrict the use of the land within the 1.3% zoned for adult uses.

It is clear from the record that Littleton has not used the power to zone as a pretext for suppressing expression, but rather has sought to make some areas available for adult entertainment businesses and their patrons, while at the same time preserving the quality of life in the community at large by preventing those businesses from locating in other areas. Plaintiff has the opportunity to operate its business in Littleton, just not in the B-2 district in which it is presently located. Accordingly, I find that Chapter 14 leaves open ample alternative channels of communication.

(b) Chapter 14 Licensing Regulations and Prior Restraints

Pursuant to Littleton's police powers, Littleton may require a party to obtain a license prior to operating an adult entertainment business. *Young*, 427 U.S. at 71, 96 S. Ct. at 2453. Whether Littleton's licensing regulations pass constitutional muster, however, depends largely on whether Chapter 14 can be characterized as a prior restraint on protected speech. *Id.* at 71, 96 S. Ct. at 2453. While prior restraints are not unconstitutional *per se*, any system of prior restraint bears a heavy presumption against its constitutional validity. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224, 110 S. Ct. 596, 604 (1990).

Cases addressing prior restraints have identified two evils that will not be tolerated in such schemes. *FW/PBS*, 493 U.S. at 224, 110 S. Ct. at 604 (1990). First, a scheme

that places "unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship." *Lakewood v. Plain Dealer Publ'g Co.,* 486 U.S. 750, 757, 108 S. Ct. 2138, 2143 (1988). "It is settled by a long line of recent decisions of [the Supreme Court] that an ordinance which makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official – is an unconstitutional censorship or prior restraint upon enjoyment of those freedoms." *See Shuttlesworth v. Birmingham,* 394 U.S. 147, 150-51, 89 S. Ct. 935, 938-39 (1969).

Second, a prior restraint that fails to place limits on the time within which the decision maker must issue the license is impermissible. *Freedman v. State of Md.,* 380 U.S. 51, 57, 85 S. Ct. 734, 738 (1965). A licensing scheme creates the possibility that constitutionally protected speech will be suppressed where there are inadequate procedural safeguards to ensure the prompt issuance of the license. *FW/PBS*, 493 U.S. at 226, 110 S. Ct. at 605. In *FW/PBS*, the Supreme Court held that two procedural safeguards are necessary to ensure the expeditious decision-making by a licensor: (1) the licensor must make the decision whether to issue the license within a specified and reasonable time period during which the status quo is maintained; and (2) there must be the possibility of prompt judicial review in the event that the license is erroneously denied. *Id.,* 493 U.S. at 226, 110 S. Ct. at 605.

Based on my review of the record, I find that Chapter 14 meets both of these requirements, is not a prior restraint on protected speech, and is, therefore, constitutional. First, Chapter 14 identifies eight specific reasons

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which require the city clerk to deny a license application. (Def.'s Br., Ex. A [Chapter 14, Section 3-14-8].) Accordingly, the Littleton city clerk does not have unbridled discretion to approve or deny a license application. Second, Chapter 14 clearly requires the city clerk to either approve or deny a license application within thirty days of receiving the application, and also provides for prompt judicial review of license denials. (*Id.*, Ex. A [Chapter 14, Section 3-14-8].) In the event the city clerk denies a license, Chapter 14 requires the clerk to make written findings of fact stating the reasons for the denial. (*Id.*, Ex. A [Chapter 14, Section 3-14-8].) If the applicant is not satisfied with the city clerk's findings, the applicant, upon request, has a right to a hearing before the city manager within thirty days of the clerk's decision. (*Id.*, Ex. A [Chapter 14, Section 3-14-8].) The order of the city manager is a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). *See City of Colorado Springs v. 2354, Inc.,* 896 P.2d 272, 284 (Colo. 1995) (holding that Colorado Rules of Civil Procedure 106(a)(4) provides "adequate procedural safeguards and an avenue for prompt judicial review so as to minimize suppression of speech in the event of a license denial.")

Based on the foregoing, I hold that Chapter 14 is constitutional as it is applied to plaintiff in this case. Accordingly, I deny plaintiff's motion for summary judgment and grant defendant's motion for summary judgment.

3. *Conclusion*

Based on the foregoing, it is therefore

ORDERED as follows:

1. Defendant's motion for summary judgment (#27) is GRANTED.
2. Plaintiff's motion for partial summary judgment (#33) is DENIED.
3. Defendant shall have its costs upon submission of a bill of costs in accordance with D. C. Colo. L. R. 54.1.

* * *

6. This case is hereby DISMISSED.

Dated this 30 day of March 2001.

BY THE COURT:
/s/ Edward W. Nottingham
EDWARD W. NOTTINGHAM
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-N-1696

CERTIFICATE OF MAILING

I hereby certify that a copy of the Order and Memorandum of Decision signed by Judge Edward W. Nottingham on March 30, 2001, was served on ~~April~~ March 31, 2001, by hand delivery, where a "D.C." box number or asterisk is indicated after the recipient's name, or otherwise by depositing it in the United States mail, postage prepaid, addressed to the recipient:

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Magistrate Judge O. Edward Schlatter*

JAMES R. MANSPEAKER,
CLERK

By /s/ Edward Butler
Deputy Clerk

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* EDWARD C. DETERS, State's Attorney of Effingham County,	)	
Plaintiff,	)	
vs.	)	**No. 04-CH-26**
THE LION'S DEN, INC., a foreign business corporation incorporated in the State of Ohio; EFFINGHAM RETAIL 27, INC., a foreign business corporation incorporated in the State of Ohio; MICHELLE MOORE; and REAL ESTATE located at 401 Frontage Road, in the Village of Montrose, Effingham County, Illinois,	)	
Defendants.	)	

FILED
JUL 13 2005
Becky Jansen
CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

MODIFIED PERMANENT INJUNCTION ORDER

This cause came before the Court on July 1, 2004, September 23, 2004, and April 27 and 28, 2005, for evidentiary hearing on the Verified Complaint for Injunctive Relief, filed on April 28, 2004, by the People of the State of Illinois, *ex rel.* Edward C. Deters, State's Attorney of Effingham County, as Plaintiff, against The Lion's Den, Inc., Effingham Retail 27, Inc., Michelle Moore, and Real Estate located at 401 Frontage Road in the Village of Montrose, Effingham County, Illinois, as Defendants, and also on the Counterclaim, filed on June 25, 2004, by Effingham Retail 27, Inc., one of the Defendants, against the Plaintiff. These matters were taken under advisement by the Court at the conclusion of said hearing. Pursuant to leave of Court, counsel for each side submitted proposed findings of fact and law in writing by May 27, 2005. After having carefully reviewed, weighed and considered the testimony of all witnesses, the

exhibits admitted into evidence, the pleadings and memoranda of record, as well as the oral arguments and written proposed findings submitted by counsel, the Court entered a Permanent Injunction Order on June 10, 2005. Subsequently, on June 22, 2005, pursuant to 735 ILCS 5/2-12-3, the Defendants filed a post-trial motion, entitled "Motion for Rehearing, Retrial, Modification of Judgment, and/or to Vacate Judgment or – in the Event such Motion is Denied in Whole or Part – for a Stay of Judgment Pending Appeal (with Supporting Memorandum Attached)." Thereafter, on July 7, 2005, the Plaintiff filed a written response to the Defendants' post-trial motion, and the Defendants filed a Notice of Supplemental Authority. On July 12, 2005, oral arguments were heard by the Court regarding the Defendants' post-trial motion. Having once again carefully reviewed, weighed and considered all matters, in light of the Defendants' post-trial motion, the Court denies the Defendants' requests for a rehearing, a retrial, a vacation of judgment, and a stay pending appeal, finding such requests to be without merit, and modifies the original Permanent Injunction Order as follows:

I. BACKGROUND

On April 28, 2004, the Plaintiff filed its Verified Complaint for Injunctive Relief, seeking to enjoin the Defendants from violating 65 ILCS 5/11-5-1.5, which reads as follows:

> Adult entertainment facility. It is prohibited within a municipality to locate an adult entertainment facility within 1,000 feet of the property boundaries of any school, day care center, cemetery, public park, forest preserve, public housing, and place of religious worship.
>
> For purposes of this Section, "adult entertainment facility" means (i) a striptease club or pornographic movie theatre whose business is the commercial sale, dissemination, or distribution of sexually explicit material,

shows, or other exhibitions or (ii) an adult bookstore or adult video store whose primary business is the commercial sale, dissemination, or distribution of sexually explicit material, shows, or other exhibitions.

The Plaintiff, the People of the State of Illinois, *ex rel.* Edward C. Deters, State's Attorney of Effingham County, initially sought both a preliminary and a permanent injunction to enjoin and restrain the Defendants from operating an adult entertainment facility within 1,000 feet of the Village of Montrose Park and the Montrose Cemetery, as prohibited by 65 ILCS 5/11-5-1.5. In their Verified Joint Amended Answer & Affirmative Defenses the Defendants challenged the constitutionality of 65 ILCS 5/11-5-1.5; and in its Counterclaim Defendant Effingham Retail 27, Inc. initially sought both a preliminary and a permanent injunction to enjoin the Plaintiff from enforcing 65 ILCS 5/11-5-1.5, as well as a declaration that the statute is unconstitutional under the First and Fourteenth Amendments of the United States Constitution, both on its face and as applied. On December 6, 2004, each side agreed to withdraw its request for a preliminary injunction and to proceed with its request for a permanent injunction; both sides also agreed that the testimony and evidence previously presented at the preliminary injunction hearing (which was conducted in part but not completed on July 1, 2004, and September 23, 2004) would be part of the permanent injunction hearing (which resumed on April 27, and was concluded on April 28, 2005).

II. FINDINGS OF FACT

A. The statute

1. The Illinois General Assembly added 625 ILCS 5/11-5-1.5 to the Illinois Municipal Code by enacting Public Act 90-394, effective January 1, 1998. Public Act

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90-394 also provided an identical provision for counties by adding 55 ILCS 5/5-1097.5 to the Counties Code.

2. Public Act 90-394 did not contain a preamble setting forth its legislative purpose. However, it is apparent from its provisions that it was intended to serve as a statewide zoning regulation of the location of adult entertainment facilities. This finding is supported by the brief legislative history admitted into evidence as Defendants' Exhibits A and B, which indicates that the legislation was offered in an effort to establish a "set back" requirement to protect certain types of property from the close proximity of adult entertainment facilities, both in non-home rule municipalities and in unincorporated areas in counties that have no county zoning ordinance. No evidence was presented to indicate that the purpose of the legislation was to ban, or even to significantly reduce, the sale of sexually explicit materials.

3. Subsequently, by Public Act 93-1056, the General Assembly amended 55 ILCS 5/5-1097.5, effective November 23, 2004, extending the set back requirement from 1,000 feet to 3,000 feet within counties; however, 625 ILCS 5/11-5-1.5 was not amended, leaving the set back requirement at 1,000 feet within municipalities.

B. The parties

4. This matter was initiated as a civil proceeding by the State's Attorney of Effingham County, Edward C. Deters, on behalf of the People of the State of Illinois, as Plaintiff, in order to enforce the statutory provisions of 65 ILCS 5/11-5-1.5.

5. Defendant Effingham Retail 27, Inc. is a foreign corporation licensed to do business in the State of Illinois. It owns and operates a retail store, known as The Lion's Den, located at 401 Frontage Road in the Village of Montrose, Effingham County,

Illinois. The store is one of 29 Lion's Den stores in the United States, each operated as a separate entity.

6. Defendant Real Estate located at 401 Frontage Road in the Village of Montrose, Effingham County, Illinois, is the parcel of real property upon which the Lion's Den store in Montrose, Illinois is located, the legal description of which is as follows:

> A part of the Northwest Fractional Quarter of Section 1, Township 8 North, Range 7 East of the Third Principal Meridian more particularly described as follows: Commencing at a point on the North line of the Northwest Fractional Quarter of said Section 1, 4823.6 feet Westerly of the Northeast corner of said Section 1, being an iron pin; thence, South 89 (degrees) 40 (minutes) 38 (seconds) East assumed bearing along the North line of the Northwest Quarter of said Section 1, a distance of 122.39 feet, to the PONT OF BEGINNING, being an iron pin; thence, continuing South 89 (degrees) 40 (minutes) 38 (seconds) East along the North line of the Northwest Quarter of said Section 1, a distance of 780.26 feet, to an iron pin; thence, South 20 (degrees) 03 (minutes) 00 (seconds) East to the Right-of-Way line of said F.A.I. Route 7, a distance of 526.08 feet, to an iron pin; thence, South 87 (degrees) 49 (minutes) 22 (seconds) West along the Right-of-Way line of said F.A.I. Route 7, a distance of 66.82 feet, to an iron pin; thence, North 27 (degrees) 16 (minutes) 26 (seconds) West, a distance of 185.23 feet, to the POINT OF BEGINNING, (reference made to Plat of Survey dated August 7, 2002 and made by Charles A. Grunloh, P.L.S. No. 2516), situated in the County of Effingham and State of Illinois.

7. Defendant Michelle Moore has been the onsite manager of the Lion's Den store in Montrose, Illinois, since it opened on or about January 17, 2003. Prior thereto she was employed as a sales clerk at the Lion's Den store in Buckley, Illinois, starting January 1, 2001.

8. The Lion's Den, Inc., another named Defendant, was a corporation chartered in the State of Ohio, but its charter has been cancelled, and it has no interest in or association with the other Defendants. The Lion's Den, Inc., is dismissed as a party in this action.

C. The store location and municipality

9. The Lion's Den store and real estate, owned and operated by Defendant Effingham Retail 27, Inc., is located within the boundaries of the Village of Montrose, in the County of Effingham, in the State of Illinois.

10. The Village of Montrose is situated along Interstate 70, approximately 9 miles east of Effingham, Illinois, in the northeast corner of Effingham County, along the southern boundary of Cumberland County. The Lion's Den store is located on a frontage road along on the north side of Interstate 70, near its exit and entrance ramps.

11. The population of the Village of Montrose is 255 people. It is governed by a village board consisting of six trustees and a village president.

12. The Village of Montrose has no school, no licensed day care center, one cemetery, one public park, no forest preserve, two units of public housing, and two places of religious worship, namely a Catholic church and a Methodist church.

13. The Lion's Den store in Montrose, Illinois, is located within 1,000 feet of the Village of Montrose Park (which is a public park) and within 1,000 feet of the Montrose Cemetery. (See written Stipulation, filed June 25, 2004.)

14. The park has existed since 1952. It is actually located in Cumberland County, but it was annexed to the Village of Montrose. The park has two pavilions, a playground area, a baseball field, four campsites, a rough camping area, and a fishing pond.

15. Subsequent to the Lion's Den store opening in January, 2003, the Montrose village board on December 15, 2003, passed a zoning ordinance. (See Defendant's

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Exhibit C.) The zoning ordinance divided all of the property within the village limits into five districts: the non-urban district (N-U), the single-family residence district (R-1), the multiple dwelling district (R-2), the general commercial district (G-C), and the light industrial district (L-I). Under the ordinance retail establishments are restricted to two districts: the general commercial district (G-C) and the light industrial district (L-I). The ordinance does not specifically restrict adult entertainment facilities.

16. The Lion's Den store is located in the general commercial (G-C) district under the Montrose zoning ordinance. Within the village limits of the Village of Montrose the only areas that are located outside the 1,000-foot buffer zones created by 65 ILCS 5/11-5-1.5 currently are zoned either R-1 or N-U by the village ordinance. (See Defendant's Exhibit E.) However, the ordinance does provide procedures for obtaining special use permits and amendments to the ordinance. For example, the ordinance was amended on May 6, 2004, to rezone certain property from the R-1 district to the G-C district. (See Defendant's Exhibit C.) There is no evidence that the Defendants ever attempted to relocate the Lion's Den store, nor that they ever requested a special use permit or an amendment to the village zoning ordinance. The Defendants have not challenged the constitutionality of the Village of Montrose zoning ordinance.

D. Evidence of adult entertainment facility

17. Defendant Effingham Retail 27, Inc. acknowledges that it is in the business of selling "sexually oriented" books, magazines, periodicals and other sundries. (See Counterclaim, Para. 1.) However, it denies that the Lion's Den store in Montrose, Illinois, is an "adult entertainment facility" as defined by 65 ILCS 5/11-5-1.5.

18. The Lion's Den store in Montrose, Illinois, is marked by a large sign, which reads "Adult Superstore." Persons under 18 years of age are not allowed to enter or purchase items from the store. The store carries and sells magazines, DVDs and VHS tapes which graphically depict individuals performing various sex acts, including sexual intercourse, oral sex, group sex, masturbation, and sodomy. The store also carries and sells a variety of sex-related novelty items, such as playing cards, and "sex toys," including replicas of human sex organs and devices designed to be used during the performance of sex acts, as well as lingerie and oils, all of which the Defendants refer to as "soft goods."

19. The parties disagree over how the term "sexually explicit material" should be construed. The statute does not define the term. The Defendants argue that the term is limited to graphic displays of sex acts that involve actual penetration. The Plaintiff argues that the term also includes any graphic displays of human genitalia and nudity, as well as anatomical replicas of sex organs.

20. Michael Hagan is the owner of a company that sells and installs point-of-sale computer software and conducts inventories for Lion's Den stores throughout the United States. He testified regarding an inventory that he conducted of the Lion's Den store in Montrose, Illinois, on September 18, 2004. Using the Defendants' proposed definition of "sexually explicit material," Mr. Hagan testified that 70% of the 31,032 items in the store on that day were not sexually explicit, and that such non-sexually explicit items occupied at least 60% of the store's floor space. The categories of merchandise used to conduct the inventory and to calculate these percentages were developed by Lion's Den personnel, not by Mr. Hagan, who acknowledged that roughly 90% of his business

comes from working with Lion's Den stores. Consequently, the accuracy and credibility of his testimony is suspect. Moreover, a store's inventory and floor space are not the most reliable measure of its primary business. For example, according to the inventory performed by Mr. Hagan on September 18, 2004, there were 1,937 magazines in the store, amounting to only 6.2 percent of all items. However, many of the store's magazines are sold in bundles of three, yet the bundles were counted as single items when inventoried. Moreover, magazine sales accounted for nearly 16 percent of the store's total net sales in 2004. Similarly, the inventory showed 6,445 DVDs and 749 VHS tapes available for sale, amounting to 20.8 percent and 2.4 percent respectively of the store's total items on hand; however, the combination of DVDs and VHS tapes sold in 2004 accounted for nearly 47 percent of the store's total net sales that year. (See Defendant's Exhibits F and O.)

21. Anthony Jones is the vice president of operations for LD Management Company, which manages Defendant Effingham Retail 27, Inc. and other Lion's Den properties. He owns 2.5% of the stock in Effingham Retail 27, Inc. and in 12 other Lion's Den stores. Mr. Jones testified that all of the VHS tapes, DVDs, and soft goods containing DVDs, at the Lion's Den store in Montrose, Illinois, are sexually explicit, because they contain graphic depictions of sex acts of one kind or another. In addition, he acknowledged that some of the magazines offered for sale at the store are sexually explicit. He described these as "hard core" magazines. Mr. Jones further testified that sexually explicit materials (in which he included all VHS tapes, all DVDs, those soft goods containing DVDs, and those magazines he described as hard core) accounted for more than $500,000.00 in net sales, or slightly over 48 percent of the total net sales

of $1,037,560.14 at the Lion's Den store in Montrose, Illinois, in the year 2004. However, during his cross examination, Mr. Jones admitted that when he calculated the percentage of the store's sexually explicit sales, he failed to include the sale of sexually explicit playing cards, which amounted to as much as $5,000.00. Correcting this omission would increase the percentage of sexually explicit sales to nearly 49 percent. Moreover, Mr. Jones also admitted on cross-examination that other magazines sold at the Lion's Den store in Montrose, Illinois, which he described as "ID" or "swinger" magazines and which he did not classify sexually explicit, did in fact graphically show some sex acts. For example, Plaintiff's Exhibits 1, 2, 11, 12, 13, 14 and 15, all of which are magazines sold at the Lion's Den store in Montrose, Illinois, contain photos depicting individuals engaging in sex acts of one kind or another; yet Mr. Jones acknowledged that he did not include any of these types of magazines in his calculation of the percentage of the store's sexually explicit sales. His testimony was less than candid and suggested an intention to obscure the actual amount of sexually explicit material sold at the Lion's Den store in Montrose, Illinois. In contrast to Mr. Jones' testimony, Defendant Michelle Moore, the onsite manager, testified that she considered most of the magazines sold at the store to be sexually explicit. The sales of what Mr. Jones categorized as "ID" or "swinger" magazines amounted to $156,981.05, or over 15 percent of the store's total net sales, in 2004.

22. Mr. Jones testified that, except for the soft goods that actually contain DVDs (which he said amounted to no more than $3,000.00 in sales in 2004), none of the soft goods sold at the Lion's Den in Montrose, Illinois, are sexually explicit, because neither the items themselves nor their packaging graphically depict persons engaged in sex

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acts. Mr. Jones explained that 80 percent of the store's soft goods were "sex toys," which included devices such as vibrators and plastic replicas of sex organs (penis, vagina, etc.). He acknowledged that 98 percent of the packaging for such items does display human nudity, but not actual use of the product in a sex act.

23. Heidi Woolridge, a former sales clerk at the Lion's Den store in Montrose, Illinois, confirmed that some of the packaging for soft goods sold at the store do display graphic depictions of sex acts. She stated, for example, that the packaging for a penis pump shows a man using the device. However, she further indicated that the packaging for most vibrators simply display naked women, but do not depict them using the device.

E. Evidence of impact on surrounding vicinity

24. Ms. Woolridge testified that the principal clientele of the Lion's Den store in Montrose, Illinois, are truck drivers coming off Interstate 70. She further testified that customers frequently are allowed to view sexually explicit DVDs in the store on the manager's computer monitor. Ms. Woolridge indicated that on two occasions she was sexually propositioned by customers while working at the store, once in the late summer, 2003, and once in March, 2004. She also testified that on one occasion she had to run off two customers whom she suspected of engaging in sexual activity in a truck parked in the store's parking lot. She stated that store management discouraged her from reporting such incidents to the state police. Although her employment at the Lion's Den store had been terminated, Ms. Woolridge was a credible witness.

25. Ron Kilman, an investigator for the Effingham County State's Attorney's Office, provided credible testimony regarding his investigation of the Lion's Den store in

Montrose, Illinois. On April 26, 2004, he entered the store and purchased various sexually explicit items, which he stated were typical of the items offered for sale there. These items were admitted into evidence as Plaintiff's Exhibits 1, 2, 3, 4 and 5. Also admitted into evidence, as Plaintiff's Exhibits 6 and 7, were the receipt and return policy he received from the store.

26. Some time later, approximately three weeks prior to the hearing on July 1, 2004, Mr. Kilman returned to and observed the areas surrounding the Lion's Den store in Montrose, Illinois. In the drainage ditches along the roadways near the store, in close proximity to the Village of Montrose Park and Montrose Cemetery, Mr. Kilman found numerous items of litter, including sexually explicit magazines and sex toys, which had been sold at the Lion's Den store. These items were admitted into evidence as Plaintiff's Exhibits 9 through 18. Mr. Kilman also took 6 photographs of the Lion's Den property from the Village of Montrose Park and Montrose Cemetery, which were admitted into evidence as Plaintiff's Group Ex. 8.

27. Barb Gillam, a resident of Montrose for the past 10 years, has openly expressed her disapproval of the Lion's Den store, but she provided credible testimony that she found several items of litter from the store in or near the Village of Montrose Park and Montrose Cemetery. These items were admitted into evidence as Plaintiff's Exhibits 20, 21, 22 and 23. On June 17, 2004, she found Plaintiff's Ex. 20, a sexually explicit magazine, in a trash can in the park near where the children's playground equipment is located. On August 21, 2004, she found Plaintiff's Exhibits 21, 22 and 23 in a roadway ditch near the cemetery. Plaintiff's Ex. 21 consists of two magazines

containing numerous full-frontal photographs of nude men, some displaying erect penises. Plaintiff's Exhibits 22 and 23 are sexually explicit video tapes.

28. Lylah Flach, a resident of rural Montrose, testified that her family had frequently used the Village of Montrose Park prior to the opening of the Lion's Den store, but due to her concerns for the safety of her children, she no longer permits them to do so, because of the close proximity of the store.

29. Dennis Fletcher, who is the president of the Village of Montrose, as well as the caretaker of the Village of Montrose Park, provided credible testimony that there has been a marked decline in the public's use of the park, including the cancellation of organized baseball leagues and a substantial reduction in usage by campers, since the Lion's Den store began operations. Similar observations were made by Mrs. Gillam and Mrs. Flach.

F. Secondary effects of adult entertainment facilities

30. Dr. Richard McCleary, an expert witness hired by the Plaintiff, testified regarding the secondary effects of crime and public safety risks associated with sexually-orientated businesses. Dr. McCleary is a professor of social ecology at the University of California-Irvine, where he holds joint appointments from the Department of Criminology and the Department of Planning, in which he teaches graduate level courses. He also sits on the boards of several leading journals in the field of criminology. He has a Bachelor of Science in mathematics from the University of Wisconsin, a Master of Arts in statistics from Northwestern University, and a Ph.D. in sociology from Northwestern University. His curriculum vitae was admitted into evidence as Plaintiff's Exhibit 25A.

31. Dr. McCleary testified that scientific research (including his own) consistently shows that sexually-oriented businesses, including retail-only adult bookstores, pose substantively large and statistically significant crime hazards. He personally has conducted research on this issue since 1977. His testimony was credible and convincing.

32. As to the issue of using buffer zones as a means of regulating adult uses, Dr. McCleary explained that the relationship between sexually-oriented businesses and crime applies to all business sub-classes, including adult book and video stores that rent or sell materials for off-premises use, and that a principal means of minimizing the crime-related public safety risk is to create distance between the sites and sensitive uses.

33. In addressing crime as a secondary effect of sexually-oriented businesses, Dr. McCleary explained why patrons of such establishments are considered, from a criminological perspective, to be "soft targets" for predatory criminals. Patrons of erotic businesses generally come from outside the area and thus are strangers to the local vicinity, they take steps to maintain anonymity (i.e., they often carry large amounts of cash for purchases), and are more reluctant to report victimization. Dr. McCleary testified that the presence of soft targets draws criminals who commit predatory crimes (robbery, auto theft, vandalism, etc.) and crimes of opportunity, and that potential victimization extends beyond the immediate site into the surrounding area.

34. Dr. McCleary based his opinions, in part, on numerous prior studies which have documented the adverse secondary effects of sexually-oriented businesses. Those studies included the following cities, reports from which were admitted into

evidence: Amarillo, Texas (Exhibit 27); Whittier, California (Exhibit 28); Phoenix, Arizona (Exhibit 29); Minneapolis, Minnesota (Exhibit 30); Indianapolis, Indiana (Exhibit 31); Austin, Texas (Exhibit 32); Garden Grove, California (Exhibit 33); Centralia, Washington (Exhibit 35); and St. Paul, Minnesota (Exhibit 36).

35. The Garden Grove study (Exhibit 33) was personally conducted by Dr. McCleary, along with James Meeker, J.D., Ph.D. Together they examined the crime rates both before and after a sexually-oriented business opened its doors. They found a sixty-five to seventy percent increase in serious crime following the opening of a sexually-oriented business.

F. Geography of Effingham County

36. Effingham County, Illinois, contains approximately 480 square miles and has a population of approximately 34,000 people.

37. Jeffrey L. Simpson is the Supervisor of Assessments for Effingham County. In that position, he is responsible for overseeing the assessments of over 22,000 parcels of real property throughout the county for real estate tax purposes. Mr. Simpson has been the Supervisor of Assessments for Effingham County for over twenty-five years and as such is very familiar with the county's geography. His job involves using a computerized Geographic Information System (GIS) to locate and view parcels located throughout Effingham County. The GIS contains various information, including the location, use and classification, for all parcels within the County. It can generate maps with parcel lines within a range of accuracy of plus or minus three feet. Mr. Simpson testified that he uses the GIS at least five to six times each week, and that

he frequently relies upon the information contained within the GIS to perform searches and queries for various county officials.

38. Plaintiff's Exhibit 38, which was admitted into evidence, is a GIS-generated map of Effingham County which shows the statutory 1,000-foot buffer zones originally created by 625 ILCS 5/11-5-1.5 and 55 ILCS 5/5-1097.5, surrounding all of the protected uses known to Mr. Simpson, either in his capacity as Supervisor of Assessments or through his personal investigation. The map's 1,000-foot buffer zones were generated by GIS from the boundaries of the parcels containing the protected uses. However, Mr. Simpson acknowledged all day care centers may not be accounted for, and that if any church, school, or cemetery has not received a real estate tax exemption, it would not be included on the map.

39. Within the limitations described above, Plaintiff's Exhibit 38 shows that more than ninety percent of the land in Effingham County is located outside the 1,000-foot buffer zones originally created by 625 ILCS 5/11-5-1.5 and 55 ILCS 5/5-1097.5.

40. Plaintiff's Exhibit 25, which was admitted into evidence, is an aerial photograph of the Village of Montrose, showing the Village boundaries and the buffer zones required by 625 ILCS 5/11-5-1.5 (as generated by GIS) for those protected uses located within the Village of Montrose and the County of Effingham.

III. ANALYSIS

A. Application of the statute to the Lion's Den store in Montrose, Illinois

It is uncontested that the Lion's Den store in Montrose, Illinois, is located within 1,000 feet of the Village of Montrose Park (which is a public park) and within 1,000 feet

of the Montrose Cemetery. Therefore, if the store is an "adult entertainment facility" as defined by 65 ILCS 5/11-5-1, its location is in clear violation of the statute.

Defendant Effingham Retail 27, Inc., which owns and operates the Lion's Den store in Montrose, Illinois, acknowledges that it is in the business of selling "sexually oriented" books, magazines, periodicals and other sundries. However, it denies that the store is an "adult entertainment facility" as defined by 65 ILCS 5/11-5-1.5. The statute defines "adult entertainment facility" to include "an adult bookstore or adult video store whose primary business is the commercial sale, dissemination, or distribution of sexually explicit material." The evidence is clear, and the Defendants do not dispute, that the Lion's Den store in Montrose, Illinois, is both an adult bookstore and an adult video store. However, they contend that the store's "primary business" is not the commercial sale, dissemination or distribution of "sexually explicit material."

Their contention is based upon three arguments, none of which does this Court find convincing. The first argument is that "primary business" (a term which is not defined in the statute) means more than 50 percent of the store's inventory, floor space and revenue. The second argument is that "sexually explicit material" (another term which is not defined in the statute) encompasses only graphic displays of actual sex acts where penetration is clearly visible. The third argument, drawing on the interpretations advanced in the first two arguments, is that the store cannot be considered an "adult entertainment facility," because less than 50 percent of its inventory, floor space and revenue are comprised of "sexually explicit material."

The principles to be applied in construing a statute are well settled. The primary objective is to ascertain and give effect to the intention of the legislature, and all other

rules of construction are subordinate. Metzger v. DaRosa, 209 Ill. 2d 30 (2004). The plain language of the statute is the best indicator of the legislature's intent. Allstate Insurance Company v. Menards, Inc., 202 Ill.2d 586 (2002). Undefined terms in a statue shall be given their ordinary and popularly understood meanings. Gem Electronics of Monmouth, Inc. v. Department of Revenue, 183 Ill. 2d 470 (1998). Additionally, in determining what the legislative intent is, the court may consider not only the language used in the statute, but also the reason and necessity for the law, the evils sought to be remedied, and the purpose to be achieved. Stewart v. Industrial Commission, 115 Ill.2d 337 (1987). Applying these principles, the Court finds the Defendants' three arguments unpersuasive.

First, the ordinary definition of the word "primary" is "first or highest in rank, quality, or importance; principal." American Heritage Dictionary of the English Language, Fourth Ed. (Houghton Mifflin Co. 2000). In the context of the statute, the commercial sale of sexually explicit material is a store's "primary business" if that activity is "principal" or "first in rank or importance" to the establishment. Although the Defendants argue that the Court's determination of the "primary business" of the Lion's Den store in Montrose, Illinois, must turn on whether sexually explicit material constitutes a majority (i.e. more than 50 percent) of the store's inventory, floor space and revenue, the plain and ordinary meaning of the language used by the statute does not compel this approach. As long as the sale of sexually explicit material is the first-ranked or most important activity of the store, then it would be the store's "primary business." Inventory and floor space are not the equivalents of "sale," nor are they true measures of sales.

Second, the Defendants' self-serving interpretation of the term "sexually explicit material" is much too narrow. They acknowledge that graphic displays of sexual penetration (of the mouth, vagina, or anus) are sexually explicit, but they contend that explicit displays of the sexual organs are not included within that term. After carefully reconsidering the arguments of counsel and reviewing the research submitted, in light of all the evidence presented, the Court finds that neither the statutory language, nor legislative purpose, nor relevant case law supports the definition of "sexually explicit material" advanced by the Defendants.

The term "sexual" (adj.) or "sexually" (adv.) means "of, relating to, involving, or characteristic of sex, sexuality, the sexes, or the *sex organs* and their functions." American Heritage Dictionary of the English Language, Fourth Ed. (Houghton Mifflin Co. 2000) (emphasis supplied). "Explicit" means "fully and clearly expressed; leaving nothing implied," and also means "describing or portraying *nudity* or sexual activity in graphic detail." *Id.* (emphasis supplied).

There is no reason to conclude that the ordinary meaning of the words "sexually explicit," as used in the statute, should be restricted to displays of actual sexual penetration only. A photograph of a woman with her mouth poised inches from a man's exposed penis clearly is "sexually explicit," even though penetration is not shown. Similarly, a photograph or video of a man masturbating clearly is "sexually explicit," even though no penetration is needed to engage in such a sex act. Likewise, a photograph of a nude male with an erect penis is "sexually explicit" without any penetration. Therefore, actual penetration should not be the determining factor in classifying material as "sexually explicit." Although displays of mere nudity may not

always constitute "sexually explicit material," the plain meaning of the term does encompass graphic depictions of individuals engaging in sex acts of one kind or another, regardless of whether there is actual penetration, as well as graphic displays or depictions of sex organs.

Including explicit displays of the sexual organs in the ambit of "sexually explicit" is consistent with the case law in this area. The first U.S. Supreme Court case to address zoning of sexually-oriented businesses begins with the statement: "Zoning ordinances adopted by the city of Detroit differentiate between motion picture theaters which exhibit sexually explicit 'adult' movies and those which do not." Young v. American Mini Theatres, Inc., 427 U.S. 50, 52 (1976) (upholding location restrictions for adult entertainment businesses). The movies the Court referred to as "sexually explicit" were those characterized by *either* "specified sexual activities" *or* "specified anatomical areas," the latter term referring to "[l]ess than completely and opaquely covered: (a) human genitals, public region, (b) buttock, and (c) female breast below a point immediately above the top of the areola." Id. at 54 n.4.

Ten years later, in Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), the Supreme Court upheld an ordinance containing the "specified anatomical areas" language and a 1,000-ft. restriction similar to the one at bar. Again, the Court used the term "sexually explicit" as a shorthand for the ordinance's more cumbersome phraseology referencing specific acts or body parts. *Id.* at 49, 55 n.4; *See also*, FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 224 (1990) (noting that ordinance using similar definitions "targets businesses purveying *sexually explicit* speech") (emphasis supplied); City of Chicago v. Scandia Books, Inc., 102 Ill. App. 3d 292 (1981).

Consequently, this Court concludes that the language of the statute, its legislative intent, and the relevant case law supports the conclusion that the term "sexually explicit" includes explicit displays or depictions of sexual organs, as well as sex acts of one kind or another (regardless of whether penetration is shown).

Finally, as to the Defendants' argument that the Lion's Den store is not an "adult entertainment facility" because only 48 percent of its revenues flow from sexually explicit material, the Court rejects the contention as both factually and legally incorrect.

As indicated in this Court's findings of fact, Anthony Jones, vice president of operations for the company which manages Defendant Effingham Retail 27, Inc., clearly misclassified certain items sold by the store (specifically, numerous "ID" or "swinger" magazines and some playing cards) as *not* sexually explicit, when the items were in fact sexually explicit – even under the Lion's Den definition of that term. While the evidence does not reveal precisely how much misclassification occurred, Mr. Jones admitted that all of the store's magazines include at least explicit nudity. Moreover, given that all of the magazines that Mr. Jones reviewed on the stand during his cross-examination -- magazines that he had previously classified as not sexually explicit -- contained both explicit nudity *and* explicit sexual activity, the Court has reason to conclude that all or most of the store's magazines are sexually explicit. This conclusion is supported by the testimony of Michelle Moore, the onsite manager. Even if only a small portion of the nearly $157,000.00 in magazine sales which Mr. Jones classified as not sexually explicit are in fact sexually explicit, then sexually explicit sales easily would exceed 50 percent of the store's total net sales. Moreover, if nearly all of the magazines sold at the store are in fact sexually explicit, as the evidence strongly suggests, then nearly 65% of the

store's total net sales would be sexually explicit, *even before* considering whether any of the store's "soft goods" are sexually explicit.

Although he classified none of the store's soft goods as sexually explicit, Mr. Jones testified that 80 percent of the soft goods were "sex toys," which include devices such as vibrators and plastic replicas of sex organs used in the performance of sex acts. Heidi Woolridge, a former sales clerk at the store, testified that some of the packaging for these devices do graphically display sex acts. Moreover, Mr. Jones acknowledged that 98 percent of the packaging for the sex toys do display human nudity. Therefore, over 78 percent of the store's soft goods would fall within the broader definition of the term 'sexually explicit," as derived from the plain meaning of those words. Adding the sales of these items to all DVDs, VHS tapes and magazines sold by the store would account for over 91 percent of the store's revenue in 2004.

However, even if this Court were to adopt the Defendants' narrow definition of "sexually explicit" and accept the Lion's Den classifications of its revenue -- which the Court does not -- the Lion's Den store in Montrose, Illinois, would still be an adult entertainment facility as defined by 65 ILCS 5/11-5-1.5. Sales of DVDs (all of which the Defendants acknowledge are sexually explicit) comprised the leading single category of sales (i.e. "primary business" activity) of the store, bringing in $381,939.85 in 2004. When DVDs (digital video discs) are combined with VHS cassette tapes (all of which the Defendants also acknowledge are sexually explicit), total sales of sexually explicit videos in 2004 amounted to $488,736.40, far and away exceeding total sales of magazines ($165,621.05) and total sales of soft goods ($376,543.13). (See Defendants' Exhibit O). These sales figures alone are sufficient to demonstrate that the

sale of sexually explicit videos is the primary business of the Lion's Den store in Montrose, Illinois.

This Court's conclusion that the primary (i.e., principal, or most important) business of the Lion's Den store in Montrose, Illinois, is the sale of sexually explicit material, is buttressed by the very description of its business found in Defendant Effingham Retail 27, Inc.'s Counterclaim, the store's outdoor signage proclaiming it to be an "Adult Superstore," and its policy of restricting admission to persons 18 years and older. All of these facts, together with the store's revenue figures, establish that the Lion's Den store in Montrose, Illinois, is an adult entertainment facility within the meaning of the statute. Consequently, its current location, within 1,000 feet of the Village of Montrose Park and within 1,000 feet of the Montrose Cemetery, places the store in clear violation of 65 ILCS 5/11-5-1.5.

B. Regulation of adult uses under the First Amendment

As previously indicated, the Defendants challenge the constitutionality of 625 ILCS 5/11-5-1.5 under the First and Fourteenth Amendments of the United States Constitution. The First Amendment provides in part that Congress shall make no law abridging freedom of speech or of the press; and the Fourteenth Amendment applies that prohibition to state government as well. A governmental regulation which is content-based (i.e. a law that regulates speech based on the ideas or messages it expresses) generally is presumed to be invalid and subject to strict scrutiny, requiring the government to meet the burden of showing that the regulation is necessary to further a compelling governmental interest and is the least restrictive means to further that interest. United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000).

However, a governmental regulation which is content-neutral (i.e. a law that targets the secondary effects of an activity, rather than the content of its speech), but which incidentally restricts speech in its application, is subject to intermediate scrutiny, requiring the government only to show that the regulation is designed to serve a substantial governmental interest, that it is narrowly tailored to serve that interest, and that it allows reasonable alternative avenues of communication. Ward v. Rock Against Racism, 491 U.S. 781, 799-800 (1989). Zoning regulations which restrict the time, place and manner of adult entertainment businesses have been treated as content-neutral regulations, subject only to intermediate scrutiny. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 1986); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002).

In City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), The U.S. Supreme Court upheld the zoning ordinance of Renton, Washington, which prohibited adult motion picture theatres from locating within 1,000 feet of any residential zone, single- or multiple-family dwelling, church, park or school. The Court followed its earlier decision in Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976), which upheld the zoning ordinance of Detroit, Michigan, prohibiting adult theatres from locating within 1,000 feet of any two other "regulated uses" or within 500 feet of any residential zone. The Supreme Court found that the Renton ordinance, like the Detroit ordinance, did not ban adult theatres, but merely regulated where they could be located; therefore, it was a "content-neutral" time, place and manner regulation, which the Court held was constitutional, because it was designed to serve a substantial governmental interest, namely combating the secondary effects of adult theatres on the surrounding

community, and because it allowed for reasonable alternative avenues of communication by leaving over five percent of the entire land area of Renton open to use as adult theatre sites.

Like the zoning ordinances in Renton and Detroit, 65 ILCS 5/11-5-1.5 does not attempt to ban adult entertainment facilities, but merely regulates where they can be located; therefore, it is a "time, place and manner" restriction, subject to intermediate scrutiny, rather than strict scrutiny. As set forth below, this Court finds that the statute is designed to serve a substantial governmental interest, unrelated to the suppression of speech, namely decreasing the negative secondary effects of adult entertainment facilities on the protected uses (i.e. any school, day care center, cemetery, public park, forest preserve, public housing, and religious place of worship); that the statute is not substantially broader than necessary to promote that interest; and that the statute still allows reasonable alternative avenues of communication. Therefore, 65 ILCS 5/11-5-1.5 is constitutional, both on its face and as applied.

1. The statute serves a substantial governmental interest in reducing the negative secondary effects of adult entertainment facilities.

The government may rely upon any evidence "reasonably believed to be relevant" when defending legislation on a secondary effects basis. Renton, 475 U.S. 41, 51-52; Alameda Books, 535 U.S. 425, 438 (plurality opinion); *id.* at 451 (Kennedy, J., concurring). This includes evidence from a wide range of sources, including previous judicial opinions, land use studies, or non-technical reports that recognize the harm targeted or the solution employed to address secondary effects. City of Erie v. Pap's A.M., 529 U.S. 277, 297 (2000) (plurality opinion); DiMa Corp. v. Town of Hallie, 185 F.3d 823, 830 (7th Cir. 1999) (upholding reliance on a single reported judicial

opinion). The secondary effects involved can include a diverse set of problems, including crime and negative impacts on surrounding properties such as litter and blight. *Id.* at 829; World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004) (upholding zoning of retail adult bookstores based upon, *inter alia*, citizen testimony and explicit litter left around the stores). Moreover, the relevant question is whether the statute currently serves a substantial governmental interest. See Barnes, 501 U.S. 560, 582 (Souter, J., concurring). Therefore, a government may rely upon secondary effects evidence compiled either before or after adoption of its legislation. DiMa, 185 F.3d at 829-30 (following Barnes); see also BGHA, LLC v. City of Universal City, 340 F.3d 295, 299 (5th Cir. 2003).

Secondary effects evidence need not be local. Renton, 475 U.S. at 52-53 (holding explicitly that cities may rely on secondary effects reports generated by other cities). Furthermore, it need not be a "study" or "scientific." Alameda Books, 535 U.S. at 438-39 (rejecting "empirical data" requirement); City of Erie, 529 U.S. at 300 (plurality opinion) ("flatly reject[ing]" the idea that "'invocation of academic studies said to indicate that the threatened harms are not real is insufficient to cast doubt on the experience of the local government").

Additionally, governments are entitled to rely upon non-technical evidence in addressing secondary effects, including anecdotal evidence. World Wide Video, *supra* at 1195-96. ("[A]necdotal evidence and reported experience can be as telling as statistical data and can serve as a legitimate basis for finding negative secondary effects") (*quoting* Stringfellow's of N.Y., Ltd. v. City of New York, 91 N.Y.2d 382 (N.Y. 1998)); see also Center for Fair Public Policy v. Maricopa County, 336 F.3d 1153, 1168

(9th Cir. 2003), *cert. denied* 2004 U.S. LEXIS 2585 (U.S. Apr. 5, 2004) (rejecting the contrary argument because it "simply misconstrues the nature of the legislative process"). A government also is permitted to rely upon common sense. Heideman v. South Salt Lake City, 348 F.3d 1182, 1199 (10th Cir. 2003) (noting that "cities are entitled to rely, in part, on 'appeal to common sense,'" when reaching their legislative judgments) (quoting Alameda Books, *supra*, at 439).

To establish a substantial governmental interest, the government needs only produce "some" evidence of the identified secondary effects, World Wide Video, *supra*, at 23, and the government is entitled to draw reasonable inferences from the secondary effects data. Alameda Books, *supra* at 452 (Kennedy, J., concurring). The standard can be satisfied by reliance upon evidence stemming from other types of sexually-oriented businesses. City of Erie, 529 U.S. at 296-297 (permitting reliance in nude dancing case on Renton, which dealt with celluloid erotica); Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683, 689 (10th Cir. 1998).

The substantial deference given to the government's secondary effects evidence recognizes the judiciary's limited role in reviewing content-neutral justifications for regulating, *inter alia*, sexually-oriented businesses. G.M. Enterprises, 350 F.3d 631, 639-640("Alameda Books does not require a court to re-weigh the evidence considered by a legislative body, nor does it empower a court to substitute its judgment" for that of the legislative body); DiMa Corp., 185 F.3d 823, 831; Z.J. Gifts, 136 F.3d 683, 689. The Supreme Court and Seventh Circuit have emphasized that "courts should not be in the business of second-guessing" legislative judgments, Alameda Books, 535 U.S. at 451 (Kennedy, J., concurring), and that governments "must have latitude to experiment" with

ordinances addressing secondary effects. *Id.* (following Renton, 475 U.S. at 51-52); *See also* Id. at 439 (plurality opinion) (same); Renton, 475 U.S. at 53 (reiterating that it is not the Court's "'function to appraise the wisdom of [the city's] decision'") (internal citation omitted).

In litigation, the government need not disprove a challenger's theories of secondary effects, Alameda Books, *supra*, at 437 (plurality), but rather the challenger must address the government's rationale for its regulation. *Id.* at 438. To cast "direct doubt" on the government's basis for its regulation, it is insufficient to cast just "*any* doubt" on the government's secondary effects evidence; rather, "the challenger must present evidence that is directly contrary to the municipality's evidence, not simply produce a general study refuting all secondary effects." City of Elko v. Abed, 677 N.W.2d 455, 465 (Minn. Ct. App. 2004) (following Alameda Books, 535 U.S. at 438-49); *See also* SOB, Inc. v. County of Benton, 317 F.3d 856, 864 (8th Cir. 2003).

In this case, the first prong of Renton analysis is clearly met. The Plaintiff put on extensive evidence "reasonably believed to be relevant" to the secondary effects of sexually-oriented businesses, including adult entertainment facilities. This evidence consists of previous judicial opinions, land use studies, expert witness testimony, and non-technical reports that recognize the harm targeted or the solution employed to address secondary effects.

At the time that 65 ILCS 5/11-5-1.5 was enacted, similar provisions in municipal ordinances regulating the location of adult entertainment facilities already had been found to be constitutional by both the U. S. Supreme Court and the Illinois Supreme Court. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), and County

of Cook v. Renaissance Arcade & Bookstore, 122 Ill.2d 123 (1988). Consequently, it is not unreasonable to conclude that the legislature relied upon such decisions in drafting this legislation. Moreover, under the U.S. Supreme Court's decision in City of Erie v. Pap's A.M., 529 U.S. 277 (2000), the government is entitled to "rely on the evidentiary foundation set forth" in prior cases discussing secondary effects. *Id.* at 297; *See also* DiMa Corp., 185 F.3d at 830.

Second, the Plaintiff relies on several land use and crime impact studies conducted by jurisdictions around the country that demonstrate the adverse impact of adult businesses. (See Plaintiff's Exhibits 27, 28, 29, 30, 31, 32, 33, 35 and 36). In Renton, the Supreme Court approved such reliance, holding that "[t]he First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities" regarding negative secondary effects. 475 U.S. at 51-52.

Third, the Plaintiff relies on the testimony of its expert, Dr. McCleary, whose testimony indicates that, while the numerous studies vary in levels of methodological rigor, there is a consensus finding that adult entertainment facilities have significant crime-related adverse effects upon the surrounding vicinity. This finding is supported by Dr. McCleary's own original research in the field.

Finally, although local secondary effects evidence is not required, Renton, 475 U.S. at 51-52, the Plaintiff also relies on the actual adverse impacts of the Lion's Den store in Montrose, Illinois, on the surrounding vicinity. The evidence shows that after the Lion's Den store opened, customers seeking illegal sexual activity were attracted to the vicinity; sexually explicit litter appeared in the Village of Montrose Park and along

the roadway drainage ditches near the park and the cemetery; concerns for safety arose; and the public's use of the park significantly declined.

All of the foregoing evidence constitutes evidence "reasonably believed to be relevant" to the problem of secondary effects. The defendants have proffered no evidence to "cast direct doubt" upon the Plaintiff's assertion that 65 ILCS 5/11-5-1.5 serves to ameliorate the negative secondary effects of adult entertainment facilities. Therefore, this Court concludes that the statute serves a substantial government interest.

2. The statute is narrowly tailored to reduce the negative secondary effects of adult entertainment facilities.

Under controlling U.S. Supreme Court precedent, a time, place, or manner regulation is narrowly tailored as long as it "promotes a substantial government interest that would be achieved less effectively absent the regulation." Ward v. Rock Against Racism, 491 U.S. 781, 799-800 (1989); Matney v. County of Kenosha, 86 F.3d 692, 696 (7th Cir. 1996) (following Ward in upholding adult bookstore regulation). The cases have emphasized that if "the means chosen are not substantially broader than necessary to achieve the government's interest, the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative." Ward, 491 U.S. at 800 (internal citations omitted); *See also* Pleasureland Museum, Inc. v. Beutter, 288 F.3d 988, 1004 (7th Cir. 2002). In so holding the Supreme Court "expressly rejected" a "least-restrictive-means" analysis for time, place, and manner regulations. Matney, *supra* at 696. Rather, "[r]egulations that burden speech incidentally or control the time, place, and manner of expression, must be evaluated in terms of their general effect." United States v.

Albertini, 472 U.S. 675, 688-689 (U.S. 1985) (internal citations omitted) (following Clark v. Community for Creative Non-Violence, 468 U.S. 288, 298-299 (1984)).

The Supreme Court "defines the narrow tailoring requirement quite broadly." Stokes v. City of Madison, 930 F.2d 1163, 1171 (7th Cir. 1991). "The Court's interpretation of the narrow-tailoring prong in time, place and manner analyses recognizes the judiciary's limited role in reviewing content-neutral limitations on speech." Z.J. Gifts, 136 F.3d 683, 689 (noting that "Renton's constitutional framework" gives cities "broad discretion to choose the means and scope of its regulation of sexually oriented businesses"). In the sexually oriented business context, a regulation is narrowly tailored when it "is limited to adult entertainment establishments...." Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702, 727; *See also* World Wide Video, 368 F.3d 1186 (upholding zoning regulation as applied to so-called "retail" adult bookstore); ILQ Investments, Inc. v. City of Rochester, 25 F.3d 1413, 1418 (8th Cir. 1994) (same). Thus, the regulation is narrowly tailored if it does not regulate businesses with only a "minimal or nonexistent connection" to sexually oriented fare." Z.J. Gifts D-2, *supra* at 689.

The application of these principles to the case at bar is plain. The statute requires adult entertainment facilities within a municipality to locate at least 1,000 feet away from the sensitive land uses specified in the statute. Dr. McCleary testified that the minimum distance requirement serves to buffer crime sources from potential victims frequenting these family-oriented locations. Thus, the statute's prohibition – essentially identical to the prohibition upheld by the U.S. Supreme Court in Renton – promotes the government's substantial interest in preventing adverse impacts on these land uses, which interest would be achieved less effectively absent the regulation. Civil Liberties

Union for Urban Believers v. City of Chicago, 342 F.3d 752, 765-66 (7th Cir. 2003) (holding that there is "no question" that the government "has a substantial interest in regulating the use of its land and that the [zoning ordinance] promotes that interest") (brackets inserted).

As the Seventh Circuit Court of Appeals has observed: "Countless cases allow municipalities to zone strip joints, adult book stores, and like erotic sites" away from certain areas of the city or town. Blue Canary Corp. v. City of Milwaukee, 251 F.3d 1121, 1124 (7th Cir. 2001). In Blue Canary, the court recognized that "[e]stablishments that purvey erotica, live or pictorial, tend to be tawdry, to be offensive to many people, and to attract a dubious, sometimes a disorderly, clientele." Id. The case law demonstrates that citizens who live near sex-oriented bookstores have learned this first-hand. World Wide Video, 368 F.3d at 1190 n.6, 1197 ("To take just one example, a pedodontist working in a building less than a block away from a retail-only store complained of pornographic litter, harassment of female employees, vandalism, and decreased business, all resulting from his proximity to the retail-only store").

625 ILCS 5/11-5-1.5 is not substantially broader than necessary; rather, as explained in the previous section, is limited to adult entertainment facilities, which are associated with negative secondary effects. Moreover, the relationship between the government interest and the means chosen to serve that interest is straightforward. Therefore, the statute is narrowly tailored. World Wide Video, *supra* at 1195 (concluding that zoning regulation for retail adult bookstores is narrowly tailored because it will reduce secondary effects "by moving the stores from sensitive areas" while allowing them to operate in other locations).

3. The statute provides alternative avenues of communication for adult entertainment facilities.

In analyzing whether "reasonable alternative avenues of communication" exist, the Supreme Court has emphasized that adult businesses must "fend for themselves in the real estate market, on an equal footing with other prospective purchasers and lessees." Renton, 475 U.S. 41, 54 (1986)). While a ban on adult businesses will not be permitted, "the First Amendment requires only that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate" in the relevant real estate market." Id.

The Defendants contend that in this case the village limits of the Village of Montrose, population 255, is the only relevant geographic area for determining the constitutionality of the state statute. They further argue that the Court must combine the effect of the statute with that of the village zoning ordinance in order to determine whether the statute is constitutional as applied to the Defendants. This combination, the Defendants argue, leaves no alternative sites for an adult entertainment facility within the village limits and, therefore, renders the statute unconstitutional. This Court finds the Defendants' arguments to be unpersuasive.

First, it is both unnecessary and unreasonable to find that the tiny Village of Montrose is the relevant geographic area for determining whether a statewide statute is constitutional. The case law does not support the argument that every community, no matter how small, must have an adult entertainment zone. *See, e.g.,* Township of Saddle Brook v. A.B. Family Center, Inc., 722 A.2d 530 (N.J. 1999) (rejecting constitutional challenges to state statute with a similar 1,000-foot regulation and citing

relevant cases). Furthermore, there is no evidence that the Village of Montrose is its own self-inclusive "real estate market." Based on the location, size and population of Montrose, it is reasonable to conclude that its residents work, shop and obtain entertainment in greater Effingham County and perhaps within an even larger geographic area. It also is evident that the substantial revenues of the Lion's Den's store in Montrose — more than $1,000,000 in 2004 — are not derived only from the 255 people who live in the Village, but rather from customers traveling to the store from a much broader area. This was confirmed by Ms. Woolridge, the former sales clerk, who testified that the Lion's Den store's main patronage comes from interstate truck drivers.

The Supreme Court of Illinois – in a case upholding an ordinance requiring the relocation of numerous adult businesses to other parts of Cook County – acknowledged expert testimony indicating "that approximately 40% of adult use customers came from greater than 10 miles to patronize these businesses and that the market area encompasses at least a 20-mile radius around the defendant adult use businesses." County of Cook v. Renaissance Arcade and Bookstore, 122 Ill. 2d 123, 135, (appeal dismissed for want of a substantial federal question); Mannheim Books, Inc. v. County of Cook, 488 U.S. 882 (1988).

Based on the relevant law and the facts adduced during the hearings in this matter, this Court finds that Effingham County is an appropriate geographic area to consider when evaluating the constitutionality of 65 ILCS 5/11-5-1.5, which was enacted in conjunction with 55 ILCS 5/5-1097.5, which initially applied identical restrictions to adult entertainment facilities throughout the County. Although 55 ILCS 5/5-1097.5 was subsequently amended to expand the buffer zone from 1,000 feet to 3,000 feet within

counties, while the buffer remains 1,000 feet within municipalities, the two statutory provisions, taken together, still comprise a statewide zoning regulation for the location of adult entertainment facilities.

As to Defendant's second premise, this Court is not persuaded that it should consider the effect of the Montrose zoning ordinance in determining whether the wholly separate state statute is constitutional. The statute was in effect for more than five years prior to the opening of the Lion's Den store in Montrose. The village ordinance was not in existence when the statute was enacted, nor when the store began operations. The Defendants have not attempted to relocate the store since the ordinance was adopted, nor have they sought any relief in the form of a special use permit or amendment under the provisions of the ordinance. The Defendants have not challenged the constitutionality of the ordinance, and its validity is not at issue before the Court in this case. Therefore, there is no basis for "bootstrapping" the effects of the ordinance on alternative sites under the state statute.

Applying the Renton standard to the statute at bar, this Court finds that the statute clearly leaves alternative avenues of communication for adult entertainment facilities to locate throughout Effingham County. Effingham County is comprised of approximately 480 square miles. As Plaintiff's Exhibit 38 demonstrates, more than 90% of its land lies outside the original 1,000-foot buffer zones created by 625 ILCS 5/11-5-1.5 and 55 ILCS 5/5-1097.5, which were in effect when the Lion's Den store opened in Montrose in January, 2003. Although Plaintiff's Exhibit 38 shows only 1,000-foot (rather than 3,000-foot) buffer zones for the protected uses located outside municipalities within the County, the Court can easily extrapolate the amended buffer zones from the original

zones shown on Plaintiff's Exhibit 38. Even when the buffer zones are expanded to 3,000 feet outside of municipalities, as required by the subsequent amendment of 55 ILCS 5/5-1097.5, which went into effect prior to the conclusion of the trial herein, there still would be land available throughout Effingham County for the location of adult entertainment facilities under both statutes.

Even though the vast majority of Effingham County consists of rural land, that does not make it unsuitable for commercial development. Undoubtedly, some improvements may need to be made in order to have sufficient access and utilities to operate a store, but there is no apparent reason that the Defendants could not do so. In County of Cook v. Renaissance Arcade and Bookstore, the Illinois Supreme Court in stated: "*Renton* does not require the county to provide the defendants with land tailor-made to conform to the defendants' requirements. . . . Even though the defendants may have to expend a certain amount of money to relocate, the defendants 'are affected no differently from any other commercial enterprise that suffers economic detriment as a result of land-use regulation. . . . '" 122 Ill. 2d at 139. It is untenable to suggest that there are no alternative sites in Effingham County for the Lion's Den store to legally locate under the statute. On the contrary, the evidence suggests that hundreds, if not thousands, of parcels remain available, which is substantially more than other courts have found sufficient to be constitutional. See S&G News, Inc. v. City of Southgate (E.D. Mich. 1986) 638 F. Supp. 1060 (upholding constitutionality of ordinance, under *Renton*, establishing commercial districts comprising only 2.3% of total land area of county as permitted use area); Dumas v. City of Dallas (N.D. Tex. 1986) 648 F. Supp.

1061 (upholding constitutionality of ordinance, under *Renton*, establishing 8% to 10% of total land area of county as permitted use area).

Furthermore, due to the close proximity of the Village of Montrose to Cumberland County and to Jasper County, there very well may be alternative sites in those counties, as well as in Effingham County, which would comply with the statutory restrictions and which would still be within the market area of Montrose. This Court finds no reason to restrict the relevant geographic area for alternative avenues of communication to the boundaries of a single county. However, the Plaintiff submitted no evidence regarding the availability of alternative sites in nearby areas of Cumberland County or Jasper County. Therefore, this Court cannot determine whether such alternative avenues of communication are available to the Defendants in addition to those in Effingham County.

In any event, there is no evidence that the Defendants ever sought any alternative site for the Lion's Den store in an effort to comply with the statute – not within the Village of Montrose, not elsewhere in Effingham County, not anywhere.

C. Elements necessary for entry of a permanent injunction

In order to be entitled to a permanent injunction, a plaintiff generally must establish the following three elements: (1) that it possesses a certain and clearly ascertainable right; (2) that it has no adequate remedy at law; and (3) that it will suffer irreparable harm if no injunctive relief is granted. County of Kendall v. Rosenwinkel, 353 Ill. App.3d 529 (2nd Dist. 2004); Lucas v. Peters, 318 Ill. App. 3d 1 (1st Dist. 2000). However, where a statute specifically authorizes the government to seek injunctive relief, the three traditional equitable elements for injunctive relief need not be proven. County of Kendall v. Rosenwinkel, 353 Ill.App.3d 529 (2nd Dist. 2004); People ex rel.

Sherman v. Cryns, 203 Ill.2d 264 (2003); Sadat v. American Motors Corp., 104 Ill.2d 105 (1984).

65 ILCS 5/11-5-1.5, the statute sought to be enforced by the Plaintiff against the Defendants in the present action, contains no specific provision for its enforcement. It provides no penalty for its violation. It does not specifically authorize any public official, whether state or local, to enforce it; nor does it provide any remedy for private parties. This action was initiated by the Effingham County State's Attorney pursuant to his general powers under 55 ILCS 5/3-9005(a)(1). Consequently, the Plaintiff is required to meet all three of the above-stated elements for injunctive relief under common law in order to obtain a permanent injunction enjoining the Defendants from violating 625 ILCS 5/11-5-1.5. As explained more fully below, this Court finds that the Plaintiff has done so.

1. A certain and clearly ascertainable right

The General Assembly, as the duly elected legislative body in the State of Illinois enacted 65 ILCS 5/11-5-1.5. Consequently, the Plaintiff, namely the People of the State of Illinois, including the people of Effingham County, and more particularly the people of the Village of Montrose, have an interest in seeing that proper compliance with 65 ILCS 5/11-5-1.5 is enforced. 55 ILCS 5/3-9005(a) provides in part as follows: "The duty of each State's Attorney shall be (1) To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the State or county may be concerned." Consequently, Edward C. Deters, as State's Attorney of Effingham County, has standing and authority to bring a civil action to enforce compliance with 65 ILCS 5/11-5-1.5 within Effingham County.

The Lion's Den store in Montrose, Effingham County, Illinois, is in clear violation of 65 ILCS 5/11-5-1.5, a statute which is constitutional, both on its face and as applied. Therefore, the Plaintiff has a certain and clearly ascertainable right to seek enforcement of the statute against the Defendants.

2. No adequate remedy at law

625 ILCS 5/11-5-1.5 does not provide any statutory cause of action for money damages, nor does any common law cause of action for damages exist, for violations of the statute. Moreover, there would be no way to determine the amount of damages for a violation. Consequently, the Plaintiff has no adequate remedy at law in order to obtain enforcement of the statute's regulation of the location of adult entertainment facilities.

3. Irreparable harm

Every day that the Lion's Den store in Montrose, Illinois, continues at its current location, it is in violation of 625 ILCS 5/11-5-1.5. Irreparable harm does not mean injury that is beyond repair, but rather transgressions of a continuing nature. Tamalunis v. City of Georgetown, 185 Ill.App.3d 173 (4th Dist. 1989).

The Village of Montrose Park and the Montrose Cemetery and all those who would use them are irreparably harmed by continuing increased exposure to the negative secondary effects resulting from close proximity to an adult entertainment facility, as described and documented by Dr. McCleary's testimony and research, as well as case law previously cited. The evidence established that since the Lion's Den store opened, there already have been several actual incidents of such negative secondary effects impacting the surrounding vicinity, including the appearance of sexually explicit litter in the playground area of the park and in the roadway drainage

ditches near the park and cemetery, acts of sexual solicitation at the store, increased truck traffic from the interstate, and a marked reduction in use of the park by families, baseball leagues and campers.

The Court's conclusion that there is irreparable injury is amply supported by relevant case law from the federal courts. Those courts have accepted findings of various studies that link adult entertainment facilities to depression of property values, crime, and sex-related vice activities. *See* City of Renton, 475 US 41 (1986); Barnes v. Glen Theater, Inc. 501 U.S. 560 (1991); County of Cook v. Renaissance Arcade and Bookstore, 522 N. E. 2d 73 (Ill. 1988). The Plaintiff is entitled to rely upon those experiences. *See* Renton, 475 US at 51-52. The appropriate focus is not, "an empirical enquiry into the actual intent of the enacting legislature, but rather the existence or not of a current governmental interest in the service of which the challenged application of the statute may be constitutional." Barnes, 501 U.S. 560, 582 (Souter, J., concurring).

4. Balancing the equities

In addition to determining whether a plaintiff has established the foregoing three elements, a court considering a request for injunctive relief must balance the equities of granting an injunction. This Court has done so, and finds that equity favors the Plaintiff's request for a permanent injunction. The Lion's Den store in Montrose, Illinois, has been in violation of 625 ILCS 5/11-5-1.5 for more than two years, ever since it opened in January of 2003. During that time the store has achieved substantial revenues, over $1 million in 2004 alone. However, no evidence has been submitted and there is no reason to believe that it could not attain similar success at another location outside the buffer zones of the statute. Moreover, there is no evidence that the

Defendants ever sought any alternative site for the store in an effort to comply with the statute. This demonstrates a blatant disregard for the statue and for the persons and places it is designed to protect. The law should not the flaunted in such a fashion. The People of the State of Illinois, including the people of Effingham County, and more particularly the people of the Village of Montrose, are entitled to the benefit of the statute's protection against the secondary effects of an adult entertainment facility near a park, a cemetery and each of the other protected uses set forth in 625 ILCS 5/11-5-1.5. They have gone long enough without the benefit of such protection. A permanent injunction will restore to them what the legislature intended them to have, and what they have been deprived of by the current location of the Lion's Den store, namely security and peace of mind when visiting the Village of Montrose Park and the Montrose Cemetery.

Accordingly, because all the requirements for injunctive relief have been met, the Plaintiff's request for a permanent injunction should be granted.

D. Defendant's Counterclaim

Because Defendant Effingham Retail 27, Inc. is in violation of a constitutionally valid state statute, and because Edward C. Deters, State's Attorney of Effingham County, is otherwise immune from civil suit under 42 U.S.C. Section 1983, the Defendant's Counterclaim should be dismissed with prejudice. *See* Imbler v. Pachtman, 424 U.S. 409 (1976) and Mendenhall v. Goldsmith, 59 F. 3d 685, 689-91 (7th Cir. 1995).

E. Denial of stay pending appeal

There are numerous different factors which may be relevant, on a case by case basis, in determining whether a judgment should be stayed pending appeal, pursuant to Supreme Court Rule 305, including but not limited to the likelihood of success on appeal, whether a stay is necessary to secure the fruits the appeal, and the likelihood that undue hardship will result. Stacke v. Bates, 138 Ill.2d 295 (1990). In making such a determination the court should engage in a balancing process as to the rights of the parties. Id. The movant must present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay. If the balance of the equitable factors does not strongly favor the movant, then there must be a more substantial showing of a likelihood of success on the merits. Id. In this case, balancing the equities in order to determine whether a stay should be granted is not significantly different than balancing the equities in order to determine whether the permanent injunction should be granted. As set forth more fully throughout this Order, this Court finds that the Defendants do not have a substantial likelihood of success on appeal, and that the balance of equitable factors strongly favors the Plaintiff rather than the Defendants. Consequently, the Defendants' request for a stay of the judgment pending appeal should be denied.

IV. JUDGMENT

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. Defendant Effingham Retail 27, Inc., its officers, agents, servants, lessees, successors and assigns, and all those acting in concert and participation with it, including but not limited to Defendant Michelle Moore, hereby are permanently enjoined from operating the adult bookstore and adult video store known as The Lion's Den, or any other adult entertainment facility, at its current location, commonly known as 401 Frontage Road, in the Village of Montrose, Effingham County, Illinois, and legally described as follows:

> A part of the Northwest Fractional Quarter of Section 1, Township 8 North, Range 7 East of the Third Principal Meridian more particularly described as follows: Commencing at a point on the North line of the Northwest Fractional Quarter of said Section 1, 4823.6 feet Westerly of the Northeast corner of said Section 1, being an iron pin; thence, South 89 (degrees) 40 (minutes) 38 (seconds) East assumed bearing along the North line of the Northwest Quarter of said Section 1, a distance of 122.39 feet, to the PONT OF BEGINNING, being an iron pin; thence, continuing South 89 (degrees) 40 (minutes) 38 (seconds) East along the North line of the Northwest Quarter of said Section 1, a distance of 780.26 feet, to an iron pin; thence, South 20 (degrees) 03 (minutes) 00 (seconds) East to the Right-of-Way line of said F.A.I. Route 7, a distance of 526.08 feet, to an iron pin; thence, South 87 (degrees) 49 (minutes) 22 (seconds) West along the Right-of-Way line of said F.A.I. Route 7, a distance of 66.82 feet, to an iron pin; thence, North 27 (degrees) 16 (minutes) 26 (seconds) West, a distance of 185.23 feet, to the POINT OF BEGINNING, (reference made to Plat of Survey dated August 7, 2002 and made by Charles A. Grunloh, P.L.S. No. 2516), situated in the County of Effingham and State of Illinois;

which is less than 1,000 feet from the Village of Montrose Park and less than 1,000 feet from the Montrose Cemetery, in violation of the requirements set forth in 65 ILCS 5/11-5-1.5.

B. Defendant Real Estate located at 401 Frontage Road, in the Village of Montrose, Effingham County, Illinois, which is legally described as follows:

> A part of the Northwest Fractional Quarter of Section 1, Township 8 North, Range 7 East of the Third Principal Meridian more particularly described as follows: Commencing at a point on the North line of the Northwest Fractional

Quarter of said Section 1, 4823.6 feet Westerly of the Northeast corner of said Section 1, being an iron pin; thence, South 89 (degrees) 40 (minutes) 38 (seconds) East assumed bearing along the North line of the Northwest Quarter of said Section 1, a distance of 122.39 feet, to the PONT OF BEGINNING, being an iron pin; thence, continuing South 89 (degrees) 40 (minutes) 38 (seconds) East along the North line of the Northwest Quarter of said Section 1, a distance of 780.26 feet, to an iron pin; thence, South 20 (degrees) 03 (minutes) 00 (seconds) East to the Right-of-Way line of said F.A.I. Route 7, a distance of 526.08 feet, to an iron pin; thence, South 87 (degrees) 49 (minutes) 22 (seconds) West along the Right-of-Way line of said F.A.I. Route 7, a distance of 66.82 feet, to an iron pin; thence, North 27 (degrees) 16 (minutes) 26 (seconds) West, a distance of 185.23 feet, to the POINT OF BEGINNING, (reference made to Plat of Survey dated August 7, 2002 and made by Charles A. Grunloh, P.L.S. No. 2516), situated in the County of Effingham and State of Illinois;

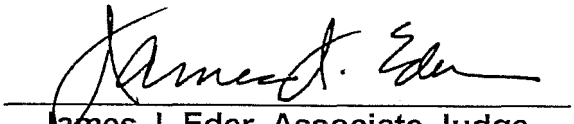
and which is less than 1,000 feet from the Village of Montrose Park and less than 1,000 feet from the Montrose Cemetery, hereby is permanently enjoined from serving as the location of the adult bookstore and video store known as The Lion's Den, or any other adult entertainment facility, in violation of the requirements set forth in 65 ILCS 5/11-5-1.5.

C. The Counterclaim, in its entirety, including both Count I and Count II, filed by Defendant Effingham Retail 27, Inc., hereby is dismissed with prejudice.

D. Each party shall bear its own costs.

E. Defendants' motion for stay of judgment pending appeal hereby is denied.

ENTERED this 13th day of July, 2005



James J. Eder, Associate Judge

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN 14 2005
CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RELIABLE CONSULTANTS, INC., ET AL., Plaintiffs,	.	CIVIL ACTION NO. 4:05-CV-166-A
VS.	.	
CITY OF KENNEDALE, TEXAS Defendant.	.	May 26, 2005 9:00 a.m.

. . . . . .

PARTIAL TRANSCRIPT OF PROCEEDINGS
(Court's Findings of Fact and Conclusions of Law)
BEFORE THE HONORABLE JOHN H. McBRYDE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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COPY

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

CITY OF BROOKHAVEN, GA SOB REGS 002813

1 P R O C E E D I N G S,

2 THE COURT: Okay. Probably the best way to deal with
3 this, I'm going to go ahead and make my findings and, if I can,
4 state my conclusions. First of all, I'll adopt as findings of
5 fact all of the facts that are stated as stipulated facts and
6 admissions. I adopt those as findings of fact. Some of them
7 may not be relevant, but I don't think it hurts to include them
8 even though they're not relevant.

9 I'm going to work from the pretrial order because I think
10 I made it clear that I was going to decide the case on the
11 basis of what the parties agreed the contested issues of fact
12 were and the contested issues of law. Some of these I don't
13 consider to be relevant, but I'm going to deal with each one of
14 them. And I'm just going to go down the list. Does each of
15 you have your pretrial order in front of you?

16 MR. OLSON: Yes, Your Honor.

17 MR. KINSLEY: Yes.

18 THE COURT: I find on 1, that customers of Dreamer's
19 use residential streets in the Oak Crest Addition to access
20 Dreamer's. I find that to be a fact.

21 I find to be a fact that Log Cabin Video is another
22 sexually oriented business operated in the Oak Crest Addition.
23 Now, there was some talk that it doesn't do what it used to do,
24 but I had the impression that it was still a sexually oriented
25 business. Now, I'll hear from either side on that if you have

1 any dispute, but it seems to me like that's undisputed.
2 MR. KINSLEY: The only testimony, I think, directly
3 to that, Your Honor, was by the code enforcement officer; and
4 he said that he had not counted or made any sort of assessment
5 of the inventory or floor space, and that's the definition.
6 THE COURT: Well, I don't think it's a relevant issue
7 anyway. What's your --
8 MR. KINSLEY: I agree. We have no objection if the
9 Court makes that finding.
10 THE COURT: I don't know why we're spending time on
11 it, so let's just cancel No. 2.
12 MR. KINSLEY: That's fine.
13 THE COURT: Do you think it's relevant to something?
14 MR. OLSON: Your Honor, I do think it's relevant to
15 the extent that we're trying to address a problem of the
16 clustering of sexually oriented businesses.
17 THE COURT: Well, I had the impression from what I've
18 heard that it was a sexually oriented business.
19 Is that your recollection of the testimony?
20 MR. OLSON: That was the testimony from our witness.
21 THE COURT: Okay. Well, I find that to be a fact.
22 I find to be a fact that the City of Kennedale has
23 received complaints from residents regarding liter, noise, and
24 late night traffic through the residential neighborhoods in the
25 Oak Crest Addition. I haven't heard of many complaints, but

1 I've heard that there were complaints. So I find that to be a
2 fact.
3 I find No. 4 to be a fact, that sexually explicit material
4 sold or distributed by Dreamer's and/or other take-home only
5 sexually oriented businesses are routinely discarded in the Oak
6 Crest Addition. I find that to be a fact.
7 I find to be a fact that residents of Oak Crest Addition
8 have found discarded sexually explicit materials on their
9 property.
10 On No. 6, I find to be a fact that Dreamer's causes there
11 to be traffic in the residential neighborhood of Oak Crest
12 Addition during its operation from midnight until 8:00 o'clock
13 a.m. and from 12:00 o'clock midnight until 2:00 o'clock p.m.
14 In other words, there's more traffic there than there would be
15 if there wasn't a Dreamer's. But I'm not sure what your No. 6
16 means, the contested issues of fact. It says that between
17 those hours sexually oriented businesses, including Dreamer's,
18 cause an increase in traffic. I don't know what that means,
19 "increase in traffic." So if I'm going to have to make a fact
20 finding on that, I need to understand exactly what it means.
21 Maybe you can tell me what is meant when it says
22 "increase." Increase over what? What do you understand your
23 agreed stipulated -- or contested issue of fact means?
24 MR. OLSON: The purpose of that is to show that
25 there's more traffic because of Dreamer's than the other

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1 businesses of being open during those hours than there would be
2 otherwise.
3 THE COURT: Well, I find that to be a fact.
4 I find to be a fact your No. 7 contested issue of fact,
5 that is, that sexually oriented businesses, including take-home
6 only businesses like Dreamer's, are causing adverse secondary
7 effects on surrounding properties in Kennedale.
8 No. 8, I don't believe I have any evidence to base a
9 finding as to No. 8. Can you think of any evidence that bears
10 on that subject that's been offered?
11 MR. KINSLEY: Yes, Your Honor. We offered testimony
12 from Mr. Richards that -- Well, we stipulated to the
13 1800-dollar average amount from midnight to 8:00 a.m., and
14 Mr. Richards testified that that was about 20 percent of the
15 overall income.
16 THE COURT: I guess what I don't know is if people
17 couldn't go there from midnight until 8:00 o'clock, would they
18 be buying it at 9:00 o'clock the next morning?
19 MR. KINSLEY: Well, I think we offered some testimony
20 about that as well. That many of the customers that shop
21 during that time are shift workers and they would not be able
22 to come at the other times, although, I guess, there's no way
23 to totally know that unless the hours were enforced.
24 THE COURT: Okay. Well, I cannot find that the
25 limited hours of operation --

1 MR. OLSON: Your Honor, we've got a negative in that
2 statement there. Our position on that is that you should find
3 that limiting the hours of operation will not substantially
4 interfere with their ability to sell.
5 THE COURT: Well, I can't find that. I just don't
6 have any evidence that would enable me to find that. So I
7 can't find that. I'm not finding the opposite. I simply can't
8 find that.
9 Okay. Let's look at No. 9. I find that the primary goal
10 of Kennedale's Sexually Oriented Business Ordinance is to
11 eliminate the adverse effects that are caused by sexually
12 oriented businesses, including take-home only sexually oriented
13 businesses.
14 Okay. No. 10, I find that the hours of operation
15 restriction in Kennedale's Sexually Oriented Business Ordinance
16 advances the goal of affording neighbors peace and quiet, at
17 least during part of the day, preserving peace and tranquility
18 for citizens during the late evening hours. I find that. The
19 evidence, though, does not indicate that there -- I haven't
20 received significant evidence of lack of peace and noise, I
21 guess is what I'll say, but there is some evidence. And I
22 think it does, in fact, advance that goal.
23 Okay. No. 11, I find that on 11 I find that to be a fact,
24 the hours of operation restriction in Kennedale's Sexually
25 Oriented Business Ordinance diminishes traffic and noise --

1 Well, let me back up. I can't find that it does that because
2 it never has been in operation, has it?
3 MR. OLSON: It has not.
4 THE COURT: So I can't find that.
5 On 10, I was making a finding as to what goal it advances.
6 I think I can make that finding, and did, even though it has
7 not been in operation. But I can't find the effect of it if it
8 never has been in operation. Do you agree with that,
9 Mr. Olson?
10 MR. OLSON: Yes, I do, Your Honor. The only finding
11 we would ask you to make is that it does advance those goals,
12 but you're right. The ordinance has not been enforced since it
13 was adopted.
14 THE COURT: Okay. So I can't find 11.
15 I can't find 12 since it's never been in operation.
16 I find 13. Actually, it has three different facts stated
17 in it, and I find all three of them. The restricted hours of
18 operation in Kennedale's Sexually Oriented Business Ordinance
19 fall within the period of time when crime is more likely to
20 occur. I find that to be a fact. Statistically, crime rates
21 increase at night. I find that to be a fact. An
22 hours-of-operation restriction is an appropriate method to
23 reduce the crime-related secondary effects generated by
24 sexually oriented businesses, including take-home only sexually
25 oriented businesses. I find that to be a fact.

1 What's the relevance of 14 to what we're doing here,
2 Mr. Olson?
3 MR. OLSON: Your Honor, it has no relevance at all if
4 you don't buy into their proposed finding that take-home only
5 sexually oriented businesses don't cause adverse effects.
6 THE COURT: Do you see any relevance to 14 in the
7 context of where we are now?
8 MR. KINSLEY: Only to the extent that the Fifth
9 Circuit in *Encore Video* said that cities have a heightened
10 requirement with respect to take-home only businesses and that
11 they do have to differentiate and they have to show that it's
12 not just sexually oriented businesses in general. It's
13 take-home only sexually oriented businesses.
14 THE COURT: Well, from what I've heard I would find
15 that there's no major differences in the amount of crime caused
16 by those businesses that provide on-site entertainment and
17 those that provide only products for take-home use. I find
18 that based on the evidence I've heard. I suppose that I would
19 not have made such a finding before I heard the evidence,
20 because it surprised me a little bit. But that's what the
21 evidence is, and it's undisputed.
22 Okay. Let's go to 15. I think you've stipulated to an
23 exact number, haven't you?
24 MR. KINSLEY: Yes.
25 THE COURT: And so that's one of the facts I've

1 already found since it's a stipulated fact, and that is that
2 Dreamer's averages $1,800 in sales per day during the midnight
3 to 8:00 o'clock a.m. shift.
4 MR. OLSON: Your Honor, for clarification, we did not
5 stipulate to the second sentence of No. 15.
6 THE COURT: Well, you stipulated to what I just said.
7 MR. OLSON: Yes, Your Honor.
8 THE COURT: Pardon?
9 MR. OLSON: Yes, Your Honor.
10 THE COURT: Well, do I need to deal with 15 in view
11 of that stipulation?
12 MR. KINSLEY: No.
13 MR. OLSON: I was just trying to get a clarification
14 on --
15 THE COURT: I'm not finding 15. I'm just ignoring
16 that.
17 MR. OLSON: Thank you.
18 THE COURT: Instead, I'm finding what you stipulated
19 to, which is what I said a moment ago.
20 I cannot find that Dreamer's has in place adequate
21 measures to reduce litter, traffic, and noise, No. 16.
22 Somebody help me on No. 17. Frankly, I haven't had a
23 chance to read all of the -- We're talking about Exhibits 14
24 through 21?
25 MR. KINSLEY: Yes. And I believe there was testimony

1 from the city manager, David Miller, that they do not
2 distinguish between take-home only businesses and on-site. And
3 Ms. Cooper also described them in that manner, Your Honor.
4 MR. OLSON: I disagree with the testimony.
5 Mr. Miller testified that it had been a while since he read
6 them. Ms. Cooper, I believe, testified that as to some of
7 those studies they did address book stores. They didn't
8 specifically address whether those book stores were take-home
9 only or not, but they did address book stores and that's the
10 basis --
11 THE COURT: Well, I can't find 17. And I'm not sure
12 it's really that important because they certainly considered
13 factors that would cause them to reasonably believe certain
14 things without having that specific information in those
15 studies.
16 No. 18, let's see, the survey of Tarrant County Real
17 Estate Appraisers conducted by the City of Kennedale did not
18 follow accepted norms for surveys, including a control group,
19 limits on sampling error, closed-ended questions, and the like.
20 I haven't heard any evidence that it did include any of those
21 things. Do you agree with that?
22 MR. OLSON: I agree with that, that statement.
23 THE COURT: But I haven't heard any evidence that
24 those are the accepted norms.
25 MS. KINSLEY: Your Honor, I believe that we submitted

1 a summary of the deposition of April Virnig that would have
2 addressed these specific --
3 THE COURT: Well, that wasn't offered in evidence.
4 MR. KINSLEY: We submitted the summary with the
5 pretrial --
6 THE COURT: Well, I've got all sorts of things that
7 people have submitted, but we only consider what's offered in
8 evidence.
9 MR. KINSLEY: Well, to the extent that that was not
10 in evidence, I move to have it in evidence. It's an agreed
11 summary that we've reached.
12 THE COURT: Okay. Do you mind if she reopens and
13 offers that summary? She apparently misunderstood the rule.
14 She thought that filing something is sufficient to make it
15 evidence, apparently.
16 MR. OLSON: Your Honor, I will not object to that.
17 THE COURT: Okay. Well, let me find that summary.
18 MR. KINSLEY: It is attached to my combined witness
19 list, exhibit list, and deposition summary.
20 THE COURT: Okay. Let me find it.
21 (Brief pause.)
22 THE COURT: Okay. I'm looking at the summary and I
23 don't see that there is anything that would define what the
24 accepted norms are for surveys, so on. Can you point to me
25 where that is in the summary?

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1 MR. KINSLEY: It's not in the summary. But then I
2 would ask, Your Honor, to make a finding that it did not do
3 these things without specifying that they are the accepted
4 norms, if we can just delete "accepted norms."
5 THE COURT: Okay. My question is: Can I make the
6 finding? I can't make the finding because there's no evidence
7 as to what the accepted norms are.
8 MR. KINSLEY: Not specifically as it's written, but I
9 would ask the Court to delete the words --
10 THE COURT: Well, I'm --
11 MR. KINSLEY: -- "accepted norms for surveys."
12 THE COURT: I'm going down and finding or not finding
13 the facts that y'all have specified to be the contested issues
14 of fact, and I cannot find 18.
15 (Court confers with law clerk.)
16 THE COURT: His question was, are we now considering
17 the summary as an exhibit; and I'm not considering the summary
18 as an exhibit but I am considering it as evidence, as part of
19 the record. It doesn't have to be in the record beyond being
20 an attachment to the combined witness list.
21 Okay. I cannot find No. 19, that is, that take-home only
22 sexually oriented businesses like Dreamer's do not cause
23 negative secondary effects. I can find the opposite of that,
24 and I do find the opposite of that, and that is I find that
25 take-home sexually oriented businesses like Dreamer's do cause

1 negative secondary effects.

2 Now, those are the only things that y'all have specified

3 as contested issues of fact. I think what you have under the

4 contested issues of law are another series of contested issues

5 of fact, as I look at them. The first one under contested

6 issues of law is whether sexually oriented businesses,

7 including take-home only sexually oriented businesses,

8 adversely affect surrounding properties. That sounds like a

9 fact issue to me. Do y'all want me to treat those as fact

10 issues and go ahead and make findings on them? What's your

11 view on that?

12 MR. KINSLEY: Yes, Your Honor, I think everything

13 that's listed is an issue that needs to be addressed.

14 THE COURT: What's your view on that?

15 MR. OLSON: I would like for you to make a finding on

16 the issues.

17 THE COURT: Okay. Well, I think you've included

18 under contested issues of law what are really fact issues. And

19 I find that sexually oriented businesses, including take-home

20 only sexually oriented businesses affect surrounding

21 properties.

22 No. 2, since this is an issue that is in your favor if I

23 were to find it as a fact, tell me what evidence supports it,

24 Mr. Olson, No. 2.

25 MR. OLSON: If you find it as a fact, it would be the

1 testimony of the city manager that that information was
2 conveyed to the City Council in connection with the adoption of
3 this ordinance. As a contested issue of law, it's the cases
4 that we have briefed to you.
5 THE COURT: Okay. My question is: What is the "used
6 by other entities"? What have I heard that other entities used
7 that for that purpose?
8 MR. OLSON: You have heard testimony from our expert
9 witnesses about their studies and recommendations they have
10 made.
11 THE COURT: What testimony have I heard that limiting
12 hours of operation of sexually oriented businesses is a method
13 that has been successfully used by other entities? Have I
14 heard anything to that effect? I haven't seen it. I mean, I
15 can't recall it.
16 MR. OLSON: I believe the only testimony was from the
17 city manager that that information was conveyed to the City
18 Council and that was the basis for their decision that other
19 entities had successfully done this.
20 THE COURT: I can't find that. I can't find No. 2.
21 I'm not finding the opposite. I simply can't find the fact as
22 stated in No. 2.
23 No. 3, I find that the City Council of the City of
24 Kennedale could have reasonably believed that the hours of
25 operation restriction in its Sexually Oriented Business

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1 Ordinance advances the following goals: affording neighbors
2 peace and quiet, at least during part of the day, preserving
3 peace and tranquility for citizens during the late evening
4 hours; diminishing noise and the presence of discarded sexually
5 oriented material on residential lawns that sexually oriented
6 businesses cause because patrons are more likely to discard
7 sexually oriented materials on residential lawns during the
8 cover of night than during the openness of broad daylight;
9 reducing noise, late-night traffic, and crime in general in the
10 vicinity of the sexually oriented businesses. In other words,
11 I find everything in the statement that you have as No. 3 on
12 page 7 except I cannot make a finding on the trespassing.
13 Okay. Going to No. 4, I find that Kennedale's Sexually
14 Oriented Business Ordinance is a content-neutral time, place,
15 and manner restriction that is designed to combat the
16 undesirable secondary effects of sexually oriented businesses.
17 And I find that the ordinance is narrowly tailored and furthers
18 a substantial governmental interest and leaves open ample
19 alternative avenues for communication.
20 Okay. Going to No. 5. I think that's become a moot
21 issue. I think No. 6 has become a moot issue.
22 No. 7, the way No. 7 is worded, I find that the city has a
23 substantial governmental interest in requiring Dreamer's to
24 close at certain hours even though it offers no on-premises
25 entertainment. That's not the way No. 7 is worded, but that's

1 the finding I'm making.
2 I think 8 is moot in view of what I've said.
3 I find on No. 9, I find that the hours of operation
4 provision is content-neutral. And I guess that's a conclusion
5 more than a finding, and I make that conclusion.
6 Going to No. 10, I conclude that Section 11-203.1 leaves
7 open ample alternative avenues of communication.
8 I find that No. 11 is moot under the circumstances.
9 Twelve, I find moot under the circumstances.
10 No. 13, I certainly can't find that survey was
11 scientifically reliable. I don't have any information that
12 it's scientifically reliable, but I don't know whether it's
13 scientifically unreliable. It's a nonentity as far as I'm
14 concerned. It didn't prove anything one way or the other. And
15 No. 14, I find the same thing.
16 And, of course, y'all agreed on certain issues, and I'll
17 accept those agreements. I'm talking about the agreed issues
18 of law.
19 Now, is there any other fact that I need to make a finding
20 on? I made a finding on every fact that y'all have specified
21 in the pretrial order as either a contested issue of fact or a
22 contested issue of law.
23 Can you think of any others I need to make a finding on?
24 MR. KINSLEY: No, Your Honor.
25 THE COURT: Do you?

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1 MR. OLSON: No, Your Honor.

2 THE COURT: Okay. Well, I'm denying the plaintiff

3 the relief the plaintiff is seeking. We'll enter -- I don't

4 think there's any kind of counter claims by the city, is there?

5 MR. OLSON: No, there's not, Your Honor.

6 THE COURT: So we'll enter a judgment denying the

7 plaintiff the relief the plaintiff is seeking.

8 Okay. The attorneys are excused.

9 MR. OLSON: Thank you, Your Honor.

10 THE COURT: Let me give all of these -- Where are the

11 originals of the exhibits?

12 MS. VIRNIG: Up there on the witnesses stand, Your

13 Honor.

14 THE COURT: Let's be sure we have all of them.

15 William will work with you. We want to be sure we have all the

16 exhibits, and I'm going to give you back my copies.

17 MS. VIRNIG: Certainly.

18 (Proceedings concluded, 4:19 a.m.)

19 -o0o-

CERTIFICATE

20 I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I

21 further certify that the transcript fees format comply with the those prescribed by the Court and the Judicial Conference of

22 the United States.

23 Eileen M. Brewer June 14, 2005

24 Eileen M. Brewer Date
Official Court Reporter

25 Texas CSR No. 3016

CITY OF BROOKHAVEN, GA SOB REGS 002829

267 Ga. 683
Supreme Court of Georgia.

GOLDRUSH II et al.
v.
CITY OF MARIETTA et al.
VARSALONA'S ITALIAN
RESTAURANT d/b/a Boomer's et al.
v.
CITY OF MARIETTA et al.
TUDOR d/b/a Cyprus Lounge
v.
CITY OF MARIETTA et al.

Nos. S96A1494, S96A1496 and S96A1497. | March 17, 1997. | Reconsideration Denied April 3, 1997.

Establishment owners filed declaratory judgment actions against city to prevent enforcement of new ordinance prohibiting them from obtaining liquor license and adult entertainment license for same establishment. After cases were consolidated, city moved for summary judgment. The Superior Court, Cobb County, James G. Bodiford, J., granted motion, and establishment owners appealed. The Supreme Court, Benham, C.J., held that: (1) amendment to Georgia Constitution authorizing local government regulation of alcohol and nudity was not, itself, unconstitutional; (2) ordinance did not violate free speech protections; and (3) owners did not have property interest in annual renewal of licenses.

Affirmed.

Sears, J., dissented and filed opinion.

Attorneys and Law Firms

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Michael J. Bowers, Attorney General, Daniel M. Formby, Deputy Attorney General, John B. Ballard, Jr., Senior Assistant Attorney General, W. Wright Banks, Assistant Attorney General, amicus curiae.

Opinion

***683** BENHAM, Chief Justice.

Appellants are establishments which provide adult entertainment and are located within the City of Marietta. For several years, each establishment has applied for and received annual licenses issued by the City authorizing the businesses to provide adult entertainment and to serve alcoholic beverages.[1] In January 1995, acting pursuant to the authority granted by a 1994 amendment to the Georgia Constitution, the Marietta City Council passed an amendment to the city's adult entertainment ordinance which amendment provided that a liquor license would not be issued for a location at which was performed entertainment that required the issuance of an adult entertainment license. In effect, the amended adult entertainment ****351** ordinance banned alcohol in adult entertainment establishments by requiring an applicant to choose between obtaining a liquor license or obtaining a license to provide adult entertainment. The amended ordinance also provided that licenses previously granted would not be subject to the amendment until December 31, 1995, "at which time all licensees within the City of Marietta shall be subject to this provision, including those licensees licensed before the effective date hereof."

1 Cyprus Lounge had adult entertainment and liquor licenses for 1992, 1993, 1994, and 1995; Boomer's had the necessary permits for 1991, 1992, 1993, 1994, and 1995, and Goldrush II for 1993, 1994, and 1995.

Following passage of the 1995 amendment to the city's adult entertainment ordinance, each of the appellants filed a separate action against the city, its council members, and its mayor, seeking a declaratory judgment on the constitutionality of certain provisions of Marietta's ordinances; injunctive relief against enforcement of the ordinances; and damages. Appellant Cyprus Lounge also sought a writ of mandamus requiring the city to issue to it adult entertainment and liquor licenses for 1996. The trial court consolidated the three cases and, after an extended

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hearing, granted summary judgment ***684** to the defendants and denied injunctive relief to the plaintiffs. Each of the businesses and the person to whom the adult entertainment and liquor licenses were issued appealed the trial court's judgment to this Court, and we have consolidated the three appeals. [2]

2 According to the trial court's order, the parties agreed in December 1995 that the businesses could continue to serve alcohol and provide adult entertainment pending resolution of appeals filed in this court.

[1] 1. The 1995 Marietta ordinance amendment was enacted following the ratification of an amendment to the Georgia Constitution which is now embodied in Article III, Section VI, Paragraph VII. The constitutional amendment gives the State of Georgia "full and complete authority to regulate alcoholic beverages and to regulate, restrict, or prohibit activities involving alcoholic beverages[,]" including the regulatory authority given the States by the Twenty-first Amendment to the U.S. Constitution. The constitutional amendment goes on to delegate this regulatory authority to the counties and municipalities of Georgia "for the purpose of regulating, restricting, or prohibiting the exhibition of nudity, partial nudity, or depictions of nudity in connection with the sale or consumption of alcoholic beverages...." Before the trial court, as well as on appeal, appellant Boomer's contends that the constitutional amendment is a fatally overbroad unconstitutional infringement upon the freedom of expression guaranteed by the First Amendment to the U.S. Constitution.

[2] The constitutional amendment's authorization to the State to "regulate, restrict, or prohibit activities involving alcoholic beverages" and its delegation of regulatory authority to local governments to regulate, restrict, or prohibit nudity, partial nudity, or depictions of nudity, without regard to whether the activity limited or the nudity proscribed is constitutionally protected, run counter to the holdings in *Harris v. Entertainment Systems,* 259 Ga. 701, 386 S.E.2d 140 (1989), and *Pel Asso v. Joseph,* 262 Ga. 904, 427 S.E.2d 264 (1993). In those cases, this court found a statute and an ordinance overbroad because one went beyond "prohibiting nude dancing in bars" and the other applied to mainstream performance houses and private conduct as well as barroom nude dancing. Despite the appearance of similar overbreadth in the 1994 constitutional amendment, we decline to brand the constitutional amendment as unconstitutionally overbroad because we perceive a fundamental distinction between it and the statute and ordinance which were found lacking in *Harris* and *Pel Asso:* the constitutional amendment is not a self-executing amendment, but requires the passage of legislation to give it effect.

> "A constitutional provision may be said to be self-executing ***685** if it supplies a sufficient rule by means of which the right given may be enjoyed and protected or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law."

Davis v. Burke, 179 U.S. 399, 403, 21 S.Ct. 210, 212, 45 L.Ed. 249 (1900), quoting Cooley, *Constitutional Limitations.* The constitutional amendment at issue here is not self-executing because it "merely indicates a line ****352** of policy or principle without supplying the means by which such policy or principle are to be carried into effect," and because "it appears from the language that subsequent legislation was contemplated to carry it into effect." 16 C.J.S., Constitutional Law, § 46. The 1994 constitutional amendment "clearly anticipates" the enactment of legislation by the General Assembly or a local governing body to implement the principles set forth in the amendment. *Cox v. French,* 277 Ark. 134, 640 S.W.2d 786 (1982). See *J.W.A. v. State of Georgia,* 233 Ga. 683, 212 S.E.2d 849 (1975). Because implementation of the constitutional amendment requires legislative enactment, the constitutional amendment is not effective until the legislation is passed. *State v. Pendergrass,* 63 Haw. 633, 633 P.2d 1113 (1981). See also *DeKalb County v. Allstate Beer,* 229 Ga. 483(2), 192 S.E.2d 342 (1972). Consequently, while the wording of the constitutional amendment authorizes enactment of local legislation that would be condemned as overbroad, it is the language of the enacted local legislation, not the constitutional amendment, which must be examined for overbreadth. That being so, we decline to declare the constitutional amendment unconstitutionally overbroad.

[3] 2(a). Appellant Varsalona asserts that the 1994 constitutional amendment violates the Georgia constitutional provision prohibiting the presentation to voters of a proposed constitutional amendment containing more than one subject matter. 1983 Ga. Const., Art. X, Sec. I, Par. II.

[4] "The test of whether ... a constitutional amendment violates the multiple subject matter rule is whether all of the parts of ... the constitutional amendment are germane to

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the accomplishment of a single objective. [Cit.]" *Carter v. Burson*, 230 Ga. 511(3), 198 S.E.2d 151 (1973). See also *Sears v. State*, 232 Ga. 547(5), 208 S.E.2d 93 (1974). It is apparent that the general purpose of the amendment is the regulation of alcoholic beverages. Because the portion of the amendment delegating to local governmental units the authority to regulate the exhibition of nudity in connection with the sale of alcoholic beverages is germane to the general subject of the regulation of alcoholic beverages, the amendment does not violate the prohibition against multiple subject matters.

[5] ***686** (b) Varsalona also contends that the wording of the ballot[3] concerning the constitutional amendment deceived the voters of Georgia, resulting in a violation of the due process guarantees of the Fourteenth Amendment to the U.S. Constitution. We disagree.

3 The ballot read as follows:

> Shall the Constitution of the State of Georgia be amended so that alcoholic beverages and activities involving nudity and alcoholic beverages, such as in nude dance clubs, may be regulated, restricted, or prohibited by counties and municipalities and so that the state shall have full and complete authority to regulate alcoholic beverages under the powers granted by the Twenty-First Amendment to the United States Constitution?

[6] "[T]his court ... [conducts] only a minimal review of ballot language if the state followed all of the constitutionally and statutorily required procedures for amending the constitution...." *Donaldson v. Dept. of Transportation*, 262 Ga. 49, 51, 414 S.E.2d 638 (1992). There is no contention in the case at bar that the prescribed amendment procedure was not followed. "The only limitation on the General Assembly in drafting ballot language is that the language be adequate to enable the voters to ascertain which amendment they are voting on. [Cit.]." *Id.* See also *Burton v. Georgia*, 953 F.2d 1266, 1269 (11th Cir.1992) ("As long as citizens are afforded reasonable opportunity to examine the full text of the proposed amendment, ... substantive due process requires no more than that the voter not be deceived [by the ballot language] about what amendment is at issue.") We conclude that the language used on the ballot is not susceptible to appellant's attack for it clearly enabled the voters to ascertain what amendment they were voting on.

3. Since the constitutional amendment which authorized the passage of the 1995 amendment to Marietta's ordinance has withstood Boomer's constitutional attack, we next focus our attention on the analytical approach to be taken with regard to the amended ordinance in light of the passage of the constitutional amendment. In ****353** *Harris v. Entertainment Systems*, 259 Ga. 701(1b), 386 S.E.2d 140, supra, this Court concluded that the State's exercise of its police power, as far as nude dancing is concerned, was limited by Georgia's constitutional guaranty of free expression, and scrutinized the statute which impinged upon protected expression under the state constitution's free speech clause, Article I, Section I, Paragraph V. See *Paramount Pictures Corp. v. Busbee*, 250 Ga. 252, 297 S.E.2d 250 (1982). The Court took that approach after conceding the possibility that passage of the Twenty-first Amendment to the federal constitution restored to the State police power otherwise limited by the First Amendment, but noting that the freedom of expression protected by the state constitution had not been similarly limited by ratification of a state constitutional ***687** amendment equivalent to the Twenty-first Amendment.[4] *Id.* See also *Chambers v. Peach County*, 266 Ga. 318(n.2), 467 S.E.2d 519 (1996); *Pel Asso v. Joseph*, supra, 262 Ga. 904, 905 n. 1, 427 S.E.2d 264; *Gravely v. Bacon*, 263 Ga. 203, 208, 429 S.E.2d 663 (1993) (Hunt, P.J., concurring). But see *Illusions on Peachtree Street v. Young*, 257 Ga. 142(3), 356 S.E.2d 510 (1987), where this court, faced with a First Amendment challenge to a city ordinance, relied on the broad power to regulate alcohol it said had been given local governments by the Twenty-first Amendment; and *Jackson v. Three Aces*, 249 Ga. 395, 396, 291 S.E.2d 522 (1982), where this court stated that the Twenty-first Amendment vested state and local governments with "broad, sweeping authority to refuse to license the sale of liquor in establishments in which even non-obscene naked dancing is performed. [Cit.]"

4 Georgia is not alone in using its state constitutional guaranty of freedom of expression, unburdened by a "mini-Twenty-first Amendment," to find unconstitutional a statute or ordinance proscribing nude dancing in establishments with liquor licenses. See *Mickens v. City of Kodiak*, 640 P.2d 818 (Alaska 1982); *Bellanca v. N.Y State Liquor Authority*, 54 N.Y.2d 228, 445 N.Y.S.2d 87, 429 N.E.2d 765 (1981); *Commonwealth v. Sees*, 374 Mass. 532, 373 N.E.2d 1151 (1978); *Cleveland's P.M. on the Boardwalk v. Ohio Liquor Control Comm.*, 1997 WL 25522, 1997 Ohio App. LEXIS 231 (Jan. 23, 1997); *Sekne v. City of Portland*, 81 Or.App. 630, 726 P.2d 959 (1986). Cf. *Knudtson v. City of Coates*, 519 N.W.2d 166 (Minn.1994) (where the Minnesota Supreme Court, after noting that the Minnesota Constitution did not contain

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a provision equivalent to the Twenty-first Amendment, found the ordinance in question did not violate the state constitution's free speech guaranty because it was a reasonable exercise of police power only incidentally controlling free speech); *City of Billings v. Laedeke,* 247 Mont. 151, 805 P.2d 1348 (1991) (where the Montana Supreme Court noted the absence from its state constitution of a Twenty-first Amendment equivalent and then determined that Montana's free speech guaranty was co-extensive with the First Amendment).

Believing the passage of the 1994 constitutional amendment to have provided the Georgia Constitution with its equivalent of the Twenty-first Amendment to the U.S. Constitution [5] and relying on U.S. Supreme Court case law, the trial court concluded that Marietta's amended ordinance should be analyzed under the principles of the Twenty-first Amendment rather than the First Amendment. Faced, however, with a dearth of Georgia case law examining a local ordinance enacted after the 1994 constitutional amendment, the trial court relied on pre-amendment case law and applied Georgia's free expression analysis, the *Paramount Pictures* test, to the amended ordinance. See *Paramount Pictures v. Busbee,* supra, 250 Ga. 252, 297 S.E.2d 250. We conclude that, under recent case law from the U.S. Supreme Court, the trial court was in error when it determined that passage of the 1994 constitutional amendment required analysis of the Marietta ordinance under the Twenty-first Amendment. However, as will be ***688** seen, the trial court's use of the applicable *Paramount Pictures* test rendered the error harmless.

5 The Twenty-first Amendment to the U.S. Constitution did two things: it repealed the Eighteenth Amendment which totally prohibited the manufacture, sale, or transportation of intoxicating liquors within the United States and its territories, and it "delegated to the several States the power to prohibit commerce in, or the use of, alcoholic beverages." *44 Liquormart, Inc. v. Rhode Island,* 517 U.S. 484, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996).

It is easy to see why the trial court believed that freedom of expression had been supplanted by the authority delegated to the States by the Twenty-first Amendment and by the authority delegated by the State of Georgia to local governments in the 1994 constitutional amendment. In ****354** *California v. LaRue,* 409 U.S. 109, 118, 93 S.Ct. 390, 397, 34 L.Ed.2d 342 (1972), the U.S. Supreme Court concluded an opinion in which it held that California's regulations prohibiting certain sexual performances and the dispensation of liquor were not violative of the First Amendment by stating that, "[g]iven the added presumption in favor of the validity of the state regulation in this area that the Twenty-first Amendment requires," it could not hold the state regulations facially invalid under the U.S. Constitution. In *Doran v. Salem Inn,* 422 U.S. 922, 932-33, 95 S.Ct. 2561, 2568-69, 45 L.Ed.2d 648 (1975), the Court, summarizing its *LaRue* construction of the Twenty-first Amendment, stated that "the broad powers of the States to regulate the sale of liquor, conferred by the Twenty-first Amendment, outweighed any First Amendment interest in nude dancing and that a State could therefore ban such dancing as a part of its liquor license program." See also *City of Newport, Ky. v. Iacobucci,* 479 U.S. 92, 95, 107 S.Ct. 383, 385, 93 L.Ed.2d 334 (1986). In *N.Y.State Liquor Authority v. Bellanca,* 452 U.S. 714, 717, 101 S.Ct. 2599, 2601, 69 L.Ed.2d 357 (1981), the Court held that the State's power under the Twenty-first Amendment to ban the sale of alcohol entirely "includes the lesser power to ban the sale of liquor on premises where topless dancing occurs." Although the U.S. Supreme Court has repeatedly noted that the Twenty-first Amendment does not qualify individual rights protected by the Bill of Rights (*Craig v. Boren,* 429 U.S. 190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976)) or override any other relevant constitutional provision (*California v. LaRue,* supra, 409 U.S. at 120, 93 S.Ct. at 398 (Stewart, J., concurring)), the Court's statements in *LaRue*, *Doran*, *Bellanca*, and *Iacobucci* became the basis for rulings by state appellate courts which upheld a statute or ordinance banning non-obscene nude dancing in a location with a liquor license. [6] See *State v. Larson,* 653 So.2d 1158 (La.1995); *Proctor v. County of Penobscot,* 651 A.2d 355 (Me.1994); *City of Billings v. Laedeke,* supra, 247 Mont. 151, 805 P.2d 1348; *Misleh v. State,* 799 P.2d 631 (Okla.Cr.1990); *State of Idaho v. Pierandozzi,* 117 Idaho 1, 784 P.2d 331 (1989); *Morris v. Mun. Ct. for San Jose-Milpitas,* 32 Cal.3d 553, 186 Cal.Rptr. 494, 652 P.2d 51 (1982); *Nall v. Baca,* 95 N.M. 783, 626 P.2d 1280 (1980); *Barmat* ***689** *v. Robertson,* 125 Ariz. 514, 611 P.2d 101 (App.1980). As was noted earlier, this court also saw the power of the Twenty-first Amendment as a means by which expression might be controlled. See *Illusions,* supra, 257 Ga. 142, 356 S.E.2d 510; *Three Aces,* supra, 249 Ga. 395, 291 S.E.2d 522.

6 An entertainment program may not be prohibited solely because it contains nudity. *Schad v. Borough of Mount Ephraim,* 452 U.S. 61, 67, 101 S.Ct. 2176, 2181-82, 68 L.Ed.2d 671 (1981). The "customary 'barroom' type of nude dancing" may involve expression minimally protected by the First Amendment. *Doran v. Salem Inn,* supra, 422 U.S. at 932, 95 S.Ct. at 2568.

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This long-used rationale has been called into question by the Supreme Court's recent disavowal of the reasoning in *LaRue* "insofar as it relied on the Twenty-first Amendment." *44 Liquormart v. Rhode Island,* supra, 517 U.S. 484, 116 S.Ct. 1495, 134 L.Ed.2d 711 (1996). In *44 Liquormart*, the Supreme Court explained that the Twenty-first Amendment "limits the effect of the dormant Commerce Clause on a State's regulatory power over the delivery or use of intoxicating beverages within its border, [but] ... 'does not license the States to ignore their obligations under other provisions of the Constitution.' [Cit.]." *Id.,* 517 U.S. at ----, 116 S.Ct. at 1514. The Court noted that each State has ample power "[e]ntirely apart from the Twenty-first Amendment," i.e., the police power, to prohibit the sale of alcoholic beverages in inappropriate locations, and that the *LaRue* decision would have reached the same result had the Court relied exclusively on the State's exercise of its police power instead of buttressing it with the regulatory authority provided by the Twenty-first Amendment. In conclusion, the Supreme Court expressly held that "the Twenty-first Amendment does not qualify the constitutional prohibition against laws abridging the freedom of speech embodied in the First Amendment." Thus, "the suggestion in [*LaRue*, *Doran*, *Bellanca*, and *Iacobucci*] that the Twenty-first Amendment was a font of some sort of 'super authority' above and beyond the considerable police powers retained by the States and which trumped the First Amendment when liquor regulation was at issue was clearly rejected in *44 Liquormart*." ****355** *J & B SocialClub # 1 v. City of Mobile,* --- F.Supp.---- [1996 WL 866644] (Oct. 2, 1996 S.D.Ala.).

[7] It is now clear that Georgia's ratification of a "mini-Twenty-first Amendment" to the state constitution provided the means by which the State delegated to local government its authority to regulate alcohol[7], but its passage does not affect the analysis to be given a ***690** statute or ordinance which allegedly impinges upon the constitutionally-guaranteed right of free speech and expression. Thus, application of our tripartite *Paramount Pictures* test or the First Amendment analytical framework from which it is derived remains appropriate for content-neutral legislation.[8]

7 The States may delegate the broad power given them by the Twenty-first Amendment "as they see fit." *City of Newport, Ky. v. Iacobucci,* supra, 479 U.S. at 96, 107 S.Ct. at 385. A State's failure to delegate its Twenty-first Amendment authority to local governments within the State has resulted in a local ordinance being found unconstitutional. See *Connor v. Town of Hilton Head Island,* 314 S.C. 251, 442 S.E.2d 608 (1994). Cf. *Krueger v. City of Pensacola,* 759 F.2d 851, 854 (11th Cir.1985), where the 11th U.S. Circuit Court of Appeals held that Florida's failure to delegate its Twenty-first Amendment regulatory authority to local governments required the city to justify its ordinance under "a stricter standard typically used to review an infringement on a protected liberty interest justified solely under the government's police power."

8 The *Paramount Pictures* three-pronged study of statutes and ordinances to determine whether the free expression guaranty of the Georgia Constitution has been violated is derived from the analytical framework applied by federal courts when measuring legislative enactments against the First Amendment of the U.S. Constitution. *Paramount Pictures,* supra, 250 Ga. at 255, n. 5, 297 S.E.2d 250.

[8] **[9]** **[10]** **[11]** **[12]** 4. Marietta's ordinance amendment is "content-neutral" legislation if it is "justified without reference to the content of the regulated speech. [Cit.]" *Chambers v. Peach County,* supra, 266 Ga. at 319, 467 S.E.2d 519. When adult entertainment establishments are involved, the "regulated speech" is the constitutionally-protected expressive conduct of nude dancing. *Harris v. Entertainment Systems,* supra, 259 Ga. 701, 386 S.E.2d 140. The principal inquiry in determining whether a legislative act is content-neutral is "whether the government has adopted a regulation of speech because of disagreement with the message it conveys. [Cit.] The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. [Cit]." *Ward v. Rock Against Racism,* 491 U.S. 781, 791, 109 S.Ct. 2746, 2754, 105 L.Ed.2d 661 (1989).[9] An ordinance designed to combat the undesirable secondary effects of sexually explicit businesses is content-neutral. *City of Renton v. Playtime Theatres,* 475 U.S. 41, 49, 106 S.Ct. 925, 929-30, 89 L.Ed.2d 29 (1986); *Chambers v. Peach County,* supra, 266 Ga. at 319, 467 S.E.2d 519. See also *Harris v. Entertainment Systems,* supra, 259 Ga. at 703, 386 S.E.2d 140. Before enacting an ordinance to combat undesirable secondary effects, a legislative body is required to consider specific evidence of the undesirable secondary effects that it reasonably believes relevant to the problems it seeks to address by passing the ordinance. *Chambers v. Peach County,* supra, 266 Ga. at 321, 467 S.E.2d 519.

9 As *Ward* makes clear, determining whether legislation is content-neutral depends upon the governing body's

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purpose in passing the legislation. Accordingly, the *content* of the legislation, i.e., the regulation of adult entertainment establishments, does not control whether the legislation is content-neutral. This court's statement in *Club Southern Burlesque v. City of Carrollton,* 265 Ga. 528(1), 457 S.E.2d 816 (1995), rejecting the club's contention that the ordinance regulating adult entertainment establishments was not content-neutral, should not be read as a holding that *all* ordinances regulating adult entertainment establishments are content-neutral. As noted in *Club Southern,* the *Paramount Pictures* standard of review is used only when the questioned legislation is found to be content-neutral, and the use of the *Paramount Pictures* test in two earlier cases reviewing ordinances nearly identical to the ordinance being reviewed in *Club Southern* led to the conclusion that the *Club Southern* ordinance was also content-neutral.

[13] The preamble to the amending ordinance passed by the Marietta ***691** City Council stated that the city council's enactment of the amendment was based on the experiences of other urban counties and municipalities ****356** believed to be relevant to Marietta's problems, and a review of a Marietta police report concerning criminal activity around the three existing clubs offering adult entertainment and alcohol. The preamble also contained the city council's finding that "public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages and so-called nude bars or establishments offering so-called nude entertainment or adult entertainment begets criminal activity and tends to create undesirable community conditions." The preamble listed as "undesirable community conditions identified with nudity and alcohol" the depression of property values in the surrounding neighborhood, the increased expenditure for law enforcement, the increased burden on the judicial system due to increased criminal behavior, and acceleration of community blight caused by the concentration of such establishments in particular areas. The transcript of the city council meeting at which the ordinance amendment was discussed and passed reflects that citizens and elected representatives voiced concern about property values and the need to close nude dancing establishments. The transcript also shows that council members considered studies from other cities which showed a correlation between the presence of adult entertainment and an increase in crime. The city's chief of police appeared at the council meeting and stated that the rate of calls for police service was slightly higher in the area surrounding the three licensees than at other establishments serving alcohol. He acknowledged that his statistics reflected calls for police service made from the areas studied, and that each call did not reflect the commission of a crime. In affidavits executed after the lawsuits at bar were filed, each of the council members who voted in favor of the ordinance amendment swore that he/she relied upon the testimony and evidence presented at the city council meeting at which the ordinance amendment was passed, including the studies from other cities. Each council member averred that the studies were "relevant to the City of Marietta, the problems faced by the City of Marietta and the problems addressed by the Ordinance."

[14] **[15]** Appellants Tudor and Cyprus Lounge assert that the trial court's finding, implicit in its application of the *Paramount Pictures* test, that the ordinance was content-neutral was erroneous in light of evidence that the mayor and several council members expressed a desire in published reports to eliminate nude dancing establishments from Marietta. " '[O]nly the clearest proof could suffice to establish the unconstitutionality of a statute' on the ground that 'a punitive purpose in fact lay behind the statute.' " *Ambassador Books & Video* ***692** *v. Little, Rock, Ark.,* 20 F.3d 858, 863 (8th Cir.1994), quoting *Flemming v. Nestor,* 363 U.S. 603, 617, 80 S.Ct. 1367, 1376, 4 L.Ed.2d 1435 (1960). Judicial inquiry into legislative motives or purposes is a "hazardous matter," for what motivates one legislator to make a comment about a law is not necessarily what motivates fellow legislators to enact the law. *United States v. O'Brien,* 391 U.S. 367, 383, 88 S.Ct. 1673, 1682-83, 20 L.Ed.2d 672 (1968). If it is established that the "predominate intent" of the enacted legislation was to combat or avoid pernicious secondary effects, then the legislation is deemed to be content-neutral. See *City of Renton v. Playtime Theatres,* supra, 475 U.S. at 48, 106 S.Ct. at 929. With these standards in mind, we conclude that the evidence upon which appellants rely is insufficient as a matter of law to establish improper intent. *Ambassador Books & Video v. Little Rock,* supra, 20 F.3d 858; *Colacurcio v. City of Kent,* 944 F.Supp. 1470 (W.D.Wash.1996). In light of the city council's predominate goal of combatting pernicious secondary effects and the lack of sufficient evidence to establish an improper motive on the part of council members, we conclude the ordinance is content-neutral.

[16] **[17]** **[18]** 5. Since the ordinance amendment was content-neutral, we apply the tripartite *Paramount Pictures* test to determine whether the restriction imposed on expression passes constitutional muster: (1) Does the ordinance further an important governmental interest? (2)

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Is that interest unrelated to the suppression of speech? and (3) Is the legislation an incidental restriction of speech no greater than essential to further the important governmental interest? ****357** *Chambers v. Peach County*, supra, 266 Ga. at 319, 467 S.E.2d 519. As noted above, the stated purpose of the ordinance amendment was to control criminal behavior and prevent undesirable community conditions. A city has a substantial government interest in "attempting to preserve the quality of urban life...." *City of Renton v. Playtime Theatres*, supra, 475 U.S. at 50, 106 S.Ct. at 930. The "reduction of criminal activity and prevention of the deterioration of neighborhoods are important government interests...." *Discotheque v. City Council of Augusta*, 264 Ga. 623, 624, 449 S.E.2d 608 (1994). The city substantiated its declaration that the amended ordinance was necessary to curb the unwanted secondary effects of mixing alcohol and adult entertainment through the experiences of other cities that the council members reasonably believed to be relevant to the problems faced by Marietta. The city's desire to preserve the quality of urban life and its attempt to reduce crime and prevent neighborhood deterioration by separating alcohol from adult entertainment are important government interests unrelated to the suppression of speech. *Id.* Finally, the ordinance's application is sufficiently narrowly tailored because it is limited to the modes of expression implicated in the production of negative secondary effects-those establishments that provide alcohol and entertainment requiring ***693** an adult entertainment license-thereby exempting mainstream performance houses, museums, or theaters. See *S.J.T. v. Richmond County*, 263 Ga. 267(3), 430 S.E.2d 726 (1993). Compare *Pel Asso v. Joseph*, supra, 262 Ga. 904, 427 S.E.2d 264. We conclude that the ordinance satisfies the three-pronged *Paramount Pictures* test and affirm the trial court's conclusion that the ordinance is a proper exercise of the city's police power.

6. In light of the amended Marietta ordinance, none of the appellants received the appropriate licensing in 1996 to permit them to provide adult entertainment and alcohol at the same location. [10] Appellants contend they have a vested property right in the renewal of their adult entertainment and alcohol licenses which entitles them to due process of law and which prevents the city from enacting retrospective laws which adversely affect their ability to provide both liquor and adult entertainment. Under both the federal and state constitutions, one may not be deprived of life, liberty, or property by the government "without due process of law." U.S. Constitution, Amendment XIV; 1983 Ga. Const. Art. I, Sec. I, Par. I. The Georgia Constitution further prohibits the passage of retroactive laws (Art. I, Sec. I, Par. X), i.e., "laws which injuriously affect the vested rights of citizens." *Recycle & Recover v. Ga. Bd. of Nat. Resources*, 266 Ga. 253(2), 466 S.E.2d 197 (1996).

10 As set forth in Footnote 2, the businesses continue to operate by means of an agreement among the parties. Consequently, appellants have not yet been denied a license under the amended ordinance since they have not applied for licenses after the effective date of the amended ordinance. We nonetheless address the issue because it is clear that, but for the parties' agreement, appellants would have applied for and would have been denied alcohol licenses, based on the amended ordinance, if they wished to continue operating as they have in the past.

[19] **[20]** **[21]** Due process requires that any licensing scheme enacted pursuant to the police power "provide sufficient objective criteria to control the discretion of the governing authority and adequate notice to applicants of the criteria for issuance of a license." *Levendis v. Cobb County*, 242 Ga. 592(1), 250 S.E.2d 460 (1978). Due process also requires that one to whom a license is denied, or one whose valid license is being revoked or suspended, be given notice and an opportunity to be heard. See *Rose v. Grow*, 210 Ga. 664(3), 82 S.E.2d 222 (1954); *Levendis v. Cobb County*, supra, 242 Ga. 592, 250 S.E.2d 460. See also OCGA §§ 3-2-3(1) and 3-3-2(a), and Marietta City Code §§ 8-20-160, 8-20-200 et seq. Both the adult entertainment occupation tax certificate (i.e., the adult entertainment license) and liquor license issued to each appellant expire annually on the last day of the year, and a license holder "renews" the licenses by filing an application for a license each year. Marietta City Code, § 170. Thus, the statutory scheme puts each appellant in the position of an applicant on an ***694** annual basis. Since both state law and Marietta's ordinance provide an applicant with ****358** notice and an opportunity to be heard concerning the denial of an application, appellants will be afforded due process should their applications be denied.

[22] **[23]** **[24]** 7. In order to address appellants' contention that the 1995 amendment to Marietta's ordinance is an unconstitutional retrospective law, we must determine whether appellants have a vested property right in the renewal of their licenses because "[o]ur Constitution forbids passage of retroactive laws which injuriously affect the *vested* rights of citizens. [Cits.]" *Recycle & Recover*, supra, 266 Ga. at 254, 466 S.E.2d 197 (emphasis added). See also *Bullard v. Holman*, 184 Ga. 788, 792, 193 S.E. 586 (1937)

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("[a] State constitution broadly prohibiting the passage of retroactive laws is to be restricted as to apply only to enactments affecting or impairing vested rights."). Generally, laws enacted pursuant to the police power for the public's protection may be modified without violating a constitutional prohibition against retrospective statutes. *Hayes v. Howell,* 251 Ga. 580(2b), 308 S.E.2d 170 (1983). However, even modifications to police power enactments cannot impinge upon vested rights. *Recycle & Recover,* supra, 266 Ga. at 254, 466 S.E.2d 197.

> "To be vested, in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. A divestible right is never, in a strict sense, a vested right." [Cit.]. It has also been said that: "the term 'vested rights,' which cannot be interfered with by retrospective laws, means interests which it is proper for the state to recognize and protect and of which the individual cannot be deprived arbitrarily without justice." [Cits.]

Hayes v. Howell, supra, 251 Ga. 580, 584, 308 S.E.2d 170. A property interest protected by the due process clauses of the federal and state constitutions meets our definition of "vested rights." Accordingly, if appellants have a property interest in the renewal of their licenses that is protected by due process, then they have a vested right which cannot be affected adversely by a retrospective law. However, before there can be a property interest in the *renewal* of a license, there must be a property interest in the license itself. Accordingly, we examine the issue of whether appellants have a protectable property interest in their licenses.

[25] 8. In the past, the contention that one had a property right in a liquor license was summarily dismissed as without merit in light of the legislative declaration contained in OCGA § 3-3-1 that "[t]he businesses of ... selling, handling, and otherwise dealing in or possessing ***695** alcoholic beverages are declared to be privileges in this state and not rights." See, e.g., *City of Mountain View v. Clayton County,* 242 Ga. 163, 249 S.E.2d 541 (1978); *Massell v. Leathers,* 229 Ga. 503, 192 S.E.2d 379 (1972); *Highnote v. Jones,* 198 Ga. 56, 31 S.E.2d 13 (1944). However, the "right/privilege" dichotomy is no longer availing since "relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege.' " *Bell v. Burson,* 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971). See also *City of Atlanta v. Hill,* 238 Ga. 413, 414, 233 S.E.2d 193 (1977), where this court noted that "the death knell has been sounded to the right-privilege distinction."

[26] **[27]** **[28]** **[29]** Now, "[t]o have a property interest ..., a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972). The Court in *Roth* pointed out that property interests do not spring forth from the U.S. Constitution, but are created and defined by statutes, rules, or understandings "that secure certain benefits and that support claims of entitlement to those benefits." *Id.,* at 577, 92 S.Ct. at 2709. A license which entitles the holder to operate a business and the continued possession of which "may become essential in the pursuit of a livelihood" is a protectable property interest under the Due Process Clause. *Bell v. Burson,* supra, 402 U.S. at 539, 91 S.Ct. at 1589. A law which provides that a license can be suspended or revoked only upon proof of certain contingencies "has ****359** engendered a clear expectation of continued enjoyment of [the] license absent proof of culpable conduct" and has thereby given the license holder a "legitimate 'claim of entitlement.' [Cit.]" *Barry v. Barchi,* 443 U.S. 55, 65, n. 11, 99 S.Ct. 2642, 2649, n. 11, 61 L.Ed.2d 365 (1979). See also *Leone v. Town of New Shoreham,* 534 A.2d 871 (R.I.1987), where the Supreme Court of Rhode Island held that a license granted by government represented a property interest. Marietta's ordinance contains a list of grounds for the denial of an application for a liquor license (Marietta City Code § 8-8-2-130) and provides that a granted license is subject to revocation or suspension only upon the occurrence of specified events: conviction of a violation of the city code's liquor licensing provisions or any state or federal law, or revocation by the State of the license it issued for the manufacture or sale of alcoholic beverages. Marietta City Code § 8-8-2-220(B) and (C). Since Marietta's city code sets forth the criteria which, if met, results in the issuance of a license, and specifies that a liquor license issued by the city can be suspended or revoked only upon a showing of cause, the city code created a protectable property interest in the license. *Barry v. Barchi,* supra, 443 U.S. at 64, 99 S.Ct. at 2649; *Richardson v. Town of Eastover,* 922 F.2d 1152, 1156 (4th Cir.1991). See also *Harris v. Entertainment Systems,* ***696** supra, 259 Ga. at 704, 386 S.E.2d 140, where this court, while expressly declining to determine the nature of the licensee's property interest, concluded that the licensee had a sufficient property interest in the license to permit a court of equity to enjoin a criminal prosecution. [11]

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11 In *Harris v. Entertainment Systems,* supra, 259 Ga. 701(2), 386 S.E.2d 140, this court expressly noted that it made "no determination as to the nature of the property interest, only that it is sufficient to meet the [equity] exception set out in *Moultrie [Milk Shed v. City of Cairo],* 206 Ga. 348 [(1), 57 S.E.2d 199 (1950)]."

[30] 9. Having determined that appellants have a vested right in the licenses issued them on an annual basis, we next consider whether each appellant has a vested right in continued re-issuance of its licenses. The same principle is applicable: the licensees must have more than a unilateral expectation that their licenses will be renewed year after year-they must have a legitimate claim of entitlement to license renewal (*Board of Regents v. Roth,* supra, 408 U.S. at 577, 92 S.Ct. at 2709) "based upon a state law, regulation, policy, or a mutually explicit understanding a governmental body puts forth...." *Resolution Trust Corp. v. Town of Highland Beach,* 18 F.3d 1536, 1544 (11th Cir.1994). As stated earlier, state and local law expressly provide that issued liquor licenses expire at the end of the year and a licensee must apply annually to keep a license active. OCGA § 3-2-7; Marietta City Code § 8-2-2-200(A). Adult entertainment occupation tax certificates issued by Marietta also have a lifespan of one year. City Code § 8-20-170. Faced with ordinances which expressly limit the duration of a license issued by Marietta, appellants assert they have a vested right to continue to offer adult entertainment and alcohol based on Marietta's past practice of annually issuing licenses to them.

By relying on the City's practice of renewing licenses, appellants are contending that they and the city have "a mutually explicit understanding" that the City will allow appellants to continue to operate "as is." See *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). While Marietta has, for several years, issued licenses which annually authorized appellants to offer both alcohol and adult entertainment for the calendar year covered by the licenses (see Footnote 1, supra), those licenses were of finite duration, and the city code expressly stated that the applicant for a liquor or an adult entertainment license had to meet annually the requirements for issuance set forth in the respective city code chapters. City Code §§ 8-8-2-130(A)(10); 8-20-170. Compare *Cabo Distrib. Co. v. Brady,* 821 F.Supp. 582, 597 (N.D.Cal.1992), where the "certificate of label approval" was issued for "a potentially unlimited period of time...." The annual issuance of the licenses could not create "a mutually explicit understanding" that licenses would annually be issued to appellants indefinitely, for nowhere does the city code provide that ***697** the licensing requirements will ****360** remain static. See *Triple A Services v. Rice,* 131 Ill.2d 217, 137 Ill.Dec. 53, 545 N.E.2d 706 (1989), where the Supreme Court of Illinois held that long and continued operation of their businesses did not vest mobile food vendors licensed by the City of Chicago with a property interest in the continuation of their business. See also *Ficarra v. Dept. of Regulatory Agencies,* 849 P.2d 6 (Colo.1993), where the Supreme Court of Colorado noted that one who holds a license that expires annually assumes the risk it may not be renewed. Compare City Code § 8-8-2-240(A), which exempts the holder of a Marietta liquor license from certain licensing requirements (residency, distance, location, parking, and type of building structure) so long as the licensee continues to remain in compliance with those requirements as they existed at the time the licensee initially received the liquor license.

> In organized society, every [person] holds all he possesses, and looks forward to all he hopes for, through the aid and under the protection of the laws; but as changes of circumstances and of public opinion, as well as other reasons affecting the public policy, are all the while calling for changes in the laws, and as these changes must influence more or less the value and stability of private possessions, and strengthen or destroy well-founded hopes, and as the power to make very many of them could not be disputed without denying the right of the political community to prosper and advance, it is obvious that many rights, privileges, and exemptions which usually pertain to ownership under a particular state of the law, and many reasonable expectations, cannot be regarded as vested rights in any legal sense.

Cooley, *Constitutional Limitations,* pp. 746-47 (Vol.2) (8th ed.1927). The city code makes it clear that the Marietta licensees before us do not have a vested right in the law never changing, and are not exempt from the exercise of the city's police power by its elected officials to further an important governmental interest. In light of the above, "the substantial reliance placed by [appellants] upon the renewal of their licenses, by constitutional standards, amounts

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only to 'a unilateral expectation,' *Roth,* [supra], 408 U.S. at 577[92 S.Ct. at 2709] ..." of renewal. *Ficarra v. Dept. of Regulatory Agencies,* supra, 849 P.2d at 20. Because appellants did not have a legitimate claim of entitlement to continued re-issuance of their annual licenses, they did not have a protectable property interest in their renewal. Compare *Bundo v. Walled Lake,* 395 Mich. 679, 238 N.W.2d 154 (1976), and *Bosselman v. State of Nebraska,* 230 Neb. 471, 432 N.W.2d 226 (1988), where the Michigan and Nebraska supreme courts ruled that a licensee had a constitutionally-protected ***698** interest in obtaining a renewal of a liquor license.

[31] 10. Relying on *Clairmont Development Co. v. Morgan,* 222 Ga. 255, 149 S.E.2d 489 (1966), appellants claim they acquired vested rights to the continued re-issuance of alcohol and adult entertainment licenses for the same location because each of them spent substantial sums of money in reliance upon the initial issuance of the licenses. It is a tenet of zoning law that a property owner may acquire a vested right under a zoning ordinance which precludes retroactive application of zoning ordinances:

> "A landowner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and continue a use despite a restriction contained in an ordinance where, prior to the effective date of the ordinance, in reliance upon a permit theretofore validly issued, he has, in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations." 3 Rathkopf, Law of Zoning and Planning, § 57-3....

Barker v. County of Forsyth, 248 Ga. 73, 75-76, 281 S.E.2d 549 (1981). While we have acknowledged the existence of "constitutionally protected vested zoning rights" of a property owner, under certain conditions, so as to preclude retroactive application of a *zoning* ordinance (e.g., *Corey Outdoor Advertising v. Bd. of Zoning Adjustments,* 254 Ga. 221(4), 327 S.E.2d 178 (1985)), the same is not applicable to *licenses* to conduct a business. In *Cobb County v. Peavy,* 248 Ga. 870(1a), 286 S.E.2d 732 (1982), this court distinguished between a business license and a building permit, holding that issuance of ****361** the latter, "a device for ensuring compliance with zoning ordinances" created a vested right in existing zoning ordinances, but that procurement of a business license, "typically not a device for ensuring compliance with zoning ordinances[,]" did not bestow vested rights upon the holder. We continue to adhere to the distinction and conclude that appellants' expenditure of funds in reliance upon the city's annual issuance of liquor and adult entertainment licenses to them did not endow them with a vested right to remain in business under the licensing regulations in existence at the time appellants received their initial licensing. Those who hold licenses that expire annually act at their peril and assume the risk that their licenses might not be renewed notwithstanding they have "committed their lives and their capital to building their businesses" which need licenses to operate. *Ficarra v. Dept. of Reg. Agencies,* supra, 849 P.2d at 18. Appellants must meet the requirements of the ordinance in effect at the time they file their annual applications for licenses. Cf. *Recycle &* ***699** *Recover,* supra, 266 Ga. at 255, 466 S.E.2d 197 (the filing of a "then-proper" application gives the applicant a vested right to issuance of the permit under the law as it existed at the time of the application).

11. Since appellants do not have a vested right to renewal of their licenses, their assertions concerning unconstitutional application of retrospective laws, unconstitutional impairment of contract, and an unconstitutional taking of property, all of which require the presence of a vested right/ property interest, must fail.

12. The mayor and city council members are not individually liable as there is no evidence they acted oppressively, maliciously, corruptly or without authority of law so as to divest themselves of legislative immunity. OCGA §§ 36-33-1; 51-1-20.

13. In light of the above, appellant Cyprus Lounge is not entitled to a writ of mandamus requiring the City to issue to it adult entertainment and liquor licenses for the same location.

Judgment affirmed.

All the Justices concur, except SEARS, J., who dissents.

SEARS, Justice, dissenting.

In this appeal we are once again called upon to grapple with questions regarding the regulation of nude dancing. Although the majority implies in Division 10 that, because of the appellants' substantial expenditures in their businesses, they would have acquired vested rights if the City of Marietta had chosen to regulate adult entertainment by way of a zoning ordinance, the majority holds that the appellants acquired no right to continue their businesses since the city chose to

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regulate adult entertainment pursuant to a licensing scheme. I disagree with this holding and therefore dissent.

The majority relies largely on Division 1(a) of *Cobb County v. Peavy* [12] for its holding. I find, however, that that division of *Peavy* is inapposite to this case. The contention addressed in Division 1(a) of *Peavy* was whether the issuance of a business license in and of itself, without regard to the property owner's investment in the business, was sufficient to create a vested right. Here, of course, the issue is whether the appellants have acquired a vested right to operate their businesses because they obtained the appropriate licenses pursuant to the adult entertainment ordinance and because they made substantial expenditures to put the businesses into operation. Furthermore, although we held in *Peavy* that the fact that the appellant had obtained a business license was not enough, by itself, to give her a vested right, we did not hold that this factor was dispositive of the appeal. Instead, we addressed whether Peavy had a vested right in ***700** her lawful, pre-existing use based upon the expenditures she had made. [13] *Peavy* thus implicitly stands for the proposition that a person operating a business can obtain a vested right based upon expenditures even if that person cannot ****362** acquire vested rights based upon the business license.

12 248 Ga. 870, 872(1)(a), 286 S.E.2d 732 (1982).

13 *Peavy*, 248 Ga. at 873(1), 286 S.E.2d 732(b).

Moreover, I find no rational reason to treat *an adult entertainment ordinance like the one in this case* any differently from a zoning ordinance for purposes of determining vested rights. First, *Peavy* itself acknowledged that "the general aim of both zoning and licensing regulations is the promotion of the general welfare." Second, zoning regulations, like licensing regulations, are subject to change at any time if the local government believes that the change will promote the general welfare of the community. Third, the adult entertainment ordinance in this case is in fact a combination zoning-licensing scheme, containing numerous traditional zoning features. Finally, here, unlike many licensing regulations, including the one at issue in the Colorado case on which the majority relies, [14] the adult entertainment ordinance was amended so as to entirely preclude the businesses that the appellants had been operating-lounges featuring nude dancing.

14 See *Ficarra v. Department of Regulatory Agencies*, 849 P.2d 6 (Colo.1993).

Because the adult entertainment ordinance at issue is a combination zoning-licensing scheme, because the ordinance's amendment precludes a pre-existing use of the property, and because zoning and licensing schemes share a common goal of furthering the general welfare of the public, I would apply to this case the well-established principle that the termination of a pre-existing use of property that does not constitute a nuisance and has not been abandoned generally is confiscatory unless there is a reasonable amortization period in which to bring the use to a close. [15] Under that test, I believe that the trial court erred in granting summary judgment to the appellees. I therefore dissent.

15 4 Ziegler, Rathkopf's The Law of Zoning and Planning, § 51.01 [2][a] (4th ed.); 2 Ziegler at 17B.02 [3][I]; 4 Ziegler at 51B.05 [1]; *Ebel v. City of Corona*, 767 F.2d 635, 639(3) (9th Cir.1985) (60-day amortization period for adult bookstore was found not to be satisfactory in view of length of lease and financial investment in bookstore).

Parallel Citations

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BROOKHAVEN, GEORGIA
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10. Memphis Articles re: Crime at Strip Clubs and Strip Club Owner Guilty Plea, 2006

11. New Albany, Indiana, Investigator Report re: Illicit Sexual Conduct at Gentlemen's Club, 2009

12. Louisville, Kentucky Police Reports, Investigator Affidavits, and Citizen Affidavits re: Secondary Effects of Sexually Oriented Businesses, 2004

13. Report on Fulton County Adult Entertainment Businesses, July 2001, and minutes of public hearing

14. Chattanooga Police Records re: Public Masturbation and Public Nuisance Activities at Cinema One Theatre, 1999-2003

15. Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the Jackson County Legislature, May 9, 2008

16. Survey of Appraisers, Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, September 2004

17. Report to the City Attorney on Crime-Related Secondary Effects, Kennedale, Texas, 2005

18. A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney, December 15, 2003

19. An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas, April 1997

20. Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston City Council, January 7, 1997

21. Legislative Report on an Ordinance Amending Section 28-73 of the Code of Ordinances of the City of Houston, Texas, November 1983

22. Adult Cabarets, Factual Record, Phoenix, Arizona, 1995-1998
    Incall Escort Bureaus/Nude Modeling Studios (Private Room Nude Dancing) Factual Record, Phoenix, Arizona, 1995-1998

23. Tucson, Arizona Police Memorandum dated May 1, 1990

24. Declaration in Support of City of Spokane's Motion for Summary Judgment re: Secondary Effects Evidence Concerning Retail Adult Bookstores, July 24, 2002; and other Spokane, Washington documents

25. Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Use Businesses, December, 1994

26. Adult Business Study, Planning Department, City of Phoenix, May 25, 1979

27. Report on Adult Oriented Businesses in Austin, prepared by Office of Land Development Services, Austin, Texas, May 19, 1986

28. Adult Entertainment Businesses in Indianapolis, An Analysis, Department of Metropolitan Development, Division of Planning, February 1984

29. The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991

30. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning, City of Los Angeles, June 1977

31. Staff Report, Amendment to Zoning Regulations, Adult Businesses in C-2 Zone with Conditional Use Permit, City of Whittier, California, January 9, 1978

32. Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers, March 3, 1986

33. Report on Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994

34. Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, State of Minnesota, June 6, 1989

35. Expert Report in *Illusions-Dallas Private Club, Inc. v. Steen*, N.D. Tex. no. 3:04-CV-201, October 5, 2007

36. *Rural Hotspots: The Case of Adult Businesses*, 19 Criminal Justice Policy Review 153 (2008)

37. Stripclubs According to Strippers: Exposing Workplace Sexual Violence, by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota

38. David Sherman, Sexually Oriented Businesses: An Insider's View, Testimony before Michigan House Committee—Ethics and Constitutional Law, January 12, 2000

39. Summary of Arrests for Jacksonville, Florida Bikini Bars (1/1/2004-8/3/2005)

40. Expert Report in *Wacko's Too, Inc. v. City of Jacksonville*, M.D. Fla. No. 3:04-cv-1307 (Oct. 2005)

41. Media articles re: bikini bars

42. Affidavit of J.R. Long, Hillsborough County, Florida, 2006

43. Cases Discussing the Negative Secondary Effects of Sexually Oriented Businesses and/or the Constitutionality of Regulations Pertaining to Same

44. Law Enforcement and Private Investigator Affidavits (Pink Pony South, Forest Park, GA, and Adult Cabarets in Sandy Springs, GA)

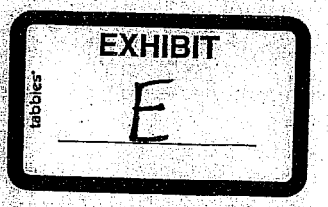
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACK GALARDI, RED EYED INC. d/b/a CRAZY HORSE SALOON, WALLEYE, LLC MIA LUNA, INC. d/b/a PINK PONY SOUTH, and JG&P, LLC,	)	
Plaintiffs,	)	CIVIL ACTION FILE NUMBER 1:09-CV-00965-RWS
v.	)	
CITY OF FOREST PARK, CORINE DEYTON, JOHN PARKER, CHIEF DWAYNE HOBBS, COUNCILPERSONS: DEBORAH YOUMANS, SPARKLE ADAMS, LINDA LORD, and MAUDIE MCCORD,	)	
Defendants.	)	

DECLARATION OF DWAYNE HOBBS
UNDER PENALTY OF PERJURY

1.

My name is Dwayne Hobbs. I have personal knowledge of the facts set forth in this declaration and know them to be true and correct. I am over the age of eighteen years, am suffering no disabilities and am competent to execute this declaration.



2.

I am Chief of Police for the City of Forest Park, Georgia and a defendant in the above-captioned litigation. As Chief of Police, my duties include oversight of all law enforcement within the corporate city limits of the City of Forest Park. I have been employed as Chief of Police of the Forest Park Police Department since April 1, 1996.

3.

There have been reported crimes around the Crazy Horse, including entering of automobiles, drug offenses, and anonymous complaints of drugs. These businesses have asked for stepped up patrols in the area, which the Police Department has provided on a periodic basis.

4.

During my time serving the Forest Park Police Department, there have been at least two murders that were connected with the clubs. One occurred on the property of one of the clubs, and the other occurred off-premises but was allegedly connected with activities at one of the dancers.

5.

Recently, there have been two alleged rapes involving the Pink Pony South. In one instance, a dancer alleges that she was raped in one of the VIP rooms. In

another instance, a dancer alleged that she was raped at a nearby hotel. In this second instance, the allegation of rape turned out to be untrue, and instead the incident involved an instance of prostitution connected with the club.

6.

Attached hereto as Exhibit A are true and correct copies of the Police Department records relating to an alleged rape and battery that occurred at the Pink Pony South on July 7, 2010. The Forest Park Police Department investigated this incident, which involved a customer in a VIP room allegedly raping a dancer. These records are maintained during the normal course and scope of the operations of the Forest Park Police Department.

7.

Attached hereto as Exhibit B are true and correct copies of the Police Department records relating to a murder of a customer in the parking lot of the Crazy Horse Saloon on or about June 24, 2007. The Forest Park Police Department investigated this incident, which involved a fatal gunshot wound to the head of the victim. These records are maintained during the normal course and scope of the operations of the Forest Park Police Department.

8.

Attached hereto as Exhibit C are true and correct copies of the Police Department records relating to an incident of larceny, underage drinking, prostitution, and false reporting of a crime that occurred near the Pink Pony South on May 19, 2009, and originated at the club. The Forest Park Police Department investigated this incident, which involved waitress at the club making a false allegation of rape against a customer, allegations of underage drinking, and alleged prostitution. These records are maintained during the normal course and scope of the operations of the Forest Park Police Department.

9.

Attached hereto as Exhibit D is a true and correct copy of the most recent application for an adult entertainment license submitted by Jack Galardi, Red Eyed, Inc., and Mia Luna, Inc. In the application materials, Mr. Galardi represents that he is the owner of the Goldrush Showbar in Atlanta, Georgia.

10.

It is exceedingly difficult for my department to investigate activities within the clubs because the employees are familiar with all of my officers.

11.

In fact, one of my recent investigations was derailed because club employees recognized my undercover officer who had not worked within the City for more

than ten years. According to one of the dancers at the club, she and others were told to avoid criminal activity that night because of the knowledge that the City had and might again place an undercover officer in the club. This dancer provided this information to a private investigator the City had hired.

12.

By my signature below, I declare, under penalty of perjury, that the foregoing is true and correct.

Dwayne Hobbs

12/23/10

Date

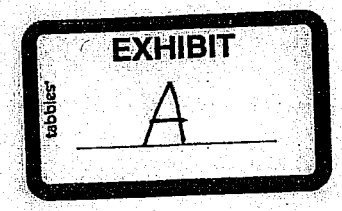
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACK GALARDI, RED EYED INC. d/b/a CRAZY HORSE SALOON, WALLEYE, LLC MIA LUNA, INC. d/b/a PINK PONY SOUTH, and JG&P, LLC,	)	
Plaintiffs,	)	CIVIL ACTION FILE NUMBER 1:09-CV-00965-RWS
vs.	)	
CITY OF FOREST PARK, CORINE DEYTON, JOHN PARKER, CHIEF DWAYNE HOBBS, COUNCILPERSONS: DEBORAH YOUMANS, SPARKLE ADAMS, LINDA LORD, and MAUDIE MCCORD,	)	
Defendants.	)	

DECLARATION OF GUY L. WATKINS, JR.
UNDER PENALTY OF PERJURY

1.

My name is Guy L. Watkins, Jr. I have personal knowledge of the facts set forth in this declaration and know them to be true and correct. I am over the age of eighteen years, am suffering no disabilities and am competent to execute this declaration.



2.

I am a licensed private detective and owner of Business Consulting & Investigations, Inc. ("BCI").

3.

The City of Forest Park hired BCI to conduct surveillance at Pink Pony South and Crazy Horse, both of which are adult entertainment clubs located in the City.

4.

In order to complete this assignment, I assigned six BCI representatives who are private detectives to go into the clubs during their open hours of operation on the following dates: December 16, 17, and 18, 2010.

5.

The BCI representatives provided me with verbal reports and are in the process of completing written reports.

6.

The activity at each club was generally the same other than at the Pink Pony South on the evening of December 17, 2010. With this exception, the BCI representatives witnessed dancers sitting on the patrons' laps fully nude and rubbing themselves on the patrons' genitals. BCI representatives witnessed dancers putting their breasts in customer's mouths, allowing customers to touch

their bare breasts and buttocks and allowing customers to insert their fingers into the dancers' vaginas.

7.

On numerous occasions, BCI representatives were asked by dancers to pay between $145 and $300 to go to a VIP room to engage in sexual activity.

8.

One of the dancers told a BCI representative that the house received most of the money from the VIP rooms so the club management encouraged the dancers and the waitresses to get customers into the VIP rooms.

9.

On at least one occasion, a BCI representative witnessed a dancer and a customer engaging in what appeared to be sexual intercourse in a VIP room.

10.

The dancers and waitresses encouraged the customers, including BCI representatives, to purchase drinks and alcohol shooters. The BCI representatives told the employees that they did not want to drink and the employees responded back that the drinks could be for the dancers. On several occasions, the BCI representatives purchased alcohol and it was then consumed by the dancers. Almost all of the dancers appeared to be under the influence of alcohol or other intoxicating substances.

11.

Several times, BCI representatives witnessed customers openly betting over games of pool.

12.

On December 17, 2010, a dancer at Pink Pony South told a BCI representative that club management informed the dancers that the police department had sent in an undercover officer to the club, so the girls were to refrain from criminal activity. That dancer told the BCI representative that she could "rock [his] world" however, if they went into a VIP room where "no one could see us."

13.

In addition to the assignments within the adult entertainment clubs, I was asked to locate the six former dancers who had provided affidavits and some of whom had provided counter-affidavits provided by plaintiffs' to the Court. After expending several hours on this task, we were able to confirm the location of two of the former dancers but were not able to speak to them directly. We have been unable to locate the other four former dancers.

14.

By my signature below, I declare, under penalty of perjury, that the foregoing is true and correct.

Guy L. Watkins, Jr.

12/23/2010

Date

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

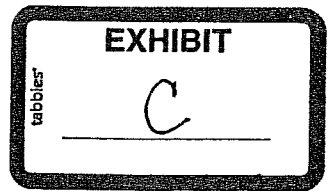
JACK GALARDI, RED EYED INC. d/b/a CRAZY HORSE SALOON, WALLEYE, LLC MIA LUNA, INC. d/b/a PINK PONY SOUTH, and JG&P, LLC,	)	CIVIL ACTION FILE NO. 1:09-CV-00965-RWS
Plaintiffs,	)	
v.	)	
CITY OF FOREST PARK, CORINE DEYTON, JOHN PARKER, CHIEF DWAYNE HOBBS, COUNCILPERSONS: DEBORAH YOUMANS, SPARKLE ADAMS, LINDA LORD, and MAUDIE MCCORD,	)	
Defendants.	)	

DECLARATION OF JOHN PARKER UNDER PENALTY OF PERJURY

Comes now JOHN PARKER, who being first duly sworn, deposes and states on oath the following:

1.

My name is John Parker. I am over eighteen years of age and competent in all respects to testify to the following facts, which are within my own personal knowledge unless expressly indicated otherwise herein.



2.

I am employed by the City of Forest Park, Georgia ("the City") as its City Manager and Director of Public Safety, and I have been so employed since April, 2006. Prior to that time, from January, 1990 to June, 1994, inclusive, I was also employed by the City as its City Manager.

3.

Included in my duties and responsibilities as City Manager and Director of Public Safety are to "direct and supervise the administration of all departments, offices and agencies of the [C]ity" and to "see that all laws, provisions of [the City's] charter and acts of the city council, subject to enforcement by [me] or by officers subject to [my] jurisdiction are faithfully executed."

4.

In addition, I am responsible, in cooperation with other officials of the City, for maintaining business records, ordinances, resolutions, court orders, and other public documents of the City.

5.

I have never reached the conclusion or made the determination that the City is or would be unable to produce evidence that would tend to demonstrate that there are adverse and pernicious secondary effects caused by or related to adult entertainment establishments specifically operating in the City. I have not

commissioned such a study or survey only because I understand that such studies are not required or necessary in order to sustain the City's ordinances and regulations governing adult entertainment.

6.

However, based on my review and reading of several studies produced by other jurisdictions, including but not limited to neighboring jurisdictions such as DeKalb County, Georgia and others, it is my opinion that there is no significant difference between these other local jurisdictions and the City, and that there are pernicious and adverse secondary effects caused by the operation of adult entertainment establishments in the City.

7.

Although there has been some relatively minor development in the past three to five years in the general vicinity of the Crazy Horse Saloon and along the Jonesboro Road corridor, such development has been slow, sluggish and of very low quality of the kind that is typical of very poor, blighted and economically depressed areas.

8.

These deteriorated and blighted areas in the City exist in relatively close proximity to adult entertainment establishments, and based on my review of

several studies produced by other jurisdictions, a contributing factor likely is the existence of the clubs.

9.

Plaintiff Red Eyed, Inc. owns and operates "the Crazy Horse Saloon," which is an adult entertainment establishment within the meaning of the City's ordinances that currently provides nude dancing and the retail sale of alcoholic beverages. The Crazy Horse Saloon is located and operates at 3920 Jonesboro Road, Forest Park, Georgia 30297, and was previously located and operated at 3950 Jonesboro Road, Forest Park, Georgia 30297.

10.

On or about September 7, 2010, the City filed a nuisance abatement action in the Municipal Court of the City of Forest Park, Georgia (Environmental Division) (hereinafter "the Municipal Court"), against three apartment complexes: the "Briarwood Forest Duplexes" at 890 Conley Road, Forest Park, Georgia 30297 (hereinafter the "Briarwood Forest Properties"); the "Taj Mahal Apartments" at 514 Bridge Avenue, Forest Park, Georgia 30297 (hereinafter the "Taj Mahal Properties"); and the "Moore Avenue Apartments" at 508 Moore Avenue, Forest Park, Georgia 30297 (hereinafter the "Moore Avenue Properties") (the three apartment complexes being hereinafter collectively referred to as the "Apartment Properties").

11.

The Briarwood Forest Properties are located approximately ¼ mile south of the Crazy Horse Saloon; the Taj Mahal Properties and the Moore Avenue Properties are located approximately 2500 feet +/- from the Crazy Horse Saloon and the Pink Pony South.

12.

The Briarwood Properties consist of approximately 56 separate dwelling units, none of which are fit for human habitation, and all of which have been boarded up and vacant, except for vagrants and squatters, for over five years.

13.

The Briarwood Properties have served as a breeding ground for illegal drug use and other criminal activities, requiring exceptional diligence and patrolling by the City's Police Department.

14.

The Taj Mahal Properties consist of approximately 48 separate dwelling units, none of which are fit for human habitation, and all of which have been boarded up and vacant, except for vagrants and squatters, for over five years.

15.

The Taj Mahal Properties have served as a breeding ground for illegal drug use and other criminal activities, requiring exceptional diligence and patrolling by the City's Police Department.

16.

The Moore Avenue Properties consist of approximately 56 separate dwelling units, none of which are fit for human habitation, and at least 52 of which have been boarded up and vacant, except for vagrants and squatters, for over five years.

17.

The Moore Avenue Properties have served as a breeding ground for illegal drug use and other criminal activities, requiring exceptional diligence and patrolling by the City's Police Department.

18.

On or about October 14, 2010, following a hearing, the Municipal Court entered a "Final Order – Nuisance Abatement" against all units located at the Briarwood Forest Properties.

19.

Attached hereto and incorporated herein is Exhibit A, which is a true and correct copy of the Municipal Court order referenced above.

20.

Among other findings, the Municipal Court entered a finding that the Briarwood Forest Properties, "including all units and structures existing thereon, are so old and dilapidated and are in such a state of disrepair as to be dangerous, unsafe, unsanitary and otherwise unfit for human habitation, and so inimical to the general public health, safety and welfare, ... and to the citizens of the City of Forest Park, Georgia, that they constitute a continuing nuisance."

21.

The Municipal Court also found that "it is neither feasible nor economically justified nor reasonable to attempt to make all the repairs and renovations necessary to bring [the Briarwood Forest Properties] into compliance with all the codes and ordinances of the City and the laws of the State of Georgia," and therefore ordered "all units and structures" located on the Briarwood Forest Properties to be demolished.

22.

Also following a hearing, the Municipal Court entered a "Final Order – Nuisance Abatement" against all units located at the Taj Mahal Properties and the Moore Avenue Properties.

23.

Attached hereto and incorporated herein is Exhibit B, which is a true and correct copy of the Municipal Court order referenced above.

24.

Among other findings, the Municipal Court entered a finding that the Taj Mahal Properties and the Moore Avenue Properties, "including buildings, apartments, units and structures situated thereon, are so old and dilapidated and are in such a state of disrepair as to be dangerous, unsafe, unsanitary and otherwise unfit for human habitation, and so inimical to the general public health, safety and welfare, ... and to the citizens of the City of Forest Park, Georgia, that they constitute continuing nuisances and continuing unsafe and dangerous conditions, in continuing violation of numerous provisions of the Code of Ordinances of the City, ... and the laws of the State of Georgia."

25.

The Municipal Court also ordered that the owners of the Taj Mahal Properties and the Moore Avenue Properties could elect to "abate ... the aforesaid nuisances and unsafe conditions by undertaking and completing those repairs and improvements [necessary to abate the nuisances]," or "by undertaking to demolish one or more of that Owner's buildings, apartments, units, or structures situated upon said Owner's properties."

26.

The Municipal Court also ordered that "if any Owner shall fail or refuse to comply with [the Municipal Court's] order within forty five (45) days from the date of this Order, then the [City] shall be entitled in the exercise of its police power to demolish the buildings, apartments, units or structures upon said Owner's properties, and to clean and clear the grounds underlying same."

27.

The Apartment Properties are located in relatively close proximity to the Crazy Horse Saloon, and based on my review of several studies produced by other jurisdictions, including but not limited to neighboring jurisdictions such as DeKalb County, Georgia and others, it is my opinion that the existence of the clubs contributed to the decline of the Apartment Properties.

27.

By my signature below, I declare, under penalty of perjury, that the foregoing is true and correct.

John Parker

12-30-10
Date

IN THE MUNICIPAL COURT OF THE CITY OF FOREST PARK, GEORGIA

CLAYTON COUNTY, STATE OF GEORGIA

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City of Forest Park, Georgia, Petitioner, vs. All those persons and legal entities having an interest in the following properties (the "Properties"): **Briarwood Forest Duplexes, LLC, 890 Conley Road, Forest Park, Ga. 30297**; Taj Mahal Apartments, 514 Bridge Avenue, Forest Park, Ga. 30297; and Moore Avenue Apartments, 508 Moore Avenue, Forest Park, Ga. 30297, Respondents.	)	CASE NO. NO. ECAB-2010-FP-28 **Final Order – Nuisance Abatement** **890 Conley Road – All Units** **Forest Park, Georgia 30297**

ORDER

This matter having come before the Court for a hearing after due and legal notice being provided to all those persons and entities purporting to have an interest in the property known as "**890 Conley Road, Forest Park, Clayton County, Georgia, Clayton County Tax I.D. No. 13015D-C004,**" and more completely described in the Deed Records of the Clerk of the Superior Court of Clayton County, Georgia at Deed Book 8542, pp. 5 through 44 inclusive ("**the Property**"), upon consideration of all of the evidence, including sworn testimony and all documentary evidence, the Court hereby **FINDS AND ORDERS** the following:

1. **The Property, including all units and structures existing thereon**, are so old and dilapidated and are in such a state of disrepair as to be dangerous, unsafe, unsanitary and otherwise unfit for human habitation, and so inimical

EXHIBIT
A to
Parker Decl.

to the general public health, safety and welfare, and the surrounding areas in proximity thereto, and to the citizens of the City, that they constitute a continuing nuisance and are in continuing violation of numerous provisions of the Code of Ordinances of the City of Forest Park, Georgia ("the City Code") and the laws of the State of Georgia; and

2. Based on the evidence in the record, none of which is contradicted or impeached, the Court finds that it is neither feasible nor economically justified nor reasonable to attempt to make all of the repairs and renovations necessary to bring said units and structures into compliance with all the codes and ordinances of the City and the laws of the State of Georgia; and so

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

The Property known as 890 Conley Road, Forest Park, Clayton County, Georgia, Clayton County Tax I.D. No. 13015D-C004, and each and every unit, building and structure thereon, shall be demolished and the lots on which they are situated shall be cleared and cleaned; this work shall be accomplished by the City of Forest Park, Georgia ("the City") through an independent contractor; and this Order shall apply, but shall not be limited to, the following lots, buildings, structures and units: Building A, Units 1 and 2, Building B, Units 3 and 4, Building C, Units 5 and 6, Building D, Units 7 and 8, Building E, Units 9 and 10, Building F, Units 11 and 12, Building G, Units 13 and 14, Building H, Units 15 and 16, Building I, Units 17 and 18, Building J, Units 19 and 20, Building K, Units 21 and 22, Building L, Units 23 and 24, Building M, Units 25 and 26, Building N, Units 27 and 28, Building O, Units 29 and 30, Building P, Units 31 and 32, Building Q, Units 33 and 34, Building R, Units 35 and 36, Building S,

Units 37 and 38, Building T, Units 39 and 40, Building U, Units 41 and 42, Building V, Units 43 and 44, Building W, Units 45 and 46, Building X, Units 47 and 48, Building Y, Units 49 and 50, Building Z, Units 51 and 52, Building AA, Units 53 and 54, Building BB, Units 55 and 56.

AND IT IS FURTHER ORDERED that all costs incurred by the City in accomplishing the demolition, cleaning and clearing of said lots, buildings and units and all remaining portions of the Property, shall constitute a lien upon all of the Property, which shall be recorded in the public records of the Clerk of the Superior Court of Clayton County, Georgia.

SO ORDERED this 14th day of October, 2010.

Honorable Ethenia F. King, Judge
Municipal Court ~~of the City of~~ Forest Park, Ga.

Prepared and submitted by:

Joe M. Harris, Jr.
Attorney for Petitioner City of
City of Forest Park, Georgia
205 Corporate Center Drive
Suite B
Stockbridge, Ga. 30281
Georgia Bar No. 330400
Telephone: 678-610-8155

IN THE MUNICIPAL COURT OF THE CITY OF FOREST PARK, GEORGIA

CLAYTON COUNTY, STATE OF GEORGIA

City of Forest Park, Georgia, Petitioner, vs. All those persons and legal entities having an interest in the following properties (the "Properties"): Taj Mahal Apartments, 514 Bridge Avenue, Forest Park, Georgia 30297; and Moore Avenue Apartments, 508 Moore Avenue, Forest Park, Georgia 30297, Respondents,	)	CASE NO. NO. ECAB-2010-FP-28 **Final Order – Nuisance Abatement** **514 Bridge Avenue – All Buildings, Structures and Units; and** **508 Moore Avenue – All Buildings, Structures and Units** **Forest Park, Georgia 30297**

ORDER

This matter having come before the Court for a hearing after due and legal notice being provided to all those persons and entities purporting to have an interest in the properties known as **"Moore Avenue Apartments, 508 Moore Avenue, Buildings A, B, C and D and Lots 1 through 14 inclusive, Forest Park, Clayton County Georgia, 30297, Clayton County Tax I.D. Nos. 13051D-A082 through 13051D-A096 inclusive"** and the properties known as **"Taj Mahal Apartments, 514 Bridge Avenue, Lot 1, Block D and Lots 15 through 26 inclusive, Forest Park, Clayton County, Georgia, 30297, Clayton County Tax I.D. Nos. 13015D-A097 through 13051D-A109 inclusive," (collectively, the Properties")**, upon consideration of all of the evidence, including sworn testimony and all documentary evidence, the Court hereby **FINDS AND ORDERS** the following:

1. The Properties, including all buildings, apartments, units and structures situated thereon, are so old and dilapidated and are in such a state of disrepair as to be dangerous, unsafe, unsanitary and otherwise unfit for human habitation, and so inimical to the general public health, safety and welfare, and the surrounding areas in proximity thereto, and to the citizens of the City of Forest Park, Georgia (the "City"), that they constitute continuing nuisances and continuing unsafe and dangerous conditions, in continuing violation of numerous provisions of the Code of Ordinances of the City ("the City Code"), the "International Property Maintenance Code, 2006 Edition" (the "IPMC"), the "International Building Code, 2006 Edition" (the IBC"), and the laws of the State of Georgia, all of which are applicable in the City; and
2. Based on the evidence in the record, the Court finds that the Properties, including all buildings, apartments, units and structures situated thereon, individually and collectively, constitute continuing nuisances and continuing unsafe conditions which must be abated; and
3. The Court further finds and concludes that the aforesaid nuisances and unsafe conditions specifically include, but are not limited to, those deficiencies and unsafe conditions identified in Plaintiff's Exhibit 25, consisting of five (5) pages, each entitled "Property Maintenance Inspection Checklist" dated November 11, 2010, prepared and signed by Mike Tuttle, Chief Code Inspector and Deputy Director, Department of Planning, Building and Zoning for the City, and Plaintiff's Exhibit 26, consisting of seven (7) pages, each entitled "Property Maintenance Inspection Checklist" dated November 10,

2010, prepared and signed by Mike Tuttle, Chief Code Inspector and Deputy Director, Department of Planning, Building and Zoning for the City, both of said exhibits being attached hereto and incorporated herein by reference; and

4. The Court further finds that after due notice, the following owners of one or more buildings, apartments, units or structures situated upon the Properties entered an appearance in this case and demonstrated an interest in these matters: Dr. J. P. Agrawal, Ms. Sarla Agrawal, Dr. Pallava Agrawal, J. J. El-Awal, and Multiple Talents, LLC (each one of these being individually referred to herein as the "Owner" and collectively referred to herein as "the Owners"); now

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

The Nuisances and Unsafe Conditions described and identified herein shall be abated as follows:

A. Each of the Owners may elect to abate one or more of the aforesaid nuisances and unsafe conditions by undertaking and completing those repairs and improvements necessary to abate those deficiencies and unsafe conditions identified in Plaintiff's Exhibits 25 and 26, as applicable, contained within each building that said Owner intends to repair and improve; and any Owner who so elects shall obtain a building permit from the City's Department of Planning, Building and Zoning at 785 Forest Parkway, Forest Park, Georgia 30297 (the "PB&Z Department"), and shall begin the process required to obtain such building permit within forty five (45) days from the date of this Order by submitting to the PB&Z Department a written assessment of each of

those buildings, apartments, units and structures that said Owner intends to repair and improve; each assessment shall be prepared by an engineer licensed by the State of Georgia, and shall include a description of all corrective actions that are necessary to bring those properties, buildings, apartments, units and structures selected by the Owner for repair and improvement up to the minimum standards required by the City Code, the IPMC, the IBC, and the laws of the State of Georgia, an estimated cost for such corrective actions, and whether, in the opinion of the said engineer, it is economically feasible to take said corrective actions; **or in the alternative:**

B. Each of the Owners may elect to abate one or more of the aforesaid nuisances and unsafe conditions by undertaking to demolish one or more of that Owner's buildings, apartments, units, or structures situated upon said Owner's properties, in which case the Owner making such election shall apply for and obtain a demolition permit from the City's Department of Planning, Building and Zoning, 785 Forest Parkway, Forest Park, Georgia 30297 within forty five (45) days from the date of this Order; and

C. In the event that any Owner shall fail or refuse to comply with either Paragraph A or Paragraph B above within forty five (45) days from the date of this Order, then the City of Forest Park, Georgia shall be entitled in the exercise of its police power to demolish the buildings, apartments, units or structures upon said Owner's properties, and to clean and clear the grounds underlying the same; and

D. In the event that an Owner shall elect to repair and improve one or more buildings pertaining to his or her property, then that Owner shall diligently pursue the work necessary to complete the required repairs and improvements within a reasonable time, and the City shall monitor the progress made by the Owner in order to ensure compliance with this Order, and shall report to this Court at any time that the City's Code Inspector shall be of the opinion that said work is not being pursued in a reasonably timely manner; and

E. In the event that an Owner shall commence repairs and improvements and then fail to diligently pursue the work in a reasonably timely manner, then the City shall file a complaint with this Court and serve a copy upon the Owner; and upon notice being given, this Court shall conduct a hearing as to whether the work should continue, and if so, upon what conditions, or whether the work should stop, and the building, apartments, units or structures should be demolished; and

F. In the event that any of the buildings, apartments, units or structures upon any of the Properties shall be demolished by the City, then all costs incurred by the City in accomplishing the demolition of said buildings, apartments, units or structures, and the cleaning and clearing of the grounds pertaining thereto, shall constitute a lien upon those properties owned by said Owner, and the lien or liens shall be recorded in the public records of the Clerk of the Superior Court of Clayton County, Georgia.

SO ORDERED this 6th day of December, 2010.

Honorable Ethenia F. King, Judge
Municipal Court of the City of Forest Park, Ga.

Prepared and submitted by:

Joe M. Harris, Jr.
Attorney for Petitioner City of
City of Forest Park, Georgia
205 Corporate Center Drive
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Stockbridge, Ga. 30281
Georgia Bar No. 330400
Telephone: 678-610-8155

EXHIBIT
B
to Parker Decl.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FLANIGAN'S ENTERPRISES, INC. OF GEORGIA d/b/a Mardi Gras, 6420 Roswell Road, Inc. d/b/a Flashers, and Fantastic Visuals, LLC d/b/a Inserection,	*	CIVIL ACTION FILE No. 1:09-CV-2747-RLV
Plaintiffs,	*	
v.	*	
CITY OF SANDY SPRINGS, GEORGIA, et al.	*	
Defendant.	*	

AFFIDAVIT OF ROBERT STEVENS

1. My name is Robert Stevens, I am over eighteen years of age, and I am competent to give this Affidavit.

2. I am a Captain in the City of Sandy Springs Police Department, and I have been with this department since July 1, 2006.

3. From late 2010 through May 2011, I supervised a narcotics/prostitution investigation concerning Sherell Allen, who was a dancer at **Mardi Gras**, an adult entertainment establishment in Sandy Springs. The investigation culminated in the arrest of Ms. Allen and five other women who were also dancers at Mardi Gras. Ms. Allen was convicted on drug charges. The other women were charged with solicitation for an illicit sexual act.

4. Attached to this affidavit is a five-page outline of activities, matters observed by law enforcement personnel, and factual findings from the above investigation. The outline is part of the case file for this legally authorized investigation by the Sandy Springs Police Department. As the outline records, an undercover officer bought drugs from dancers at Mardi Gras on the following dates:

SJ Exhibit GG

December 2, 2010 (3.8 grams of cocaine)
December 30, 2010 (4.8 grams of cocaine)
January 21, 2011 (4.8 grams of cocaine)
February 2, 2011 (4.2 grams of cocaine)
March 1, 2011 (4.9 grams of cocaine)
May 20, 2011 (4.6 grams of cocaine)
May 24, 2011 (57.1 grams of cocaine)

5. The case investigation file also includes written statements that the five Mardi Gras dancers, who were arrested with Sherell Allen on May 26, 2011, provided to the Police Department. These five pages are also attached to this affidavit. The dancers, who were each over the age of 18 years, wrote their statements and certified that they were true and correct and freely given without promise of reward, coercion, intimidation, or any other unlawful influence. Their statements record that dancers participate in sex acts with customers inside Mardi Gras, including oral sex, masturbation, and sexual intercourse. The statements also reflect that dancers engage in drug transactions and drug use inside Mardi Gras.

6. Beginning in late 2011, I led an undercover investigation at **Flashers**, an adult entertainment establishment at 6420 Roswell Road NE in Sandy Springs, to investigate allegations of illegal drug distribution and prostitution occurring among the employees.

7. On Friday, **December 16, 2011**, Detective David Huffschmidt and I went to Flashers in an undercover capacity at about 10:30 P.M.

8. From the bar I saw 20-25 nude adult entertainers dancing on stage or among patrons on the main floor. I saw many nude entertainers having physical contact with customers that consisted of entertainers rubbing their bare breasts in the customers' faces and grinding their nude buttocks into customers' laps during lap dances. Bouncers for Flashers were about to see the physical contact that was occurring between nude entertainers and customers.

9. I received a lap dance from a nude adult entertainer, for which I paid $20-$25. Several times she rubbed her bare breasts in my face. She also sat on my lap and thrusted her hips into my crotch and along my leg. Later I received a lap dance from a different nude entertainer. She also

rubbed her bare breasts in my face repeatedly and rubbed along my legs with her bare buttocks. I also saw multiple nude entertainers have similar physical contact with Detective Huffschmidt.

10. On Friday, **December 23, 2011**, I returned to Flashers in an undercover capacity with Detective Huffschmidt.

11. On this visit I received several lap dances from a nude adult entertainer. I paid $20-$25 for each lap dance. During the dances she repeatedly sat on my lap and thrusted back and forth on my lap with her bare buttocks. She also would face me and rub her bare genitals with her fingers as if she were masturbating herself. Later I saw this entertainer have the same kind of physical contact with Detective Huffschmidt.

12. Another adult entertainer, Ebony, asked me to go with her to the VIP room for $125, and that we could "get close" for an extra $50. She told me the room was dark, no one could see in, no one would interrupt us, and we could touch each other. When I said I did not want to get into any trouble with the bouncers, she repeated that the bouncers would not come into the VIP room while we were in there.

13. Ebony gave me several lap dances for $20-$25 per dance. She would bend over away from me and spread her vagina apart with her fingers. She sat in my lap several times and rubbed on my crotch with her nude buttocks back and forth in a rapid motion. During lap dances she told me several times, "I give good oral sex." She also told me she was sexually aroused and that she wanted to give me oral sex. I told her I was interested, and she left me for a few minutes.

14. Ebony approached me later, squeezed my buttocks with her hands, and asked if I was ready to go back to the VIP room. When I said I would after another beer, she responded "I don't want you to get too drunk so you can't get it up and come on me." I believed this to mean that she did not want me to get too drunk so that I could not get an erection and be unable to ejaculate on her. Ebony approached me again later, stating she wanted to give me the "pornstar experience" and that she had "all the toys and protection." I asked her if we could instead meet sometime outside of the club. She said she understood, and she gave me a napkin with her telephone number.

15. During this visit to Flashers, I saw numerous nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas. Bouncers for Flashers were able to see the physical contact that was occurring between nude entertainers and customers, and yet it continued.

16. On Thursday, **January 5, 2012**, I returned to Flashers in an undercover capacity with Detective Huffschmidt.

17. On this visit had received six to seven lap dances from a nude adult entertainer. I paid $20-$25 for each lap dance. During each dance the entertainer rubbed her bare breasts in my face, grinded her bare buttocks into my crotch area, rubbed her bare vagina with her fingers for me to see, and in one instance grabbed my crotch with her hand. Flashers bouncers were able to see this physical contact, but they ignored it.

18. At one point I saw an adult entertainer and a customer enter the VIP room that was near where I sat. Before they entered, there was a dim green light on inside the VIP room. After they entered, the light went out and the interior of the room was completely dark until they came out. During the 20 to 30 minutes that the entertainer and the customer were in the VIP room, I did not see any bouncer look into their VIP room.

19. I also saw many other nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts on customers' crotches and entertainers rubbing their bare breasts against customers' faces. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

20. On Friday, **January 13, 2012**, I returned to Flashers in an undercover capacity with Detective Huffschmidt, from about 11:30 P.M. to about 1:45 A.M. (on January 14).

21. As before, I received a lap dance from a nude adult entertainer. She sat on my lap and grinded her bare buttocks into my crotch area. I paid her $20-$25 in return. Afterwards she said she would have rubbed her

breasts in my face, but that they were too sensitive because she just had them pierced.

22. Then another adult entertainer, Mystery, came up to me and grabbed my crotch with her hand and asked if I wanted a dance. I agreed, so she removed her attire. During the lap dance she grabbed my crotch several more times with her hands, pushed her bare buttocks into my crotch area, and even straddled me on the bar stool and grinded her bare vaginal area on my crotch. For this dance, I paid $20-$25. Flashers bouncers were able to see this physical contact but they did not say anything to us about it.

23. Later another nude entertainer gave me lap dances for $20-$25 per dance. During each dance she grinded her bare buttocks into my crotch area, rubbed her breasts in my face, rubbed her knees in my crotch area, and touched her vagina with her fingers. This entertainer also gave dances to, and had the same kind of physical contact with, Detective Huffschmidt.

24. I also saw many other nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts on customers' crotches and entertainers rubbing their bare breasts against customers' faces. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

25. On Saturday, **January 28, 2012**, I returned to Flashers in an undercover capacity with Detective Huffschmidt, from about 10:00 P.M. to about 11:30 P.M.

26. On this visit, the adult entertainers were—at first—not dancing for customers like usual, but rather would huddle in groups and whisper to each another. One of the adult entertainers, Vegas, approached me, and we recognized one another from a previous visit to the club. She told me that the dancers suspected that undercover officers were in the club. After some time I asked her who the cops were, and she pointed out two men sitting at a table. I did not recognize them and I was not aware of any other agency conducting an undercover operation at Flashers that night.

27. Later Vegas gave me a lap dance. She rubbed her bare breasts in my face, kissed my neck, rubbed her knees into my crotch, and grinded on my crotch with her bare buttocks. I received at least 6 lap dances from Vegas on this visit, and each one cost about $20 and involved the foregoing physical contact. One time, between dances, she reached under the table and grabbed my crotch before asking to give me another lap dance. Bouncers were able to see the physical contact during each lap dance, but they never tried to make her stop.

28. During this visit, I saw other entertainers rubbing their bare breasts in customers' faces, sitting and grinding their nude buttocks on customers' laps, and laying on top of customers while nude. Although Flashers staff could see that activity, no one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

29. Affiant further sayeth not.

Robert Stevens 9-18-12

Robert Stevens

Sworn to and subscribed before me this 18th day of September, 2012.

Sheila M. Hayes, Notary Public

Outline on the Mardi Gras Case

On November 22, 2010, I went to the permits unit in effort to identify each person provided by the informant. Each stage name provided was entered into our reporting system. By doing so, the true identity and profile along with a photo was revealed. A copy of each profile was printed. At approximately 1630 Hours, the informant arrived at police headquarters. He was shown a photo of each person while their profiles were concealed. The informant identified each person by writing their stage name on the bottom profile. Each person was easily identified by the informant.

On December 01, 2010 at approximately 1803 hours, I went into the Mardi Strip Club located at 6300 Powers Ferry Rd along with the informant for purpose of being introduced. After being there approximate 20 minutes, I was introduced to a white female identified as "Morgan" her real name is Jessica Pelt and Teri Shields.

On December 02, 2010 at approximately 1702 hours, I went into the Mardi Gras Strip Club and made a hand to hand purchased approximately 3.8 grams of cocaine from Jessica Pelt. The purchase was made with $250.00 of confidential city funds.

On December 07, 2010 at approximately 1733 hours, I went to the Cocktail Cove Sports Bar located at 5840 Roswell Rd along with the CI. I was introduced to the main target Sherell Allen. After a brief conversation, Allen sold me approximately 4.8 grams of cocaine. The Purchase was made with $250.00 of confidential city funds.

On December 12, 2010 I went to the Mardi Gras Strip Club for the purpose of making a purchase of cocaine from Teri Shields. Shields had made prior arrangements via cell phone to sell to me on this date; however, she was unable to get her hands on the drugs.

On December 14, 2010 at approximately 1739 hours, I went to the Cocktail Cove Sports Bar and made a hand to hand purchase of approximately 4.8 grams of cocaine from Sherell Allen. The Purchase was made with $250.00 of confidential city funds.

On December 20, 2010 at approximately 1545 hours, I went to the Taco Mac Sports Bar and made a hand to hand purchase of approximately 7 grams of cocaine and 7 grams of marijuana from Sherell Allen. The Purchase was made with $635.00 of confidential city funds. The cocaine was sold for $475.00 and the marijuana at $160.00.

On December 30, 2010 I went to the Mardi Gras Strip Club along Detective Concepcion and made a hand to hand purchase of approximately 4.8 grams of cocaine from Sherell Allen. We were introduced to a white female "Athena" real name Connie Lee. Lee was described as Allen's right hand girl. We also met a white male who was introduced as JB. Detective Concepcion was brought in this date to get me into VIP. By doing so it showed me to have more credibility. We were asked to use cocaine while in VIP; however, we managed to control the situation.

On January 06, 2011 at approximately 1633 hours, I met Allen in the parking lot of the Publix Grocery Store located at 6300 Powers Ferry Rd and made a hand to hand purchase of approximately 4.8 grams of cocaine from Sherell Allen. The Purchase was made with $250.00 of confidential city funds.

On January 21, 2011 at approximately 1412 hours, I went into the Mardi Strip Club located at 6300 Powers Ferry Rd and made a hand to hand purchase of approximately 4.8 grams of cocaine from Sherell Allen. The Purchase was made with $250.00 of confidential city funds. On this date, Allen and Lee explained how they travel to Ft Lauderdale Fl, hide illegal drugs in their vaginas and fly back to Atlanta.

On February 2, 2011 at approximately 1245 hours, I went to the Mardi Gras Strip Club and made a hand to hand purchase of approximately 4.2 grams of cocaine. The Purchase was made with $250.00 of confidential city funds. During this meet, Allen advised me that she makes drops all over the metropolitan Atlanta including Forsyth County. Allen also informed me that she sells pills as well.

On March 01, 2011 at approximately 1803 hours, I went to the Mardi Gras Strip Club and purchase approximately 4.9 grams of cocaine from Sherell Allen. While talking to Allen and Jessica Pelt, I learned that new dancers at the club were also aware of the drug activity at Mardi Gras. Some of them were pointed out as users and/or as partaking in the sale of illegal drugs.

On Thursday April 07, 2011 at approximately 1825, I met Sherell Allen at the TacoMac located in Dunwoody Georgia. The purpose of the meet was to achieve installation of a tracking device and to seek more information related to Allen's drug supplier. In order to meet with Allen, I had to agree to purchase more cocaine. While sitting at the bar along with Allen, she handed a plastic bag containing two smaller bags. One of the bags contained approximately 4.7 grams of suspected cocaine and the other bag contained 5 blue and yellow pills which appeared to be ecstasy pills. The cocaine was later field tested and showed to be positive for cocaine.

On Monday April 18, 2011 at approximately 1845 hours, I entered the Buffalo Wild Wings Sports Bar for the purpose of meeting with Sherell Allen. At approximately 1855 hours, Allen arrived. She then asked for the money and pointed to her legs while telling me to take it. I handed her $250.00 of

confidential city funds and received approximately 4.8 grams of cocaine. Later that day a tracking device was placed on Allen's vehicle.

On Thursday April 29, 2011 at approximately 1730 hours, I met Sherell Allen at the TacoMac located at 5600 Roswell Road. The purpose of the meeting was for the HIDTA team to replace an inoperative tracking device and for me to discuss with Allen future plans of a so called party which is to become a takedown of her illegal drug enterprise. There were also two other females at that meeting. A white female "Athena" who's real name is Connie Lee and an unknown black female. There was no drug or money exchange at this meeting.

On Friday, May 20, 2011 at approximately 14:30 hours, I met with Sherell Allen at The Mardi Gras Strip Club for the purpose of finalizing plans of an upcoming party. This so called party is to become a drug and prostitution sting. Also at this meeting an 8-Ball (4.6 grams) of suspected cocaine was purchased. I had to agree to make this purchase in order to meet with Allen for finalization of take down plans. Approximately 20 minutes after meeting Allen at the upstairs bar area, the exchange was made when Allen tapped me on my leg and handed me the suspected cocaine. I then handed her $250.00 of confidential City funds. A field test of the drug confirmed it to be cocaine.

On Tuesday, May 24, 2011 at approximately 1300 hours, I met Sherell Allen at 8879 Roswell Road (The North River Tavern). The purpose of this meeting was to front Allen the money for four ounces of cocaine and to confirm the take down party. After giving her $2,700.00 of confidential city seized funds, Allen stated, "I`m going to pick up two ounces right now." I then advised her that I was under the impression that this was front money for four ounces. Allen stated that she had to purchase two ounces from her supplier first and then she would be able to bring two more ounces on the night of the party. Allen left a few minutes later being followed by Detectives Spears and Begeal. She was also being tracked by an electronic tracking device being monitored by Detective Simone. Detectives observed Allen walking up to the door of 1876 Madrona Street, Atlanta GA.

30318. A short while later, Allen was seen jogging to her car and driving off. At approximately 1350 hours, Allen called me via cell phone and advised that she had goods. At approximately 1430 hours the exchange was made at the bar area of the Mardi Gras Strip Club. The suspected cocaine was later field tested and showed to be positive for cocaine. It weighed approximate 57.1 grams, a little over two ounces.

On May 26, 2011 at approximately 1845 hours, Undercover Detectives Huffschmidt, Stansberry and I met Sherell Allen, Connie Lee, Amy Walker, Michelle Reynolds, Tameka Dixon and Rosario Garrett met in the bar area of the Crown Plaza Hotel. After talking and having a drink, we all went to room number 728. Allen and I then went to room number 712. Both rooms were equipped with listening bugs. Once in room number 712, Allen removed four small bags containing suspected cocaine. She then asked me how many did I want. She advised me that it would be $160.00 for all four bags. Allen then asked me if I would give her the money for the other two ounces we had agreed on. I then counted out $2,600.00 and an additional $1,800.00 which was to cover the cost for each female at $300.00 each for prostitution. During the transactions, Allen removed a handgun from her purse and showed it to me while stating, "See, here`s my gun. It`s a 38." She then placed it back into her purse. All funds were confidential city seized funds and all funds given to her on this date was recovered. At that time, takedown officers Sgt. Stevens, Detective Begeal and Detective Concepcion entered the room and placed Allen under arrest. Allen was transported back to police headquarters where she was read her rights by Sgt. Stevens and Detective Simone. After being informed of her charges and what she was facing, Allen advised that she wanted to speak to a lawyer. At that time the interview was terminated. The suspected cocaine (3.6 gms) was later tested and showed positive for cocaine. Allen`s handgun a 38cal. revolver, a samsung cell phone and the cocaine were placed into property and evidence.

On May 31, 2011 at approximately 1710 hours, Jessica Pelt arrived at the Sandy Springs Police Headquarters after being arrested on warrant number 11SWA0029 for distribute of cocaine. After being read her rights, Plet denied knowing Sherell Allen and others involved in this case. Plet denied ever selling me drugs

and claimed to never have seen me before. Pelt sold me two ounces of cocaine at the Mardi Gras Strip Club on December 2, 2010. I showed Plet her permit information which was file at the Sandy Springs Police Department; however, she continued to deny dancing at the Club. Pelt had renewed the permit on September 23, 2010. After a brief interview she was transported to the Fulton county jail.

SANDY SPRINGS POLICE DEPARTMENT
STATEMENT FORM

STATEMENT OF: Connie Lee TAKEN/WRITTEN BY: Det. Thomas

RACE/SEX: W/F DOB: [redacted]/55 NICKNAME: Athena

DATE: 5/26/11 TIME: 10:15 PM CASE #: 2010-215880

HOME ADDRESS: [redacted] PHONE [redacted]

BUSINESS ADDRESS: PHONE ( )

I have known Stacy for about 5 yrs. I only saw her sell to Morgon, Amy. when she was out having the baby I would hold it for her at work about a couple times a week at $40.00 bgs. I would buy from her when I was at work a ~~b~~ $40.00 bg. about who she was paying off I do not know, and ~~the~~ In the VIP I have giving head I've seen Stacy, and morgon also do it ~~The~~ I've seen ~~alic~~ alisa give head to guys in the VIP room. I've seen her ~~give~~ sell to guys inside the club but I do not know who They ~~are. Because~~ were. all of this took place at Mari gras where I work.

I certify that I have read or have had read to me the above statement and that it is true and correct to the best of my knowledge and belief. I further certify that the statement was freely given and without promise of reward, coercion, intimidation, or any other unlawful influence.

SIGNATURE: Connie S Lee DATE: 5/26/11

WITNESS: [signature] DATE: 5/26/11

Revised 05-01-06

SANDY SPRINGS POLICE DEPARTMENT

STATEMENT FORM

CASE NUMBER: _____ DATE: _____ TIME: _____

STATEMENT OF: Rosario Gardt RACE/SEX: F DOB: [redacted]-60

ALIAS (STREET NAME): Rose

HOME ADDRESS: [redacted] PHONE [redacted]

BUSINESS ADDRESS: Atlanta GA PHONE ( ) _____

I done cocaine with Stacy, Athena and Serena inside her car one night at the crown plaza Hotel, ~~two~~ three weeks ago.
I did 10 Handjob with ~~the~~ for the Customer in the VIP room and had one sex with the Customer. and also seen Athena done cocaine in the dressing rest room.

I certify that I have read or have had read to me the above statement and that it is true and correct to the best of my knowledge and belief. I further certify that the statement was freely given and without promise of reward, coercion, intimidation, or other unlawful influence.

SIGNATURE: Rosario Gardt WITNESS: Det. [signature] #103

WITNESS: _____ WITNESS: _____

03/07/06

SANDY SPRINGS POLICE DEPARTMENT
STATEMENT FORM

STATEMENT OF: Amy Walker TAKEN/WRITTEN BY: Amy Walker

RACE/SEX: F DOB: [redacted]89 NICKNAME: Cheyanne

DATE: 05/26/11 TIME: CASE #:

HOME ADDRESS: [redacted] PHONE ( )

BUSINESS ADDRESS: PHONE [redacted]

I saw Atheena + Serena upstairs at Mardi Gras. They told me to meet Stacy downstairs. I went + Talked to her and She told me that she was having a private party at the Crowne Plaza on thursday The deal was before we went in we all would get $300 each and one girl told me to bring condoms, just in case but that would be more money. I Showed up to find myself in jail.

I certify that I have read or have had read to me the above statement and that it is true and correct to the best of my knowledge and belief. I further certify that the statement was freely given and without promise of reward, coercion, intimidation, or any other unlawful influence.

SIGNATURE: Amy Walker DATE: 05/26/11

WITNESS: #127 DATE: 05-26-11

Revised 05-01-06

SANDY SPRINGS POLICE DEPARTMENT
STATEMENT FORM

STATEMENT OF: Tameka Dixon TAKEN/WRITTEN BY:

RACE/SEX: Female DOB: [redacted] 83 NICKNAME: Toy

DATE: 5·26·2011 TIME: CASE #:

HOME ADDRESS: [redacted] PHONE [redacted]

BUSINESS ADDRESS: PHONE [redacted]

Last week, Stacy aka Sherrell Allen, called me and asked if I wanted to do a party. I said yes. She told me that it would be three hundred dollars at the door just to show up. She also said that they wanted girls that partied, She told me I could fake and act as if I was doing cocaine. (Because she knew that I have been clean now for 3½ years) I figured she was just tryna be a friend and help me make some money, and as a friend I trusted her. Sherrell is a dealer, I work night shift, and she works days. So I don't get to see her as often but I do see her when I am coming into work, and she is leaving when I come in. There is only one girl that I know of that helps Sherrell, her name is Connie, I am not sure of any other girls dealing for her, that is the only one that I know of.

I certify that I have read or have had read to me the above statement and that it is true and correct to the best of my knowledge and belief. I further certify that the statement was freely given and without promise of reward, coercion, intimidation, or any other unlawful influence.

SIGNATURE: T. Dixon DATE: 5·26·2011

WITNESS: C. [signature] #163 DATE: 5/26/2011

Revised 05-01-06

SANDY SPRINGS POLICE DEPARTMENT

STATEMENT FORM

CASE NUMBER: _____ DATE: 5/26/11 TIME: 10:39 pm

STATEMENT OF: _____ RACE/SEX: BLK DOB: [redacted]-05

ALIAS (STREET NAME): Michelle Reynolds

HOME ADDRESS: [redacted] PHONE [redacted]

BUSINESS ADDRESS: _____ PHONE (____) _____

I was told It was a bachelor party and that It was up to each individual as to what they wanted to participate in. It would last an 1½hr. and to not be surprised at what you see. We all were to get $300, and what ever else happened was at each girls discretion, you could or could not indulge in party Favors or other activities If were propositioned it would be up to you if wanted to participate

I certify that I have read or have had read to me the above statement and that it is true and correct to the best of my knowledge and belief. I further certify that the statement was freely given and without promise of reward, coercion, intimidation, or other unlawful influence.

SIGNATURE: [signature] WITNESS: [signature] #103

WITNESS: _____ WITNESS: _____

03/07/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FLANIGAN'S ENTERPRISES, INC. OF GEORGIA d/b/a Mardi Gras, 6420 Roswell Road, Inc. d/b/a Flashers, and Fantastic Visuals, LLC d/b/a Inserection,	*	CIVIL ACTION FILE No. 1:09-CV-2747-RLV
Plaintiffs,	*	
v.	*	
CITY OF SANDY SPRINGS, GEORGIA, et al.	*	
Defendant.	*	

AFFIDAVIT OF DAVID HUFFSCHMIDT

1. My name is David Huffschmidt, I am over eighteen years of age, and I am competent to give this Affidavit.

2. I am a detective in the City of Sandy Springs Police Department, and I have been with this department since January 2008.

3. Beginning in late 2011, I participated in an undercover investigation at **Flashers**, an adult entertainment establishment at 6420 Roswell Road NE in Sandy Springs, to investigate allegations of illegal drug distribution and prostitution occurring among the employees.

4. On Friday, **December 16, 2011**, Sergeant Rob Stevens (now, Captain) and I went to Flashers in an undercover capacity at about 10:30 P.M.

5. From the bar I saw 20-25 nude adult entertainers dancing on stage or among patrons on the main floor. I saw many nude entertainers having physical contact with customers that consisted of entertainers rubbing their bare breasts in the customers' faces and grinding their nude buttocks into customers' laps during lap dances.

SJ Exhibit HH

6. I received a lap dance from a nude adult entertainer for about $20. Several times she rubbed her bare breasts in my face. She also sat on my lap and rubbed my crotch with her bare buttocks. Later I received a lap dance from a different nude entertainer, who also had physical contact with me in similar ways. I paid for that lap dance as well. I also saw multiple nude entertainers have similar physical contact with Sergeant Stevens.

7. On Friday, **December 23, 2011**, I returned to Flashers in an undercover capacity with Sergeant Stevens shortly after 10:00 P.M.

8. On this visit I received lap dances from a nude adult entertainer called Chelsea. I paid $20-$25 for each lap dance. During the dances, Chelsea grinded on my crotch area with her bare buttocks. I also saw her have this kind of physical contact during lap dances with Sergeant Stevens.

9. While leaning her body against mine and exposing her bare breasts to me, Chelsea asked if I wanted to go with her to the VIP room. She said it would cost $125 for the club, plus $200 for her. I told her the price was too high, so she continued dancing in my lap. I asked where she was from, and she said El Salvador. She then whispered in my ear that we could go to the VIP room and she would take me to El Salvador. I understood this to mean she would have sex with me in the VIP room for $325.

10. Chelsea then led me to a different area of the club, where she said we could "get away with a lot more." She gave me a lap dance, grinding her bare buttocks on my crotch and rubbing her bare breasts. She turned around and touched her bare vagina, spreading it open slightly with her hand. Then, referring to her vagina, she said "we have to go to the VIP for that." She then started rubbing my crotch area with her bare breasts. For this lap dance I paid about $20 or $25.

11. Next I spoke with a nude entertainer called Trinity. She spoke to me about the VIP room, and she explained she did not want me to waste my money that night because, due to her female situation, it was a week of the month that she could not do the VIP room. Trinity then gave me a lap dance for about $20 or so. While still nude she grinded on my crotch area with her bare buttocks. She then turned around and caused her bare breasts to touch my face. After the dance, she took down my phone

number and then called my phone to give me her number.

12. During this visit to Flashers, I saw numerous nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas. Bouncers for Flashers were able to see the physical contact that was occurring between nude entertainers and customers, and yet it continued.

13. On Thursday, **January 5, 2012**, I returned to Flashers in an undercover capacity with Sergeant Stevens.

14. On this visit I received several lap dances from nude adult entertainers for $20-$25 per dance, and each involved physical contact. The entertainers rubbed their bare breasts in my face and grinded on my clothed genital area with their bare butts and vaginal areas.

15. I also saw many other nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts on customers' crotches and entertainers rubbing their bare breasts against customers' faces. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

16. On Friday, **January 13, 2012**, I returned to Flashers in an undercover capacity with Sergeant Stevens, from about 11:30 P.M. to about 1:45 A.M. (on January 14).

17. On this visit I received several lap dances from nude adult entertainers for $20-$25 per dance, and each involved physical contact. The entertainers rubbed their bare breasts in my face and grinded on my clothed genital area with their bare butts and vaginal areas. During one such dance, an entertainer called Mystery placed her leg on top of my leg while grinding her nude vagina on my leg. Then she turned around, bent over, and grinded my crotch with her bare buttocks.

18. During a lap dance from Zoey, she sat in my lap, put her hands on my shoulders, and grinded her bare breasts and stomach in my face. Then she turned around, bent over, reached her hand between her legs and ran her finger between her vaginal lips for me to see. She did this several

times. I paid her about $20 or so for this lap dance.

19. I also saw many other nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts on customers' crotches and entertainers rubbing their bare breasts against customers' faces. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

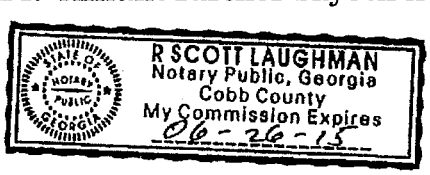
20. On Saturday, **January 28, 2012**, I returned to Flashers in an undercover capacity with Sergeant Stevens, from about 10:00 P.M. to about 11:30 P.M.

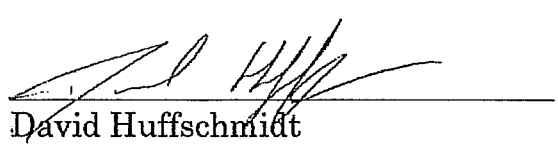
21. One of the nude entertainers, called Trinity, approached me and we talked. As we spoke, she mentioned that two men at the other end of the main stage were suspected to be undercover officers. She commented that it was stupid of one of the other nude entertainers to be dancing for them since she believed they were undercover officers.

22. Trinity then gave me lap dances for about three songs. She did so completely nude, she rubbed her bare breasts in my face and my chest area, and she grinded on my crotch/lap area with her bare buttocks. Later Trinity gave me another lap dance, and it also involved the same kind of physical contact. I paid her about $20 for each lap dance.

23. I also saw many other nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts on customers' crotches and entertainers rubbing their bare breasts against customers' faces. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

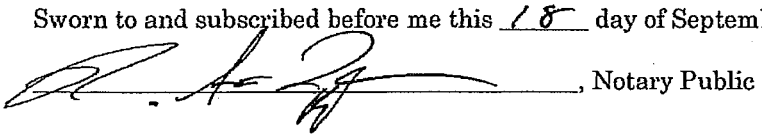
24. Affiant further sayeth not.





David Huffschmidt

Sworn to and subscribed before me this 18 day of September, 2012.



, Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FLANIGAN'S ENTERPRISES, INC. OF GEORGIA d/b/a Mardi Gras, 6420 Roswell Road, Inc. d/b/a Flashers, and Fantastic Visuals, LLC d/b/a Inserection,	*	CIVIL ACTION FILE No. 1:09-CV-2747-RLV
Plaintiffs,	*	
v.	*	
CITY OF SANDY SPRINGS, GEORGIA, et al.	*	
Defendant.	*	

AFFIDAVIT OF CAMERON REEVES

1. My name is Cameron Reeves, I am over eighteen years of age, and I am competent to give this Affidavit.

2. I am the Owner of Reeves Investigations LLC, and I am a licensed private investigator.

3. On Friday, **October 7, 2011**, I went to **Flashers**, an adult entertainment establishment at 6420 Roswell Road NE in Sandy Springs, Georgia, from about 8:30 P.M. to about 11:05 P.M. On this visit I saw Mario Freese and Tamara Corazalla moving about throughout the club.

4. An adult entertainer solicited a personal dance to me, and I agreed to the $20 fee she quoted. The adult entertainer removed her thong underwear (exposing her genitals and buttocks), lifted up her tank top (exposing her bare breasts), and put both her hands on my upper thighs. The entertainer then began to rub my groin area with her nude butt. Her nude vaginal area also had physical contact with my groin area. The nude adult entertainer rubbed her bare breasts on my face and then licked my ear and neck area with her tongue. Mario Freese was sitting

SJ Exhibit EE

next to me at the time, and he and Tamara Corazalla were both able to see the conduct described in this paragraph.

5. I later received dances from two other nude adult entertainers that consisted of the same kind of physical contact described in paragraph 4. I paid each of the entertainers $30 after each dance.

6. During this visit to Flashers, I saw at least 18 nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas and entertainers rubbing their bare breasts against customers' faces and bodies. Mario Freese and Tamara Corazalla were present in the room and were able to see the physical contact occurring between nude adult entertainers and paying customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

7. On Friday, **October 7, 2011**, I went to **MainStage**, an adult entertainment establishment at 5275 Roswell Road in Sandy Springs, Georgia, from about 11:15 P.M. to about 1:15 A.M (on October 8). On this visit I saw Grant Davis, Apostolos Kakaroumbas, and Kevin Gribbin in the establishment. MainStage is in the same location as the Coronet Club.

8. An adult entertainer solicited a personal dance to me, and I agreed to the $10 fee she quoted. The adult entertainer removed her thong underwear (exposing her genitals and buttocks), lifted up her tube top (exposing her bare breasts), and put both her hands on my upper thighs. The entertainer then began to rub my groin area with her nude butt. I paid the nude entertainer $20.

9. Then the nude entertainer asked me to go with her to the Gold Room, which she described as a more "private area." I agreed to go into the Gold Room for the quoted price of $25. In the Gold Room the nude entertainer rubbed her bare breasts on my face and rubbed her nude vaginal area on my thighs. She also rubbed my groin area with her nude butt. For this dance, I paid the nude entertainer $35.

10. Later an adult entertainer took me to the VIP room. To go to the VIP room, I had to pay Kevin Gribbin, who appeared to be a manager, a $240 fee. In the VIP room I sat on a couch and the adult entertainer removed

her thong underwear (exposing her genitals and buttocks) and her bra (exposing her bare breasts). The entertainer straddled my head, and she touched my face with her nude vaginal area. She then wrapped her legs around my body and rubbed her bare breasts against my face. In this position, the nude entertainer moved back and forth on my groin area (a motion known as "dry humping") for several minutes. Her nude vaginal area had physical contact with my thigh area and groin in the VIP room. I spent 15 minutes in the VIP room with the nude entertainer.

11. During this visit to MainStage, I saw at least 8 nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas, nude entertainers rubbing their breasts against customers' faces and bodies, and nude entertainers rubbing their vaginal and butt areas in customers' faces. Grant Davis, Apostolos Kakaroumbas, and Kevin Gribbin were present and able to see the physical contact occurring between nude adult entertainers and paying customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

12. On Saturday, **October 8, 2011**, I went to **Mardi Gras**, an adult entertainment establishment at 6300 Powers Ferry Road in Sandy Springs, Georgia, from about 9:30 P.M. to about 12:15 A.M. (on October 9). On this visit I saw Rick Peffer and a manager called Slater in the establishment.

13. An adult entertainer solicited a personal dance to me, and I agreed to the $40 fee she quoted. The adult entertainer removed her thong underwear (exposing her genitals and buttocks) and her bra (exposing her bare breasts). While nude, the entertainer straddled me, wrapped her legs around my torso, and rubbed my groin area with her nude vaginal area. She then changed positions and rubbed my groin area with her nude butt. Afterwards I paid the entertainer $50. During this visit to Mardi Gras, I received similar dances from two other nude adult entertainers.

14. While seated on the main floor, I saw Rick Peffer speaking with a group of customers who were part of a bachelor party. Three adult entertainers took the bachelor onto the stage where he sat in a chair. The adult entertainers removed their bras and thong underwear. They rubbed their

nude vaginal areas on the bachelor's thighs, rubbed their bare breasts on the bachelor's face, and rubbed the bachelor's groin area with their nude butts. Rick Peffer and Slater were able to see the physical contact between the 3 nude entertainers and the bachelor on the stage.

15. On this visit, I saw at least 40 nude adult entertainers having physical contact with paying customers that consisted of nude entertainers rubbing their nude butts and vaginal areas on customers' groin areas and entertainers rubbing their bare breasts on customers' faces and bodies. Rick Peffer and another manager called Slater were able to see the physical contact between nude adult entertainers and paying customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

16. On Thursday, **October 20, 2011**, I went to **Inserection**, an adult bookstore at 7855 Roswell Road, Sandy Springs, Georgia, between noon and 1:00 P.M.

17. After paying a $5 fee, I entered an area of the store containing 16 viewing booths. The area with booths was not viewable from the main merchandise showroom. Each booth had a video monitor and a bench approximately 4 feet long. I entered 6 booths, and in 2 of the booths I inserted cash to activate the video. The videos depicted both heterosexual and homosexual intercourse. In all 6 booths, the wall below the video monitor was soiled with what appeared to be the residue of human semen.

18. Two middle-aged men were in the booth area walking about while I was there. As I moved among the booths, they would walk next to the booth I was occupying and would seek to maintain eye contact with me. Their behavior made me feel like they wanted me to interact with them or perhaps to join them in anonymous sexual activity.

19. I departed the booth area and told the store clerk about the two men in the booth area. She stated she did not know about them and said she would investigate, but she did not appear to be concerned and she did not approach them during the following moments while I browsed the merchandise showroom.

20. On Wednesday, **November 30, 2011**, I returned to **Inserection** between 7:15 and 8:15 P.M. On this visit I was accompanied by a colleague.

21. My colleague and I each paid the store clerk the $5 fee to enter the booth area. The clerk, a bald African American male with facial hair, who was the only individual working and who appeared to be the manager, asked me whether I was a homosexual. When I replied "No, why?" he then replied, "Because usually only homosexuals go in there."

22. Once inside the booth area, my colleague and I went together into 4 different booths and sat or stood together in each booth for a period of time. In each booth I saw what appeared to be the residue of human semen on the floor directly below the video monitor.

23. On Thursday, **December 1, 2011**, I returned to **Flashers** from about 7:10 P.M. to about 9:10 P.M. On this visit I saw Joseph McCranie and Tamara Corazalla collecting money and walking about the establishment.

24. An adult entertainer solicited personal dances to me, and I agreed to the $20 fee per dance that she quoted. The adult entertainer removed her thong underwear (exposing her genitals and buttocks), lifted up her tank top (exposing her bare breasts), and put both her hands on my upper thighs. The entertainer then began to rub my genital area with her nude butt. Her nude vaginal area also had physical contact with my genital area. The nude adult entertainer rubbed her bare breasts on my face. I paid the nude entertainer $50 when she finished her dances. Joseph McCranie observed the foregoing physical contact.

25. Later, I received a similar dance from another nude entertainer, for which I paid $30. During the dance, the nude entertainer rubbed my genital area with her nude butt, and then she changed positions and rubbed her nude vaginal area on my thigh.

26. During this visit to Flashers, I saw at least 10 nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas and entertainers rubbing their bare breasts against customers' faces and bodies. Joseph McCranie and Tamara Corazalla were present and able to see the physical contact occurring between nude adult entertainers and paying customers. No one tried to stop or reduce

the physical contact that was repeatedly occurring between the nude entertainers and customers.

27. On Thursday, **December 1, 2011**, I returned to **Mardi Gras** from about 9:30 P.M. to about 11:30 P.M. During this visit, I saw David Lamb moving about the club.

28. An adult entertainer solicited a personal dance to me, and I agreed to the $20 fee she quoted. The adult entertainer removed her thong underwear (exposing her genitals and buttocks) and her bra (exposing her bare breasts). She rubbed her nude butt on my genital area and put her hands on my thighs. After the dance, I paid her $30. David Lamb was able to see the foregoing physical contact. I later received a similar dance from another nude entertainer, for which I paid $30.

29. Later an adult entertainer offered me a dance for $40 in an upstairs private room, and I agreed. The entertainer took me to an upstairs private room, and there she removed her bra and thong underwear. Once nude, the entertainer put her hands on my shoulders and straddled me, wrapping both her legs around my torso, and she rubbed my genital area with her nude vaginal area. She then changed positions and rubbed my genital area with her nude butt. After two such dances, I paid the nude entertainer $90.

30. During this visit to Mardi Gras, I saw at least 25 nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas and entertainers rubbing their bare breasts against customers' faces and bodies. David Lamb was a manager on the floor and he was able to see the physical contact occurring between nude adult entertainers and paying customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

31. On Thursday, **December 6, 2011**, I returned to **Flashers**, from about 8:00 P.M. to about 10:00 P.M. On this visit, I saw Kylie Rodgers and Tamara Corazalla collecting money and observing the main floor of the establishment.

32. An adult entertainer solicited a personal dance to me, and I agreed to the $20 fee she quoted. The adult entertainer removed her thong underwear (exposing her genitals and buttocks), took off her bra (exposing her bare breasts), and put both her hands on my upper thighs. The entertainer then began to rub my genital area with her nude butt. Her nude vaginal area also had physical contact with my genital area. The nude adult entertainer rubbed her bare breasts on my face. Afterwards, I paid her $30. Kylie Rodgers and Tamara Corazalla were able to see the foregoing physical contact.

33. Later an adult entertainer took me to the VIP room, which she said would cost $250 for 30 minutes. In the VIP room, the nude entertainer rubbed my genital area with her nude butt and vagina. Using her hand, she also rubbed my penis (which remained covered by my pants). The nude entertainer then put her mouth on my clothed penis and she rubbed her vagina and bare breast on my face. Afterwards, I paid the nude entertainer $270.

34. During this visit to Flashers, I saw at least 12 nude adult entertainers having physical contact with paying customers that consisted of entertainers rubbing their nude butts and vaginal areas on customers' groin areas and entertainers rubbing their bare breasts against customers' faces and bodies. Kylie Rodgers and Tamara Corazalla were present and able to see the physical contact occurring between nude adult entertainers and paying customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

35. On Tuesday, **December 6, 2011**, I returned to **Mardi Gras**, from about 10:15 P.M. to about 12:15 A.M. (on December 7). On this visit I saw Mike Fulton walking around the main floor of the establishment.

36. An adult entertainer solicited a personal dance to me, and I agreed to the $30 fee she quoted. The adult entertainer removed her underwear (exposing her genitals and buttocks), took off her bra (exposing her bare breasts), and rubbed my genital area with her nude butt. I paid the nude entertainer $60 for two dances. Mike Fulton was able to see the foregoing physical contact.

37. Later an adult entertainer took me upstairs to a corner booth for a 30 minute dance, which she said would cost $150. Once inside the booth, which was dark, the adult entertainer removed her underwear (exposing her genitals and buttocks), took off her bra (exposing her bare breasts), and put both her hands on my upper thighs. The entertainer then began to rub my genital area with her nude butt. Her nude vaginal area also had physical contact with my genital area. The nude adult entertainer rubbed her bare breasts on my face. At the conclusion, I paid the nude entertainer $150.

38. During this visit to Mardi Gras, I saw at least 25 nude adult entertainers having physical contact with paying customers that included entertainers rubbing their nude butts on customers' groin areas. Mike Fulton was there as a manager and was able to see the physical contact occurring between nude adult entertainers and paying customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

39. On Wednesday, **January 11, 2012**, I went to **Love Shack**, an adult bookstore at 5674 Roswell Road NE in Sandy Springs, Georgia, between 9:45 and 10:45 A.M.

40. I browsed the merchandise on display in the store, but it was not apparent to me whether there were any viewing booths in the establishment. So I asked the store clerk and she told me that the viewing booths were upstairs. The stairs were in a corner of the store and are fairly hidden.

41. I went up the stairs and found 9 booths, and each contained a monitor and a bench that was about 2 feet long. The booths could not be seen or observed from the merchandise display area on the lower level.

42. I entered each of the booths, and in 6 of them I saw what appeared to be the residue of human semen on the floor directly below the monitor. In one of the booths I inserted a dollar bill to activate the video monitor, which allowed the occupant to see several videos depicting heterosexual and homosexual intercourse.

43. Later that afternoon, I returned to Love Shack with a colleague. We each paid the $2 fee and proceeded upstairs to the booth area. The two of us

entered a booth together and activated the video monitor. The monitor showed videos depicting heterosexual and homosexual intercourse. Then we entered a second booth and, again, occupied that booth at the same time.

44. On Wednesday, January 11, 2012, I traveled to 350 Northridge Road in Sandy Springs, Georgia, looking for an establishment called Video Wholesalers. I could not find any such establishment at that address.

45. On Wednesday, January 11, 2012, I traveled to 8290 Roswell Road in Sandy Springs, Georgia, looking for an establishment called Extreme Video. I could not find any such establishment at that address.

46. On Wednesday, January 11, 2012, I went to Starship, a retail store at 8590 Roswell Road in Sandy Springs, Georgia. The establishment offered adult merchandise in one large room, but it did not have any type of back room or video booth area.

47. On Saturday, **January 14, 2012**, I returned to **Love Shack** with a colleague between 3:45 and 4:45 P.M. We again entered the booth area, where we occupied viewing booths together with no one correcting or stopping us. I also saw what appeared to be the residue of human semen on the floor directly below the video monitor in 6 of the 9 viewing booths. Again, the videos available in the booths were depicting heterosexual and homosexual intercourse.

48. Affiant further sayeth not.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 17th, 2012.

Cameron Reeves

Sworn to and subscribed before me this 17th day of September, 2012.

Notary Public

DEBORAH P EVANS
NOTARY PUBLIC
GWINNETT COUNTY, GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FLANIGAN'S ENTERPRISES, INC. OF GEORGIA d/b/a Mardi Gras, 6420 Roswell Road, Inc. d/b/a Flashers, and Fantastic Visuals, LLC d/b/a Inserection,	*	CIVIL ACTION FILE No. 1:09-CV-2747-RLV
Plaintiffs,	*	
v.	*	
CITY OF SANDY SPRINGS, GEORGIA, et al.	*	
Defendant.	*	

AFFIDAVIT OF WARREN SCHERR

1. My name is Warren Scherr, I am over eighteen years of age, and I am competent to give this Affidavit.

2. I am a licensed private investigator employed by Holliday Investigative Services.

3. On Friday, **September 23, 2011**, another investigator and I went to **Mardi Gras**, an adult entertainment establishment at 6300 Powers Ferry Road in Sandy Springs, Georgia, from about 9:55 P.M. to about 1:00 A.M. (on September 24). On this visit I saw a manager named Mike who was working on the floor in the establishment.

4. An adult entertainer solicited a personal dance to me, and I agreed to the fee she quoted. The adult entertainer removed her attire and was completely nude (exposing her genitals, her buttocks, and her bare breasts). For the entire duration of a song, the nude entertainer rubbed and grinded into my crotch area aggressively with her nude buttocks.

5. I also saw my colleague receive personal dances from nude entertainers. I saw the entertainers grinding his crotch area with their nude buttocks,

SJ Exhibit FF

and some of them touching his face with their bare breasts. I also saw a nude entertainer grinding his crotch area with her nude vaginal area.

6. During this visit to Mardi Gras, I saw at least 8 nude adult entertainers having physical contact with other customers that consisted of entertainers grinding their nude buttocks on the crotch area of customers and rubbing their bare breasts in customers' faces. Mike, the manager, was present in the room and was able to see the physical contact occurring between nude adult entertainers and customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

7. On Saturday, **September 24, 2011**, another investigator and I went to **MainStage**, an adult entertainment establishment at 5275 Roswell Road in Sandy Springs, Georgia, from about 9:00 P.M. to about 11:30 P.M. On this visit, I saw Natasha Steward and Grant Davis in the establishment.

8. On this occasion, I saw my colleague receive a personal dance from a nude adult entertainer for a $25 fee. The entertainer removed her attire and was completely nude (exposing her genitals, buttocks, and bare breasts). During the dance, the nude entertainer grinded her nude body up against the body of my colleague. I saw her grind on his crotch area using her vagina and buttocks. She rubbed his body and hair with her hands, and then she rubbed his crotch area with her hands. I also saw her rub her breast against his mouth.

9. Later, I saw another nude entertainer grinding on my colleague's crotch with her nude buttocks and brushing her nude breast in his face. I also received several dances like this from nude adult entertainers.

10. During this visit to MainStage, I saw at least 6 nude adult entertainers having physical contact with other customers that included the entertainers grinding their nude buttocks on the crotch area of customers and rubbing their bare breasts in customers' faces. Natasha Steward and Grant Davis were present in the room and were able to see the physical contact occurring between nude adult entertainers and customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

11. On Friday, **September 23, 2011**, another investigator and I went to **Flashers**, an adult entertainment establishment at 6420 Roswell Road NE in Sandy Springs, Georgia, from about 11:45 P.M. to about 1:00 A.M. (on September 24). On this visit, I saw a duty manager named Tamara working in the club.

12. On this occasion, I received a personal dance from an adult entertainer for a fee. The entertainer was completely nude, exposing her buttocks, breasts, and vaginal area. The nude entertainer grinded on my crotch with her bare buttocks, and she rubbed her bare breasts in my face, all while sitting on my lap and grinding her body up against mine. I received multiple dances like this from nude adult entertainers. I also saw my colleague being touched in the same way by nude entertainers.

13. During this visit to Flashers, I saw at least 4 nude adult entertainers having physical contact with other customers that consisted of entertainers grinding their nude buttocks on the crotch area of customers and entertainers rubbing their bare breasts in customers' faces. Tamara, a manager, was present in the room and was able to see the physical contact occurring between nude adult entertainers and customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

14. On Tuesday, **December 13, 2011**, I returned to **Main Stage** from about 10:30 P.M. to about 12 midnight. On this visit, I saw Natasha Steward and Grant Davis in the establishment.

15. On this occasion I received a personal dance from an adult entertainer for a fee. The entertainer removed her bikini top and exposed her breasts. She was left wearing a g-string, which covered her genitals but left nearly all of her buttocks exposed. She grinded her exposed buttocks in my lap. She did that for part of a song and for the duration of another song.

16. Then the adult entertainer led me to the steps to the VIP room, and Grant Davis counted the $150 fee that I paid for fifteen minutes in the VIP room. I sat down in the VIP room and the adult entertainer took off all her clothes. For the entire 15 minutes she grinded her nude buttocks in my lap continuously, hugging me and kissing my cheek. After 15

minutes Natasha Steward came to the room to note the time, and she asked if I wanted to continue for an extra $150.

17. During this visit to MainStage, I saw at least 2 nude adult entertainers exposing their breasts while having physical contact with other customers that included the entertainers grinding their exposed buttocks on the crotch area of customers. Natasha Steward and Grant Davis were present in the room and were able to see the physical contact occurring between nude adult entertainers and customers. No one tried to stop or reduce the physical contact that was repeatedly occurring between the nude entertainers and customers.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 18th, 2012.

Warren Scherr

Warren Scherr

Sworn to and subscribed before me this 18th day of September, 2012.

Judith P. Horne, Notary Public

Judith P. Horne Notary Public Cobb County, Georgia

my commission expires: 6/10/16

Exhibit M-4

Summary of IMPD UCR Classified Part I Crimes at Bookstore Addresses
Pre- and Post- Enforcement Periods/Regulated v Non-Regulated Hours

	Total Crimes	*Non-Regulated Hours*	*Mon-Sat Midnight to 10 am*	*Sunday*
LAFAYETTE VIDEO AND NEWSSTAND				
Apr 1 2002 - May 31 2005	8	2	5	1
Jun 1 2005 to March 31 2008	6	5		1
NEW FLICKS VIDEO				
Apr 1 2002 - May 31 2005	3	3		
Jun 1 2005 to March 31 2008	2	1	1	
KEYSTONE VIDEO & NEWSSTAND				
Apr 1 2002 - May 31 2005	11	3	3	5
Jun 1 2005 to March 31 2008	10	5	3	2
ANNEX BOOKS				
Apr 1 2002 - May 31 2005	9	5	3	1
Jun 1 2005 to March 31 2008	2	1	1	
VIDEO GALLERY				
Apr 1 2002 - May 31 2005	5	3	1	1
Jun 1 2005 to March 31 2008	1	1		
Grand Sum Apr 1 2002 - May 31 2005	**36**	**16**	**12**	**8**
Grand Sum Jun 1 2005 to March 31 2008	**21**	**13**	**5**	**3**

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist.
Pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. Post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.
Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

IMPD UCR Classified Crime Listing - Adult Bookstore Locations

Exhibit M-5

Day Type	Time Range	Address	Case #	File Date	UCR Description
02402 N LAFAYETTE RD - LAFAYETTE VIDEO AND NEWSSTAND					
Apr 1 2002 - May 31 2005					
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	030087247	08/25/2003	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	040045406	04/22/2004	132 ROBBERY - ATTMP ARMED
Monday - Saturday	Midnight to 10am	02402 N LAFAYETTE RD	020046740	04/29/2002	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	02402 N LAFAYETTE RD	030056432	05/29/2003	242 LARC-50/200-SHOPLIFTING
Monday - Saturday	Midnight to 10am	02402 N LAFAYETTE RD	030117438	11/24/2003	150 ROBBERY - STRARM HIWAY
Monday - Saturday	Midnight to 10am	02402 N LAFAYETTE RD	030120630	12/05/2003	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	02402 N LAFAYETTE RD	040103315	10/05/2004	141 ROBBERY - ARMED COMER H
Sunday	Midnight to 10am	02402 N LAFAYETTE RD	020044274	04/21/2002	141 ROBBERY - ARMED COMER H
Jun 1 2005 to March 31 2008					
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	050100215	10/03/2005	252 LARC-UNDER 50-SHOPLIFTING
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	060012093	01/07/2006	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	070014989	01/29/2007	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	070129023	08/15/2007	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	070133426	08/22/2007	132 ROBBERY - ATTMP ARMED
Sunday	10:01 am to 11:59 pm	02402 N LAFAYETTE RD	060142733	12/10/2006	192 BURG - FRC ENT-NON-RES NGT

Total Location Count: 14

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist

The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.

Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

IMPD UCR Classified Crime Listing - Adult Bookstore Locations

Day Type	Time Range	Address	Case #	File Date	UCR Description
03580 N LAFAYETTE RD - NEW FLICKS VIDEO					
Apr 1 2002 - May 31 2005					
Monday - Saturday	10:01 am to 11:59 pm	03580 N LAFAYETTE RD	020126591	12/14/2002	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	03580 N LAFAYETTE RD	040030138	03/06/2004	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	03580 N LAFAYETTE RD	050017427	01/26/2005	132 ROBBERY - ATTMP ARMED
Jun 1 2005 to March 31 2008					
Monday - Saturday	10:01 am to 11:59 pm	03580 N LAFAYETTE RD	070092767	06/18/2007	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	03580 N LAFAYETTE RD	050095677	09/21/2005	192 BURG - FRC ENT-NON-RES NGT

Total Location Count: 5

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist
The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.
Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

IMPD UCR Classified Crime Listing - Adult Bookstore Locations

Day Type	Time Range	Address	Case #	File Date	UCR Description
04501 N KEYSTONE AV - KEYSTONE VIDEO & NEWSSTAND					
Apr 1 2002 - May 31 2005					
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	020075627	07/20/2002	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	030024566	02/20/2003	256 LARC-UNDER 50-BUILDING
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	040128106	12/23/2004	252 LARC-UNDER 50-SHOPLIFTING
Monday - Saturday	Midnight to 10am	04501 N KEYSTONE AV	030042553	04/17/2003	172 ASSAULT - OTHER WEAPON
Monday - Saturday	Midnight to 10am	04501 N KEYSTONE AV	040030492	03/08/2004	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	04501 N KEYSTONE AV	050042724	04/20/2005	242 LARC-50/200-SHOPLIFTING
Sunday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	020115672	11/10/2002	151 ROBBERY - STRARM COMER H
Sunday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	030059986	06/08/2003	252 LARC-UNDER 50-SHOPLIFTING
Sunday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	050037414	04/03/2005	192 BURG - FRC ENT-NON-RES NGT
Sunday	Midnight to 10am	04501 N KEYSTONE AV	020117905	11/17/2002	252 LARC-UNDER 50-SHOPLIFTING
Sunday	Midnight to 10am	04501 N KEYSTONE AV	040075446	07/18/2004	252 LARC-UNDER 50-SHOPLIFTING
Jun 1 2005 to March 31 2008					
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	050083727	08/17/2005	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	060072238	07/07/2006	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	060077207	07/21/2006	236 LARC-OVER 200-BUILDING
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	060094478	09/06/2006	232 LARC-OVER 200-SHOPLIFTING
Monday - Saturday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	070081141	05/30/2007	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	04501 N KEYSTONE AV	050063459	06/20/2005	192 BURG - FRC ENT-NON-RES NGT
Monday - Saturday	Midnight to 10am	04501 N KEYSTONE AV	060037950	03/30/2006	174 ASSAULT - SIMPLE
Monday - Saturday	Midnight to 10am	04501 N KEYSTONE AV	060114182	11/01/2006	192 BURG - FRC ENT-NON-RES NGT
Sunday	10:01 am to 11:59 pm	04501 N KEYSTONE AV	060067976	06/25/2006	193 BURG - FRC ENT-NON-RES DAY
Sunday	Midnight to 10am	04501 N KEYSTONE AV	070042277	03/25/2007	191 BURG - FRC ENT - RES DAY

Total Location Count: 21

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist
The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.
Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

IMPD UCR Classified Crime Listing - Adult Bookstore Locations

Day Type	Time Range	Address	Case #	File Date	UCR Description
06767 E 38TH ST - ANNEX BOOKS					
Apr 1 2002 - May 31 2005					
Monday - Saturday	10:01 am to 11:59 pm	06767 E 38TH ST	020050986	05/11/2002	243 LARC-50/200-FROM VEHICL
Monday - Saturday	10:01 am to 11:59 pm	06767 E 38TH ST	020121395	11/27/2002	252 LARC-UNDER 50-SHOPLIFTING
Monday - Saturday	10:01 am to 11:59 pm	06767 E 38TH ST	030080621	08/06/2003	250 LARC-UNDER 50-PICKPOCK
Monday - Saturday	10:01 am to 11:59 pm	06767 E 38TH ST	040015016	01/16/2004	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	06767 E 38TH ST	050053293	05/21/2005	132 ROBBERY - ATTMP ARMED
Monday - Saturday	Midnight to 10am	06767 E 38TH ST	020059759	06/05/2002	252 LARC-UNDER 50-SHOPLIFTING
Monday - Saturday	Midnight to 10am	06767 E 38TH ST	050017545	01/27/2005	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	06767 E 38TH ST	050031628	03/16/2005	141 ROBBERY - ARMED COMER H
Sunday	10:01 am to 11:59 pm	06767 E 38TH ST	040013054	01/11/2004	242 LARC-50/200-SHOPLIFTING
Jun 1 2005 to March 31 2008					
Monday - Saturday	10:01 am to 11:59 pm	06767 E 38TH ST	050003213	12/15/2005	242 LARC-50/200-SHOPLIFTING
Monday - Saturday	Midnight to 10am	06767 E 38TH ST	060121161	11/20/2006	192 BURG - FRC ENT-NON-RES NGT

Total Location Count: 11

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist
The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.
Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

IMPD UCR Classified Crime Listing - Adult Bookstore Locations

Day Type	Time Range	Address	Case #	File Date	UCR Description
06801 E 38TH ST - VIDEO GALLERY					
Apr 1 2002 - May 31 2005					
Monday - Saturday	10:01 am to 11:59 pm	06801 E 38TH ST	020003049	08/14/2002	252 LARC-UNDER 50-SHOPLIFTING
Monday - Saturday	10:01 am to 11:59 pm	06801 E 38TH ST	050034999	03/26/2005	141 ROBBERY - ARMED COMER H
Monday - Saturday	10:01 am to 11:59 pm	06801 E 38TH ST	050039455	04/09/2005	141 ROBBERY - ARMED COMER H
Monday - Saturday	Midnight to 10am	06801 E 38TH ST	040028841	03/03/2004	192 BURG - FRC ENT-NON-RES NGT
Sunday	10:01 am to 11:59 pm	06801 E 38TH ST	040058593	05/30/2004	141 ROBBERY - ARMED COMER H
Jun 1 2005 to March 31 2008					
Monday - Saturday	10:01 am to 11:59 pm	06801 E 38TH ST	060083259	08/07/2006	174 ASSAULT - SIMPLE

Total Location Count: 6

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist

The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.

Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

IMPD UCR Classified Crime Listing - Adult Bookstore Locations

Day Type	*Time Range*	*Address*	*Case #*	*File Date*	*UCR Description*

Total Report Count: 57

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist
The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34 calendar months.
Time Ranges for crimes where the exact time was unknown were assigned based on the UCR convention of first likely time of occurrence.

Exhibit M-6

IMPD UCR Classified Crime Summary (by Described Address)
500' Footer Buffer of 4 Points: Pre- and Post- Enforcement Time Frames (UCR Count Order)

2402 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
02402 N LAFAYETTE RD - LAFAYETTE VIDEO AND NEWSSTAND	8		6	1				1	
02422 N GOODLET AV - Residence	4					1	1	2	
02421 N CENTENNIAL ST - Residence	3					1	2		
02429 N CENTENNIAL ST - Residence	3				1	2			
02440 N LAFAYETTE RD - A AND E LAUNDROMAT	3						1	2	
02440 N LAFAYETTE RD - SAV A TON GROCERY STORE	3						3		
02458 N GOODLET AV - Residence	3				1	1		1	
02362 N GOODLET AV - Residence	2					1	1		
02369 N GOODLET AV - Residence	2		1			1			
02371 N GOODLET AV - Residence	2				1			1	
02441 N LAFAYETTE RD - Papa John's Pizza	2			1				1	
02450 N LAFAYETTE RD - MENA AUTO SERVICE AND SALES	2						1	1	
Address Suppressed - Generic Street Address	2	2							
02353 N GOODLET AV - Residence	1				1				
02370 N LAFAYETTE RD - Generic Street Address	1				1				
02400 N GOODLET AV - Generic Street Address	1				1				
02400 N LAFAYETTE RD - Generic Street Address	1					1			
02401 N CENTENNIAL ST - Residence	1				1				
02402 N LAFAYETTE RD (Generic) - Generic Street Address	1				1				
02418 N CENTENNIAL ST - Residence	1						1		
02421 N GOODLET AV - Residence	1					1			
02424 KESSLER BL ND - Generic Street Address	1					1			
02425 N CENTENNIAL ST - Residence	1						1		
02429 N GOODLET AV - Residence	1					1			
02433 N GOODLET AV - Residence	1						1		

2402 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
02434 N CENTENNIAL ST - Residence	1						1		
02437 N CENTENNIAL ST - Residence	1								1
02440 N LAFAYETTE RD - CRISTANS SUPER SANDWICH SHOPPE	1						1		
02440 N LAFAYETTE RD - Generic Street Address-BUSINESS	1							1	
02445 N LAFAYETTE RD - Generic Street Address	1								1
02445 N LAFAYETTE RD - KAPU AUTO SALES	1						1		
02445 N LAFAYETTE RD - Residence	1								1
02445 N LAFAYETTE RD - S AND S AUTO SALES	1								1
02449 N GOODLET AV - Residence	1				1				
02450 N CENTENNIAL ST - Residence	1						1		
02450 N LAFAYETTE RD - Generic Street Address	1								1
02453 N CENTENNIAL ST - Residence	1						1		
02453 N GOODLET AV - Residence	1						1		
02457 N CENTENNIAL ST - Residence	1					1			
02462 N GOODLET AV - Residence	1		1						
02500 N LAFAYETTE RD - Generic Street Address	1				1				
02500 N LAFAYETTE RD - M AND M CAR WASH	1							1	
02538 N LAFAYETTE RD - Generic Street Address-BUSINESS	1							1	
02545 N LAFAYETTE RD - ALIS AUTO SALES	1						1		
Address Suppressed - Residence	1	1							
Summary for Apr 1 2002 - May 31 2005 (45 detail records)									
Sum	***71***	***3***	***8***	***2***	***10***	***12***	***19***	***12***	***5***

2402 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Incident Occurred Out of Date Range									
02440 N LAFAYETTE RD - P & J LAUNDROMAT	1							1	
Summary for Incident Occurred Out of Date Range (1 detail record)									
Sum	***1***							***1***	
Jun 1 2005 to March 31 2008									
02405 N LAFAYETTE RD - NU LOOK FASHION	7						6	1	
02402 N LAFAYETTE RD - LAFAYETTE VIDEO AND NEWSSTAND	6		4				1	1	
02446 N CENTENNIAL ST - Residence	4							1	3
02450 N LAFAYETTE RD - MENA AUTO SERVICE AND SALES	4						1	2	1
02414 N CENTENNIAL ST - Residence	3						1	2	
02434 N GOODLET AV - Residence	3					1	2		
02438 N CENTENNIAL ST - Residence	3		1	1			1		
02440 N LAFAYETTE RD - Generic Street Address-BUSINESS	3		1	1			1		
02449 N GOODLET AV - Residence	3					2	1		
02500 N LAFAYETTE RD - M AND M CAR WASH	3		1				2		
02371 N GOODLET AV - Residence	2				2				
02400 N LAFAYETTE RD - Generic Street Address	2								2
02440 N LAFAYETTE RD - RUEBENS QUE	2						2		
02445 N LAFAYETTE RD - C AND C AUTO SALES OF INDY INC	2						1	1	
02445 N LAFAYETTE RD - KAPU AUTO SALES	2								2
02457 N CENTENNIAL ST - Residence	2						1		1
02465 N GOODLET AV - Residence	2				1		1		
02545 N LAFAYETTE RD - ALIS AUTO SALES	2								2
02361 N GOODLET AV - Generic Street Address	1							1	

2402 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
02370 N LAFAYETTE RD - ORIENTAL MARKET	1						1		
02400 N GOODLET AV - Generic Street Address	1					1			
02400 N LAFAYETTE RD - BEAUTY SUPPLY PARKING LOT	1							1	
02401 GROFF AV - Residence	1						1		
02401 N GOODLET AV - Residence	1		1						
02402 N CENTENNIAL ST - Residence	1						1		
02402 N LAFAYETTE RD (Generic) - Generic Street Address	1					1			
02403 N LAFAYETTE RD - TOTAL LOOK BEAUTY SALON	1						1		
02406 N CENTENNIAL ST - Residence	1				1				
02409 N GOODLET AV - Residence	1					1			
02417 N CENTENNIAL ST - Residence	1							1	
02417 N GOODLET AV - Residence	1						1		
02421 N CENTENNIAL ST - Residence	1					1			
02429 N CENTENNIAL ST - Residence	1							1	
02434 N CENTENNIAL ST - Residence	1							1	
02440 N LAFAYETTE RD - ASIA CITY	1						1		
02440 N LAFAYETTE RD - Generic Street Address	1					1			
02441 N LAFAYETTE RD - C AND R CATERING	1							1	
02441 N LAFAYETTE RD - Generic Street Address	1								1
02445 N CENTENNIAL ST - Residence	1							1	
02450 N GOODLET AV - Residence	1							1	
02450 N LAFAYETTE RD - Generic Street Address	1							1	
02454 N GOODLET AV - Residence	1						1		
02457 N GOODLET AV - Residence	1							1	
02458 N GOODLET AV - Residence	1						1		

2402 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
02469 N GOODLET AV - Residence	1						1		
02470 N GOODLET AV - Residence	1							1	
02500 N LAFAYETTE RD - Generic Street Address	1								1
02545 N LAFAYETTE RD - Generic Street Address	1								1
03002 N CAPITOL AV - Vehicle Recovery - Not A Crime	1								1
Summary for Jun 1 2005 to March 31 2008 (49 detail records)									
Sum	***86***		***8***	***2***	***4***	***8***	***30***	***19***	***15***
Summary for 'BufferArea' = 2402 Lafayette Buffer Area (95 detail records)									
Sum	***158***	***3***	***16***	***4***	***14***	***20***	***49***	***32***	***20***

3580 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
03557 N LAFAYETTE RD - CASH AMERICA PAWN	5				1			4	
03602 N LAFAYETTE RD - QUICK STOP LIQUOR STORE	4							4	
03580 N LAFAYETTE RD - NEW FLICKS VIDEO	3		3						
03650 N LAFAYETTE RD - MIDAS MUFFLER SHOP	3						1	1	1
03600 N LAFAYETTE RD - HOURGLASS BOUTIQUE	2					1	1		
03605 N LAFAYETTE RD - Generic Street Address	2								2
03605 N LAFAYETTE RD - INSTANT AUTO FINANCE	2							1	1
03641 N LAFAYETTE RD - Generic Street Address	2							1	1
03649 N LAFAYETTE RD - STEFAN JOHANSON KARTING CENTER	2						1	1	
03653 N LAFAYETTE RD - CAR X	2					1	1		
03557 N LAFAYETTE RD - Generic Street Address	1							1	
03560 N LAFAYETTE RD - ABIDING FAITH LIGHTHOUSE CHR	1						1		
03564 N LAFAYETTE RD - LOS CAZADORES	1						1		
03574 N LAFAYETTE RD - CAR QUEST	1		1						
03585 N LAFAYETTE RD - SUPER KMART	1							1	
03641 N LAFAYETTE RD - INDY TIRE	1							1	
03652 N LAFAYETTE RD - Generic Street Address	1								1
03653 N LAFAYETTE RD - Generic Street Address-BUSINESS	1					1			
03654 N LAFAYETTE RD - VANS FISH MARKET	1						1		
Summary for Apr 1 2002 - May 31 2005 (19 detail records)									
Sum	***36***		***4***		***1***	***3***	***7***	***15***	***6***
Jun 1 2005 to March 31 2008									
03605 N LAFAYETTE RD - INSTANT AUTO FINANCE	11							5	6

3580 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
03557 N LAFAYETTE RD - CASH AMERICA PAWN	8				2	1	1	4	
03641 N LAFAYETTE RD - INDY TIRE	7						6	1	
03650 N LAFAYETTE RD - MIDAS MUFFLER SHOP	4						2	2	
03605 N LAFAYETTE RD - Generic Street Address	3							3	
03641 N LAFAYETTE RD - Generic Street Address	3							2	1
03580 N LAFAYETTE RD - NEW FLICKS VIDEO	2		1				1		
03602 N LAFAYETTE RD - Generic Street Address	2							2	
03654 N LAFAYETTE RD - VANS FISH MARKET	2						1	1	
03564 N LAFAYETTE RD - EL PUERTO DE SAN BLAS	1						1		
03585 N LAFAYETTE RD - Generic Street Address	1					1			
03590 N LAFAYETTE RD - BEAUTY SHOP	1							1	
03600 N LAFAYETTE RD - Generic Street Address	1		1						
03602 N LAFAYETTE RD - QUICK STOP LIQUOR STORE	1							1	
03605 N LAFAYETTE RD - ALDI FOOD	1			1					
03649 N LAFAYETTE RD - Generic Street Address	1							1	
03652 N LAFAYETTE RD - CAR X	1						1		
03652 N LAFAYETTE RD - JIMS PLUMBING CORP	1							1	
03653 N LAFAYETTE RD - Generic Street Address	1								1
03654 N LAFAYETTE RD - Generic Street Address	1							1	
03654 N LAFAYETTE RD - Generic Street Address-BUSINESS	1						1		
03654 N LAFAYETTE RD - SHUN FAT ENT INC DBA VANS	1						1		
03690 N LAFAYETTE RD - ICI PAINTS	1							1	
03694 N LAFAYETTE RD - SUNLIGHT NAIL SUPPLY	1						1		
04503 W 38TH ST - MECHANIC SHOP	1								1

3580 Lafayette Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
Summary for Jun 1 2005 to March 31 2008 (25 detail records)									
Sum	58		2	1	2	2	16	26	9
Summary for 'BufferArea' = 3580 Lafayette Buffer Area (44 detail records)									
Sum	94		6	1	3	5	23	41	15

4501 N Keystone Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
02330 E 46TH ST - CVS	42		6	2				33	1
04501 N KEYSTONE AV - KEYSTONE VIDEO & NEWSSTAND	11		2	1	1		1	6	
02626 E 46TH ST - COMMUNITY ACTION CENTER	7		1	1		3		2	
02511 E 46TH ST - Generic Street Address-BUSINESS	6						1	5	
04435 N KEYSTONE AV - EASY PAWN	6		1					4	1
04440 N KEYSTONE AV - THOMAS CATERER	5						3	2	
04459 N ALLISONVILLE RD - NAPA AUTO CARE	5						2	1	2
04545 N KEYSTONE AV - ROYCE MOTORS	5							4	1
04600 N KEYSTONE AV - Generic Street Address	4				2	1		1	
02511 E 46TH ST - Generic Street Address	3							2	1
04555 N KEYSTONE AV - BUDGET TRUCK AND CAR RENTAL	3						1	1	1
04601 N KEYSTONE AV - Generic Street Address	3							1	2
04449 N ALLISONVILLE RD - FOOD PLUS	2						2		
04449 N ALLISONVILLE RD - LET IT BOUNCE BARBER AND BEAUTY	2						2		
04459 N ALLISONVILLE RD - FALL CREEK SERVICE CENTER	2						1	1	
04498 N KEYSTONE AV - Generic Street Address	2							1	1
04500 N KEYSTONE AV - Generic Street Address	2				1			1	
04545 N KEYSTONE AV - U-SAVE AUTO RENTAL	2							2	
04555 N KEYSTONE AV - Generic Street Address	2							1	1
04601 N KEYSTONE AV - Cal Fireworks	2		1				1		
02300 E 45TH ST - DAVE'S AUTO	1							1	
02316 E 45TH ST - MICHAEL MARTIN PROPERTIES	1							1	
02330 E 46TH ST - Generic Street Address	1		1						
02500 E 46TH ST - Generic Street Address	1							1	

4501 N Keystone Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
02511 E 46TH ST - CORPORATE SQUARE EAST	1						1		
02511 E 46TH ST - FALL CREEK CONSULTING	1						1		
02511 E 46TH ST - FLEX WEIGHT MANAGEMENT	1				1				
02511 E 46TH ST - GREATER INDPLS COUNCIL ON ALCOHOLISM	1						1		
02511 E 46TH ST - MD STRUM HOUSING SERVICES	1							1	
02511 E 46TH ST - PROJECT IMPACT - OFFICE	1				1				
02511 E 46TH ST - TOTAL PIECE	1						1		
02511 E 46TH ST #Q2 - EUPHORIA	1							1	
02600 E 46TH ST - Generic Street Address	1					1			
02611 E 46TH ST - Generic Street Address	1		1						
02626 E 46TH ST - EBENEZER INTERNATIONAL MINISTRIES CHURCH	1						1		
02626 E 46TH ST - Generic Street Address	1					1			
04435 N KEYSTONE AV - Generic Street Address	1							1	
04435 N KEYSTONE AV - Generic Street Address-BUSINESS	1							1	
04435 N KEYSTONE AV - HAIRTIQUE	1						1		
04435 N KEYSTONE AV - TOWN AND COUNTRY FLEA MARKET	1						1		
04440 N KEYSTONE AV - Residence	1						1		
04446 N ALLISONVILLE RD - WILKERSON BODY SHOP	1							1	
04458 N ALLISONVILLE RD - DOWN WIT IT ENTERTAINMENT	1						1		
04459 N ALLISONVILLE RD - CUSTOM AUTO REPAIR	1							1	
04459 N ALLISONVILLE RD - Generic Street Address	1								1
04461 N KEYSTONE AV - AA-MCO TRANSMISSION	1							1	
04495 N KEYSTONE AV - Generic Street Address	1								1
04502 N KEYSTONE AV - EARL SHEIB PAINT AND BODY SHOP	1				1				

4501 N Keystone Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
04510 N KEYSTONE AV - FURNITURE LAND	1						1		
04510 N KEYSTONE AV - Generic Street Address	1								1
04530 N KEYSTONE AV - LAWN MAINTENANCE/LANDSCAPING	1							1	
04545 N KEYSTONE AV - Otto Ind, LLC	1								1
04600 N KEYSTONE AV - AMOCO GAS STATION	1							1	
04600 N KEYSTONE AV - BP CONNECT	1								1
04600 N KEYSTONE AV - UNION PLANTERS BANK	1		1						
04601 N KEYSTONE AV - A-1 QUALITY CAR SALES	1							1	
04601 N KEYSTONE AV - CAR REPAIR	1							1	
04601 N KEYSTONE AV - Fireworks Store	1						1		
04601 N KEYSTONE AV - Generic Street Address-BUSINESS	1							1	
NOT STATED - Residence	1					1			
Summary for Apr 1 2002 - May 31 2005 (60 detail records)									
Sum	***156***		***14***	***4***	***7***	***7***	***25***	***83***	***16***
Jun 1 2005 to March 31 2008									
02330 E 46TH ST - CVS	18		3				1	14	
04501 N KEYSTONE AV - KEYSTONE VIDEO & NEWSSTAND	10		3			1	4	2	
02511 E 46TH ST - Generic Street Address	6					1		5	
04435 N KEYSTONE AV - EASY PAWN	5		1				3	1	
04545 N KEYSTONE AV - ROYCE MOTORS	5						2	3	
04600 N KEYSTONE AV - Generic Street Address	5		1		1	2		1	
02626 E 46TH ST - COMMUNITY ACTION CENTER	4					2		2	
04435 N KEYSTONE AV - CARIBBEAN VILLAGE BAR AND GRILL	4					2	2		

4501 N Keystone Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
04545 N KEYSTONE AV - Generic Street Address	4							4	
02626 E 46TH ST - Generic Street Address	3							1	2
04502 N KEYSTONE AV - Generic Street Address	3							1	2
04555 N KEYSTONE AV - BUDGET TRUCK AND CAR RENTAL	3							2	1
02300 E 45TH ST - Generic Street Address	2							1	1
02511 E 46TH ST - Generic Street Address-BUSINESS	2						1	1	
04440 N KEYSTONE AV - Generic Street Address	2							1	1
04444 N ALLISONVILLE RD - TRANS TECH ELECTRIC	2						2		
04502 N KEYSTONE AV - DAVES PAINT AND BODY	2						1	1	
04530 N KEYSTONE AV - Generic Street Address	2							1	1
04550 N KEYSTONE AV - USA FIREWORKS	2						2		
04555 N KEYSTONE AV - Generic Street Address	2					1			1
04600 N KEYSTONE AV - Residence	2			1					1
04601 N KEYSTONE AV - Generic Street Address	2					1		1	
04602 N KEYSTONE AV - Generic Street Address	2							2	
01447 SHADOW RIDGE RD - Residence	1						1		
02318 E 45TH ST - Generic Street Address	1							1	
02325 E 45TH ST - Residence	1							1	
02330 E 46TH ST - Generic Street Address	1							1	
02500 E 46TH ST - Generic Street Address	1								1
02511 E 46TH ST - MARION COUNTY PUBLIC DEFENDER	1						1		
02511 E 46TH ST - QUINTON RESIDENTIAL LIVING	1							1	
02511 E 46TH ST - ROOFING COMPANY	1					1			
02511 E 46TH ST #SUIT - Generic Street Address-BUSINESS	1							1	
02601 E 46TH ST - ACE TAX PREPARATION	1						1		

4501 N Keystone Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
02611 E 46TH ST - BIG DOG LIQUOR STORE	1		1						
02611 E 46TH ST - Generic Street Address	1								1
02626 E 46TH ST - COLLEGE AVENUE CONDUMINIUMS LL	1							1	
04435 N KEYSTONE AV - JOHN H BONNER TAX CENTER	1						1		
04435 N KEYSTONE AV - Residence	1							1	
04444 N ALLISONVILLE RD - AMACO	1							1	
04444 N ALLISONVILLE RD - Generic Street Address-BUSINESS	1						1		
04446 N ALLISONVILLE RD - CYCLE SHOP	1							1	
04446 N ALLISONVILLE RD - Generic Street Address	1							1	
04449 N ALLISONVILLE RD - FOOD PLUS	1		1						
04449 N ALLISONVILLE RD - Generic Street Address-BUSINESS	1					1			
04451 N ALLISONVILLE RD - GEORGE'S BARBER SHOP	1						1		
04455 N ALLISONVILLE RD - NATIONAL CITY BANK	1		1						
04461 N KEYSTONE AV - AA-MCO TRANSMISSION	1							1	
04461 N KEYSTONE AV - Generic Street Address	1								1
04500 N KEYSTONE AV - Generic Street Address	1				1				
04530 N KEYSTONE AV - LAWN MAINTENANCE/LANDSCAPING	1						1		
04545 N KEYSTONE AV - Residence	1							1	
04601 N KEYSTONE AV - A-1 QUALITY CAR SALES	1							1	
04601 N KEYSTONE AV - ENTERPRISE	1							1	
04602 N KEYSTONE AV - ALDI FOOD	1							1	
Summary for Jun 1 2005 to March 31 2008 (54 detail records)									
Sum	***123***		***11***	***1***	***2***	***12***	***25***	***59***	***13***

4501 N Keystone Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Summary for 'BufferArea' = 4501 N Keystone Buffer Area (114 detail records)									
Sum	279		25	5	9	19	50	142	29

6767 E 38th Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
06800 E PENDLETON PK - Menard's	149		1	6		2		137	3
06800 E PENDLETON PK - FAMILY DOLLAR	14		1				5	8	
06767 E 38TH ST - Annex Books	9		4					5	
06845 E MASSACHUSETTS AV - ALDI FOOD	8		1			1		5	1
06801 E 38TH ST - VIDEO GALLERY	5		3				1	1	
06833 E MASSACHUSETTS AV - HINDEL LANES	4			1				3	
02805 BARBARY LN - Residence	3				1	2			
06685 E 38TH ST - HERROD AUTOMOTIVE	3							2	1
06800 E PENDLETON PK - Generic Street Address	3					1		1	1
06700 E 38TH ST - Generic Street Address	2					1		1	
06708 E 38TH ST - ANOTHER PHASE MEN'S CLOTHING	2						1	1	
06800 E MASSACHUSETTS AV - Generic Street Address	2					1			1
06801 E 38TH ST (Generic) - Generic Street Address	2								2
01600 N PENDLETON PK - Generic Street Address	1					1			
03799 N ELIZABETH ST - Generic Street Address	1		1						
06685 E 38TH ST - Residence	1							1	
06702 E 38TH ST - CLUB ESCALADE	1				1				
06708 E 38TH ST - Generic Street Address-BUSINESS	1						1		
06710 E 38TH ST - Generic Street Address	1								1
06710 E 38TH ST - PSYCHIC STUDIO SERVICES	1							1	
06710 E 38TH ST - Residence	1						1		
06713 E 38TH ST - Residence	1						1		
06718 E 38TH ST - Generic Street Address	1							1	
06755 E 38TH ST - VIP Hair Salon	1					1			
06802 E MASSACHUSETTS AV - Residence	1						1		

6767 E 38th Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Apr 1 2002 - May 31 2005									
06901 E 38TH ST - CULLIGAN WATER COMPANY	1							1	
06909 E 38TH ST - FIFTH THIRD BANK	1		1						
06909 E 38TH ST - FIFTH THIRD BANK - OUTSIDE	1		1						
Summary for Apr 1 2002 - May 31 2005 (28 detail records)									
Sum	***221***		***13***	***7***	***2***	***10***	***11***	***168***	***10***
Jun 1 2005 to March 31 2008									
06800 E PENDLETON PK - Menard's	176			6	1	2		167	
06800 E PENDLETON PK - FAMILY DOLLAR	17		4	1		2	3	7	
06700 E 38TH ST - CLUB ESCALADE	9			2	2			5	
06845 E MASSACHUSETTS AV - ALDI FOOD	8		1			1		6	
06800 E PENDLETON PK - Generic Street Address	5					1		2	2
06833 E MASSACHUSETTS AV - HINDEL LANES	4					2		2	
06909 E 38TH ST - FIFTH THIRD BANK	4		1				2	1	
06685 E 38TH ST - HERROD AUTOMOTIVE	2							2	
06708 E 38TH ST - PERSONAL TOUCH CLOTHING STORE	2						2		
06765 E 38TH ST - Generic Street Address	2								2
06765 E 38TH ST - WAX ON WAX OFF	2					1		1	
06767 E 38TH ST - Annex Books	2						1	1	
06800 E 38TH ST - Generic Street Address	2					1		1	
06901 E 38TH ST - CULLIGAN WATER COMPANY	2						1	1	
00545 E 19TH ST - IPS SCHOOL 27	1						1		
03736 N ELIZABETH ST - Residence	1						1		
03749 N KITLEY - BECKER LANDSCAPE CONTRACTORS	1								1

6767 E 38th Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Jun 1 2005 to March 31 2008									
06685 E 38TH ST - Generic Street Address	1							1	
06700 E 38TH ST - Generic Street Address	1								1
06710 E 38TH ST - CARPET FURNITURE AND MORE	1						1		
06712 E 38TH ST - CLUB ESCALADE	1							1	
06712 E 38TH ST - KJS SEAFOOD AND BBQ	1						1		
06718 E 38TH ST - SPEEDWAY AUTO PARTS	1						1		
06750 E 38TH ST - HINDEL LANES	1							1	
06751 E 38TH ST - ROOTS II HAIR STUDIOS	1		1						
06800 E 38TH ST - Menard's	1					1			
06800 E MASSACHUSETTS AV - Generic Street Address	1								1
06800 E PENDLETON PK - ANNIES ALTERATIONS INC	1						1		
06800 E PENDLETON PK - WILKERSON BARBER SHOP	1						1		
06801 E 38TH ST - VIDEO GALLERY	1					1			
06805 E 38TH ST - PAY DAY LOAN STORE	1		1						
06833 E MASSACHUSETTS AV - Generic Street Address	1								1
06900 E 34TH ST - Occurred outside buffer	1					1			
06900 E 38TH ST - CLUB ESCALADE	1							1	
06900 E 38TH ST - Menard's	1							1	
06900 E MASSACHUSETTS AV - THE POINT BAR PARKING LOT	1							1	
06901 E 38TH ST - WHITE CASTLE	1				1				
Summary for Jun 1 2005 to March 31 2008 (37 detail records)									
Sum	***260***		***8***	***9***	***4***	***13***	***16***	***202***	***8***

6767 E 38th Buffer Area

Location	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Summary for 'BufferArea' = 6767 E 38th Buffer Area (65 detail records)									
Sum	481		21	16	6	23	27	370	18

IMPD UCR Classified Crime Summary (by Described Address)
500' Footer Buffer of 4 Points: Pre- and Post- Enforcement Time Frames (UCR Count Order)

	Total UCR	Rape	Armed Robbery	Strong Arm Robb.	Agg. Assault	Simple Assault	Burglary	Larceny	Vehicle Theft
Grand Total	1012	3	68	26	32	67	149	585	82

Prepared by IMPD Resource Coordinator based on UCR Case Numbers selected by City of Indianapolis Planning Division and follow-up reading by IMPD UCR specialist

The pre-enforcement period (April 1, 2002 - May 31, 2005) represents 38 calendar months. The post-enforcement period (June 1, 2005 - March 31, 2008) represents 34.

The data selections did not contain any Criminal Homicides, so that Part I Crime is not presented on this report.

Konrad discovers that adult-video and sex-toy shops attract all kinds

BY KONRAD.MARSHALL

Posted: May 28, 2008 in Nightlife

Tags: porn, Adult Movies, Pornographic, vibrators, adult toys, adult shops, xxx

"Are you looking for anything in particular?"

This is the question that begs to be asked when a customer walks in, because if there's one truth that the racks of adult DVDs, stacks of pornographic magazines and walls of mature "toys" and gadgets confirms, it's that everyone likes something in particular.

In my two hours working in Keystone Video & Newsstand, on a recent Friday night, I saw them all. Young women venturing into the store in pairs for moral support, giggling. Couples whispering to one another in corners, with goods in hand. And men, lots of men, perusing all the store has to offer, some loudly and proudly, and some with a sheepish shuffle.

None of them seemed to want to answer the question, though. For the most part, they seemed to know exactly what something in particular that they wanted.

There were magazines, books, and videos grouped according to all tastes, featuring true porn stars (Jenna Jameson and Belladonna), amateur ones (like former Indy escort Marie McCrae, and even a former Keystone Video clerk, Jake Blade), and celebrities (from Screech to Paris Hilton to Jimi Hendrix). A movie featuring a relative unknown was playing in the background, the music coming from the store radio oddly fitting: "Still looking for that blue jean baby queen, prettiest girl I ever seen. See her shake on the movie screen."

There were things with harnesses, clips, suction cups, pumps, cavities, vibration and gyration. And things made of latex, blown glass, Cyberskin, metal and rubber (rubbers themselves were there, too).

I helped a young female cashier run through the purchases of a young man buying vibrators on behalf of his girlfriend, surprised to learn that the store puts batteries inside any motorized toys to make sure the tools operate as expected. (A little tip for guys: If you want to know what a device will feel like on your loved one, hold it up to the tip of your nose.)

Some of the items, though, particularly those in the fetish section, look like weapons of mass destruction, or tools of cruel and unusual punishment, but employees are taught never to express any judgment.

"When I first started -- and I was no stranger to this stuff -- it took a while to get comfortable," manager Lawrence Utley said. "It can be intense. It can definitely be intense."

But there's also a light side. After all, it's hard not to laugh at a 15-inch, 5-pound "device."

"A lot of the stuff we deal with, at first, it's hysterical," Utley said. "But you obviously can't laugh

in anybody's face. You get questions that you think are a joke, but they're serious. And then you get questions that you think are serious, and they're actually joking."

As an employee, however, you are permitted to laugh when someone calls Keystone Video hoping to reserve a copy of "The Rugrats Movie."

The only well-known titles in this store are "Debbie Does Dallas," "Behind the Green Door," "Caligula," and of course, the mother of them all, "Deep Throat," none of which have commanded "hardest of the hardcore" status for some time.

The mood of the store is truly softened by half the floor space being devoted to lingerie, novelties, costumes, incense, and things like edible underwear.

"It's all about enhancing your sex life, enhancing your love life, and enhancing your relationship," said Utley. "And I believe in the freedom angle, too."

Utley used to manage a store in Hebron, and he remembers the wrath incurred in that community, including weekly protesters with signs and bullhorns. He once had to stop truckers from setting their pit bulls on the people with placards.

"It was a little unnerving," Utley said. "Of course, the funny thing is a lot of them were customers. They'd protest you one day, and they would shop the next. So you have to be able to let that stuff go."

It isn't all excitement though. Some days there is nothing much to do but organizing stock and neatening the displays.

"It's a habit now," said one of the store cashiers. "I'll be in Wal-Mart and find myself straightening shelves."

Excellent article!

joe.shearer on May 28, '08 at 01:05 PM

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joe.shearer wrote:
Excellent article!

I agree Konrad's articles are always great.

randydaytona on May 29, '08 at 12:14 PM

So, Konrad, were you able to keep a straight face??? Great article

caralyn on May 29, '08 at 01:04 PM

I'd like to know the craziest/weirdest thing you sold that day.

Dexter on May 29, '08 at 01:12 PM

Thanks guys. I gotta say, there was definitely some freaky stuff in that place, but it was still a pretty comfortable atmosphere.

The guy who runs it told me a funny thing. He said he tells the girls who work there to be ready to be propositioned, that guys will just assume they're prostitutes, or that the doors in the back of the store lead to peep shows and dungeons and what not. He was a pretty cool guy, and funny.

As for the craziest thing sold, I didn't see any truly crazy sales. But I asked about how often some of the weirder stuff sells. The festish wall was pretty popular. And you would be AMAZED at how many gigantic ... male imitation devices ... sell. And you'd be shocked at how realistic the female .. pockets? ... seem.

More shocking still? Some people actually try to return used merchandise. (The store, for the record, does not accept said returns.)

Konrad.Marshall on May 29, '08 at 01:34 PM

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ha-ha-ha-HAH-ha-ha....funny post!

deb5683 on May 30, '08 at 08:45 AM

Why does it seem that all the "freaky" stories get thrown your way, Konrad? :)

FineWine on May 30, '08 at 09:43 AM

Just lucky, I guess :)

Konrad.Marshall on May 30, '08 at 09:53 AM

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10/26/2010 6:00:00 AM

Suspect sought in robbery of adult book store

Erin Taylor
Miner Staff Reporter

KINGMAN - Authorities are looking for a man who robbed a Golden Valley adult bookstore just after midnight Friday night.

Mohave County Sheriff's spokeswoman Trish Carter said a man between the age of 30 and 40 years old walked into the Pleasure Palace adult store on Highway 68 around 12:57 a.m. and demanded money from the clerk.

Carter said the man was wearing a black, hooded sweatshirt underneath a one-piece outfit that resembled a mechanic's jumpsuit. The suspect pointed his right hand at the clerk from inside his jumpsuit pocket as though he had a weapon.

The man made off with an undisclosed amount of cash. No other items were taken.

The suspect had the hood pulled over the top of his head with a black bandana or cloth covering his face. He is anywhere from 5-foot-10 to 6-foot tall, with a normal build and hazel colored eyes.

Anyone with any information is asked to call the Mohave County Sheriff's Office at (928) 753-0753 or Silent Witness at (928) 753-1234. A reward of up to $500 has been offered for information leading to the arrest and conviction of the person(s) responsible for the robbery.

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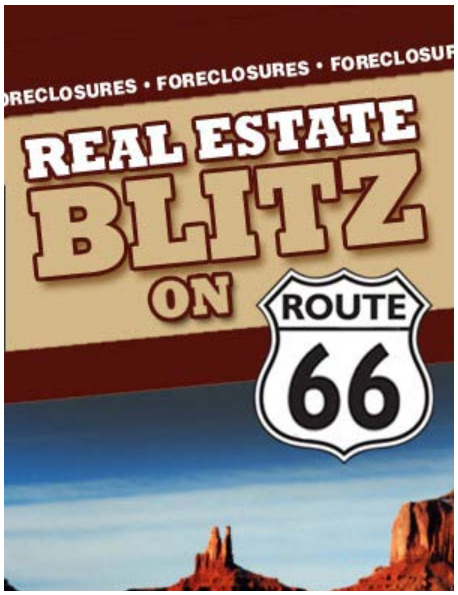

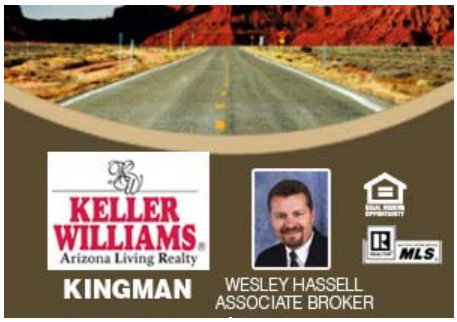

Reader Comments

Posted: Saturday, October 30, 2010
Article comment by: **Henry O**

Porno stores always seem to smell strongly of chlorine and cheese.....yick! I wouldn't be working there for that reason alone.

Posted: Saturday, October 30, 2010
Article comment by: **makes ya wonder**

If Porno shops actually did pay better than Degreed positions. I think there would be one on every corner and the colleges would go bankrupt.

Im so glad its not that way. Theirs nothing. Not even a liquor store can destroy an area faster then a Porno shop. People who frequent these stores tend to be dregs. Before you hammer me with the "you have no right to be judgemental". Take a few moments and think about it. Im being realistic.

If you doubt my realisum sit in the parking lot for awhile. I Promise MOST of the folks you see shopping there. You would drop dead if your Child brought home and announced. "we're getting married".

These places turn an absolutely fantastic event two people can share. Into something that turns your stomach. I dont ever want to understand the "draw" people feel that brings them to a Porno shop. Working there for me would be the bottom of the barrel. My family would have to be homeless and starving.

Posted: Friday, October 29, 2010
Article comment by: **would you sellout your integrity?**

Hey College degree making less then Porno employee.

Somethings are worth more then a few bucks. Personnally I would do ANYTHING for any pay to NOT find myself degraded to the point of slinging Porno.

Then again our country has become "money first" over the last few decades. Selling out and joining the dregs seems to not bother many more people these days.

Im sure glad Im older and wont have to see how society evolves deeper into disgrace with each generation for much longer.

Posted: Friday, October 29, 2010
Article comment by: **World's down the tubes**

@ "@ talk about a horrible job--"

BULL! Unless you're working at McDonalds in spite of your degree? And if what you did say wasn't a lie, your friend is the exception! Doesn't mean that they all pay well!

Posted: Thursday, October 28, 2010
Article comment by: **@ talk about a horrible job --**

You might want to research and rethink your opinion. I have a friend who works at one of these stores and is paid more and has better health insurance than I do at my job that requires a college degree. As to the other comments about being open at that hour, I assume you think we should close gas stations and conveinence stores too?

Posted: Thursday, October 28, 2010
Article comment by: **talk about a horrible job**

Porno stores are the bottom feeders of all society.

Im not a "church lady" nor am I a prude. If you visit these places you must have a very low self esteem. Sex is cool and all...BUT. Its not the ultimate end all of things in life. Just thinking of visiting this kind of store makes me want to take a hot bleach bath.

Im glad the clerk didnt get hurt by this knucklehead. Its really to bad the clerk wasnt armed. I also hope this clerk gets a new job. Working for someone that respects their employees enough to hire an extra person for nights. For gods sake. You run a business with many customers that are seriously "different". Not to mention dangerous.
.
The owners need to be horse whipped for being so cheap or greedy they put an employee in such a precarious position. Hire a second clerk for nights. Train them to be proficient with a .45 auto at 30 feet.

Being robbed while working at a Porno shop is truely adding insult to injury. Do yourself a favor and look for better job.

Posted: Wednesday, October 27, 2010

Article comment by: **Sir Batson Belfry**

Any incident involving an Adult bookstore seems to bring out a lot of childish reactions in readers, which underscores the question: "How do you ever know you're selling to a Mature adult?"

Hey, here is a clerk: a person who is working what is probably not their idea of a glamorous gig with no one there for back up. Wouldn't be so humorous if the same robbery occurred in a Circle-K, now would it. I've little doubt the people who find this so entertaining have "frequent shopper" cards...and not at Circle-K.

Imagine how you would feel if you were alone in any retail store around 1 AM and some desperado walks in to rob the till. Would you feel afraid? Might you feel traumatized? And what, perchance, do you imagine would have happened if an actual customer had chosen to stop in to do some shopping while the robbery was in progress? This could have been a lot uglier than an empty cash register.

It's purely insane and unethical that anyone would be left working *alone* at that hour, on a Friday night, in what any rational person would consider an isolated location. Despite economic pressures, there is no excuse for leaving one person to run a shop, especially a shop that attracts more attention than most.

While there is a lot of traffic to and from cities like Laughlin and Kingman traveling the highway, I suspect someone in the local area had been casing the store or had entered the premises at various times as a customer and knew the lone clerk would be holding down the "fort" (so to speak).

It is fortunate this person was not hurt or killed by the robber and it is hoped there will be no incidents of this sort in future. Certainly, giving this media coverage won't increase the safety of anyone working nights at this store.

Attention owner(s): f there aren't surveillance cameras in the parking lot, I suggest to avert the potential liability and lower insurance premiums, you invest in a few cams with 360 degree views and at the very least, dedicate a monitor for viewing and VCR for taping activity around the sides and back of the building, particularly after the sun sets.

Motion sensor lights that also trigger a discreet signal within the store are, I'm certain, worth the money. I'm surprised there wasn't a silent "panic alarm" near the register to alert the local police.

If the owners believe it is too expensive to invest in this equipment, I ask them to compare this to the expense of closing the store at a reasonable hour or ensuring there is always another human being with a registered firearm present who can keep the cashier safe during the night shift. Ideally, both the equipment *and* the "late night Ninja" would be put into place.

And anyone who thinks a robbery is funny should steer clear of Adult Bookstores or risk being grounded for eternity by their wife or girlfriend(s). Or, as an alternative, grow up.

Posted: Wednesday, October 27, 2010

Article comment by: **Im Funny Dammit**

Thanks alot Jerry. You ol' fuddy duddy.

Posted: Wednesday, October 27, 2010

Article comment by: **Jerry J**

Wow, now the post from I'm Funny is HIGHLY inappropriate and suggestive...can't believe KDM published it!

(It slipped through. It's gone now. Thanks for the heads up. -Mark)

Posted: Tuesday, October 26, 2010

Article comment by: **Bart Simpson**

OMG!! Who would rob an adult book store!? What has the world come to when someone would violate the sanctity of such a holy place?

Posted: Tuesday, October 26, 2010

Article comment by: **Tim griffith**

The only problem here is that the establishments that were robbed should've provided handguns (pref. large calibre) to the employees. That way, they could've just blown these idiots out of their shoes, and the police could then easily just ID the bodies. "

Posted: Tuesday, October 26, 2010

Article comment by: **FBI'S FIBS**

This just brings to the forefront of my mind how happy I am that we don't have an adult bookstore within city limits and I hope it stays this way. Not from a religious standpoint, but it just looks like trash when you see that in a neighborhood! The last place I lived had them around and even my "open minded" friends agreed that it made the area look seedy.

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ARIZONA'S HOME PAGE

Police search for adult bookstore robber

by Lisa Halverstadt - Jul. 14, 2008 03:46 PM
The Arizona Republic

A Mesa man was arrested early Saturday after police said he and another man threatened others with a handgun at an adult bookstore on Apache Boulevard.

Richard Torres, 24, who Tempe police eventually arrested, allegedly yelled at a witness and ordered him to go inside the bookstore, police said.

An unidentified man with Torres stuck a handgun into a man's ribs at the Modern World Adult Bookstore and took $7 from him, according to police reports. He then walked up to another man, held a gun to his head and demanded he give up his cell phone. The unidentified robber hit that man in the face, knocking out one of his teeth and later yelled at Torres to get into a car.

The two men drove across the street and then abandoned their vehicle, police said.

Torres was later arrested at a fenced-in residence in the 1600 block of East Hudson Drive on suspicion of two counts of armed robbery and first-degree trespassing. He had been hiding in the bushes, police said.

Police are still searching for the other man who is described as about 5-foot-10 inches, tall with a thin-to-medium build and "Afro"-style hair. At the time of the armed robbery, he wore a white T-shirt and brown pants.

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Adult bookstore robbed in Kearny Mesa

By Staff, City News Service
Monday, January 11, 2010

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A man robbed an adult bookstore at gunpoint in Kearny Mesa but no one was hurt, police said Monday.

The gunman robbed the Adult Emporium 2 at 5101 Convoy St. around 7:45 p.m. Sunday, San Diego police Officer Dino Delimitros said.

Police described the robber as black and in his 30s, last seen wearing a blue and gray windbreaker-type jacket. He carried a semi-automatic handgun, Delimitros said.

This story was written and edited by City News Service staff.

Tags: adult bookstore, Adult Emporium, black, gray windbreaker, gunman, Kearny Mesa, SDNN

This entry was posted on Monday, January 11th, 2010 at 7:53 am and is filed under Crime . You can follow any responses to this entry through the RSS 2.0 feed. You can skip to the end and leave a response. Pinging is currently not allowed.

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Article Published: Monday, August 01, 2005 - 9:53:02 PM PST

Bat used in robbery of adult bookstore

MONTCLAIR - A robber struck an adult bookstore employee with a bat and then took cash from the store Sunday afternoon, police said.

The employee didn't notice when the robber entered the Paradise Adult Book Store at 3894 E. Mission Blvd. The robber entered an area behind the counter through an open door around 4:15 p.m. and grabbed a baseball bat that was behind the counter.

He struck the employee in the back and demanded the employee open the register, police said.

The robber took all the cash in the register and left the business. The employee, who police said suffered little to no injuries, refused medical attention.

Police said the man left in a white Volkswagen, possibly a Jetta. Police received a partial plate number of 5BK787.

- Melissa Pinion-Whitt, (909) 483-9378

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Caught on Tape: Oakland Armed Adult Bookstore Robbery

POSTED: 9:07 am PDT April 23, 2008
UPDATED: 10:48 am PDT April 23, 2008

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Video: CAUGHT ON TAPE: Watch Oakland Adult Bookstore Robbery

OAKLAND, Calif. -- Another night, another frightening armed robbery in Oakland -- the pattern repeated itself in the East Bay city when a bandit walked into a downtown adult bookstore, brandished a handgun and threatened the clerks and other patrons.

The manager, who asked not to be identified, said it was the third such recent robbery of an adult bookstore in the city.

Police released no other details about the 6:46 p.m. robbery at Cory's Adult Superstore at 2408 Telegraph and no arrests had been made.

The manager said police recommended he get a gun.

"The officer suggested I should arm myself," he told KTVU. "It's getting tough out there. These types of robberies are becoming an everyday happening."

The robbery took place just hours before an Oakland City Council meeting where police officials laid out a game plan to fight crime in Oakland. The officials promised more officers on the street, working longer hours.

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Two officers kill robber's alleged getaway driver

By Debbi Farr Baker and Joe Hughes
UNION-TRIBUNE STAFF WRITERS

April 19, 2007

SAN DIEGO – Two San Diego police officers shot and killed a suspected getaway driver early yesterday morning after he opened fire on them following a robbery at a North Park adult bookstore.

The Medical Examiner's Office late Wednesday identified the man as Maurice Antoine White, 30, of Valencia Park.

Two patrol officers saw a man run out of the F Street Adult Video and Gifts store on University Avenue at Florida Street a few minutes after midnight.

Store employees said the man had come into the store carrying a gun and wearing gloves and a mask. He jumped over the counter, threatened them with the gun and stole money, said homicide Lt. Kevin Rooney.

Officers who were driving by saw the man running with his hands raised over his head – possibly as he took off his mask – carrying a white bag, Rooney said.

As the man headed north on Florida, he yelled something to White, who was in a green 1990 Chevy Cavalier parked with its lights on before running away, Rooney said.

The officers pulled behind the Cavalier, which drove a short distance before turning left and pulling over on Lincoln Avenue, a dead-end street. They got out of their patrol car and approached the car from either side.

The officer on the passenger side shined his flashlight into the car and saw that White was holding a gun pointed down between his legs, Rooney said.

“The passenger officer yells 'gun' to alert his partner and yells for the man to drop the weapon,” Rooney said. “Instead, he raised it and pointed it at the officer on the driver's side, and it appears he fired several rounds.

“Both officers drew their weapons and opened fire,” Rooney said.

Rooney did not say how many times White was hit, but he was still alive after the shooting and paramedics were called. He died a short time later.

The gun was found wedged next to the car door, police said.

Rooney said he did not know how many shots were fired during the encounter, but police were not aware of any collateral damage to buildings or homes in the area.

He said the officers were very lucky they were not shot.

“They did what they were trained to do, and they did it well,” Rooney said.

The two officers will be off for several days and placed on administrative leave, a routine practice when officers are involved in shootings. Both work out of Western Division. One has been on the force for two years and the other three.

Police are still looking for the man who robbed the video store. He is described as black, about 5 feet 8 inches tall, 130 pounds, wearing a beige shirt.

Police said the robber ran through an apartment complex, took off clothing and his gloves, and tossed his handgun. Those items have been recovered, Rooney said.

Detectives were at the scene for several hours as they investigated the shooting and robbery.

As the sun came up, the Cavalier was still parked on the cul-de-sac with the body inside. Its back window had been shot out. Several markers were on the ground indicating where the shell casings from the bullets fell.

Lincoln Avenue was roped off, but police were letting residents in and out of their homes, a mixture of small houses and apartment buildings. Some residents were not being allowed to move their cars, however.

The adult bookstore has been the scene of several robberies and a shooting over the years.

The store was robbed on Dec. 21, 2003; Nov. 8, 2001; and Nov. 1, 2001. The two November robberies were believed to have been committed by the same ski-masked bandit, who used a semi-automatic handgun.

On Nov. 12, 1997, a manager at the store was pistol-whipped during an armed robbery by two masked men. They got about $100.

On July 18, 1996, a would-be robber fired a shot at a security guard inside the store. The bandit then tried unsuccessfully to open the cash register before running off. The guard suffered minor glass cuts during the incident.

The store, which is part of a chain, recently curtailed hours. It used to be open all night, but it now closes at 2 a.m.

▪Debbi Baker: (619) 293-1710; **debbi.baker@uniontrib.com**

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Adult Book Store Robbed By Muscular Man

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POSTED: 2:04 pm PDT July 8, 2006

SAN DIEGO -- A 6-foot tall muscular man in dark shorts and a baseball cap robbed an bookstore in North Park of an undisclosed amount of cash, said San Diego police.

The robbery at the F Street store in the 2000 block of University Avenue was reported a Friday, SDPD Sgt. Rich Nemetz said.

The suspect reportedly grabbe the drawer when the clerk ope register, police said.

Following the robbery the sus Nemetz said.

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Adult Bookstore Robbed At Gunpoint, Clerk Left Unharmed

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POSTED: 9:46 am PDT August 20, 2006

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SAN DIEGO -- An adult bookstore clerk was robbed at gunpoint Saturday of an unkno cash by two male suspects, 10News reported.

The heist took place at 5:35 a.m. at Mercury Books in the 7400 block of Clairemont Me according to San Diego police Sgt. Kerry Tom.

One robber carried a silver re dressed in a dark tan jacket.

The other suspect wore a brov said.

It was unclear whether that m a weapon.

The clerk was apparently not

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Crime/911

STOCKTON ADULT ENTERTAINMENT STORE ROBBED (1:05 P.M.)

By ***The Record***
August 26, 2008

STOCKTON – An adult entertainment store was robbed and an employee threatened Monday afternoon.

According to a Stockton police report, a 23-year-old employee of Suzie's Adult Store in the 3100 block of East Hammer Lane was alone in the store and went to the bathroom about 2:20 p.m.

A man was standing outside the bathroom door when she came out and he lifted his shirt to show her a semiautomatic handgun in the waistband of his pants.

"This is a robbery," the police report quoted the robber. "Give me everything you got or I will kill you."

The employee handed over nearly $400 and the robber left going east from the business. No vehicle was seen.

The robber was described as a black man in his 20s or 30s with short black hair. He wore large mirrored sunglasses, black T-shirt and black jeans.

Anyone with information is asked to contact the Stockton Police Department at (209) 937-8377.

TheDenverChannel.com

Porn Store Robber Still On The Loose

Police Are Asking For Help

Tara Kurtz, Contributor

POSTED: 10:09 am MDT July 28, 2006
UPDATED: 10:51 am MDT July 28, 2006

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Police hope someone will recognize this man.

DENVER -- Police are searching for a man who is suspected of robbing four adult bookstores in the past week.

The suspect is described as a black male about 5 feet, 10 inches tall and weighing 200 pounds with possibly a light mustache and goatee, according to police. Police also said he was wearing a white jersey with dark lettering, a blue hat and carried a black handgun.

The four adult bookstore locations hit were at the 100 block of South Broadway Avenue, the 8200 and 3400 blocks of Colfax Avenue and the 5500 block of North Federal Boulevard, police said.

The Denver Police are asking for any assistance in solving this crime.

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Bookstore bandits wanted for armed robbery

written by: John Fosholt , Producer/Photographer
posted by: Dan Boniface , Web Producer

created: 5/24/2007 5:38:18 PM
Last updated: 5/25/2007 8:17:02 PM

ENGLEWOOD - Police are searching for two men who threatened and robbed a clerk at a store on South Santa Fe Drive on May 19.

One of the men has been identified as 30-year-old Eric Brink. He has outstanding warrants for aggravated robbery and parole violations.

He and his partner used a rifle to stickup the Adult Bookstore at 4595 South Santa Fe Drive.

A security camera photographed the second man, and police are trying to identify him.

If you can help with the investigation, call Crime Stoppers at 720-913-7867. Your information could make you eligible for a cash reward.

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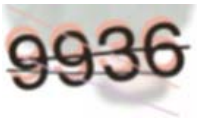

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denverpost.com
THE DENVER POST

Sex-toy store clerk stabbed during robbery

By The Denver Post

Posted: 03/07/2011 08:09:53 PM MST

Updated: 03/07/2011 11:25:58 PM MST

An employee of a Lakewood adult store is in the hospital after suffering stab wounds during a robbery just before 6 p.m., police said.

A Lakewood Police spokeswoman said the robbery took place at the Pleasures Adult Entertainment store at 7570 W. Jewell Ave. The suspect, described as a Hispanic male in his 20s was armed with a knife, police said. After stabbing a male employee, the suspect escaped with an undisclosed amount of cash, police said.

The status of the wounded man is not known, and his identity has not been released.

Kyle Glazier: 303-954-1638

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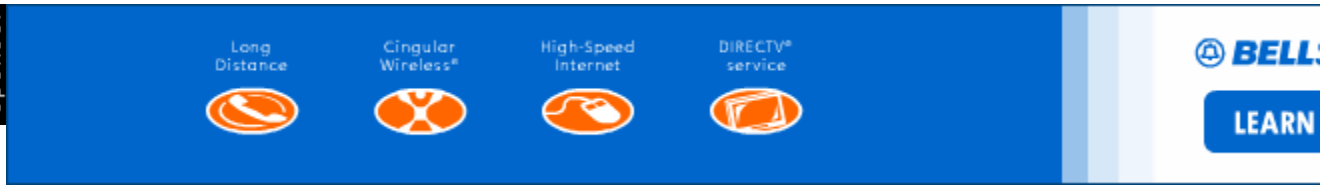

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Police: Man Uses Sprinkler Head To Hold Up Adult Store

Same Man Accused Of Robbing Store 3 Times

POSTED: 5:46 pm EDT June 26, 2006

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HOLLYWOOD, Fla. -- Police say a man was arrested Monday after he was caught on surveillance tape using a most unusual item as a weapon.

The clerk of the Hollywood Adult Bookstore thought he was being held up at gunpoint. What the robber didn't realize was that police had the store under surveillance because it has been robbed twice in the past month.

Detectives say they nabbed Andre Clark as he ran from the store.

Capt. Tony Rode said when they got a closer look at Clark's "weapon," they realized it was the attachment you add to a hose to water your lawn.

Police said that they believe Clark is also responsible for the two prior robberies at the store.

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Two Sarasota adult stores robbed again

Last Update: 10/19/2010 6:38 pm

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SARASOTA - Sarasota Police are investigating two armed robberies that occurred minutes apart Wednesday night at two adult entertainment businesses. That makes a total of five robberies of adult entertainment businesses since July 16th in the City of Sarasota.

At approximately 11:25 p.m the suspect walked into the front door of X Factor in the 1900 block of 12th Street and pointed a handgun at the clerk and demanded money. The suspect was wearing a Halloween mask with hair sticking out of the top of the mask. He's described as a white male approximately 20–30 years old 6 feet tall and 190 lbs with brown hair and brown eyes.

As the suspect exited the store he instructed the clerk "I got something else to do give me ten minutes before you call the cops".

As officers arrived on the scene of the first robbery they received information on a robbery at XTC Super Center on 17th Street with a similar suspect description. Officers transported the clerk from the first robbery to the scene of the second robbery where they viewed the surveillance video and confirmed that it was video of the same person that robbed him.

The victim advised that he had observed a truck drive slowly past the business right before the robbery; the truck appeared to be a red Chevy with a loading lift on the rear of the vehicle.

The XTC store video possibly shows the suspect's vehicle which appears to have some type of a lift on the rear of the vehicle. Earlier that night a 2000 Forest Green Dodge Dakota was reported stolen in Sarasota County. The stolen vehicle is reported to have a lift on the rear of the vehicle.

Capt. Paul Sutton confirms that Sarasota Police are investigating the links between the suspect in these robberies and the man shot by Sarasota County Sheriff's Office today. they are looking for a white male that was wearing a mask and driving a green pickup with a lift on the back.

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3 rob adult bookstore near I-75

Posted April 11, 2006

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WILDWOOD -- Three men robbed the X-Mart Supercenter this weekend on State Ro
Interstate 75, according to the Sumter County Sheriff's Office.

Two workers were inside the adult bookstore about 5 a.m. Saturday when three me
store. One stayed by the door, while the other two entered and demanded money. C
was armed with a gun and the other had a bat, according to the Sheriff's Office.

They ordered the employees to get on the floor and grabbed cash out of the register, reports said.

A few customers entered the store and were ordered to the floor. The suspects fled with an unknown amount of money, the Sheriff's Office said.

Etan Horowitz, Kevin P. Connolly, Stephen Hudak and Sarah Lundy of the Sentinel staff contributed to this report.

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Armed men rob sex shop

By Ty Tagami
The Atlanta Journal-Constitution

11:24 p.m. Wednesday, November 17, 2010

Five men, two of them armed, burst into a Jonesboro sex shop Wednesday night and ran off with untold amounts of cash.

No one was injured in the robbery of the Starship Enterprises in the 7400 block of Tara Boulevard, but police did call in an ambulance.

"There was a pregnant lady at the store," Clayton County Police Officer Otis Willis told the AJC. "Rescue was called to check her out."

Willis said it was unclear whether she was an employee or customer, but he said she was fine.

The men, two of whom had handguns, ran south on Tara and jumped into a black Dodge Ram.

Police responded to the address after an alarm company alerted dispatchers at 9:48 p.m.

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Davenport, IA

Two men arrested fro armed robbery at adult bookstore

May 12, 2006 06:02 PM EDT

DAVENPORT, Iowa - Two Davenport men have been arrested for the armed robbery at an adult bookstore.

Police say 19-year-old Chrisopher Mitchell is the one who held up the store and 42-year-old Leroy Owens drove the get-away car. Both are being charged with first degree robbery.

It happened at TR Video last night. Luckily the store clerk remembered what the the car looked like and reported it to the police. Police busted them in a nearby neighborhood.

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2 arrested in 4 robberies at X-rated bookstores

By Brendan McCarthy
Tribune staff reporter

July 15, 2005

While several robbers have taken hundreds of thousands of dollars from downtown banks in the last month, two Chicago men allegedly took a more novel approach: They have been accused of a series of X-rated adult book and novelty store holdups that began in mid-June.

David Joseph, 33, of the 2200 block of West Adams Street, and Paul Barney, 42, of the 2200 block of West Monroe Street, have been charged with several counts of robbery, police said.

They have admitted to four robberies at three adult bookstores, police said, and are suspected in several other thefts. They were arrested about 2:30 a.m. Thursday in a sting set up by officers from the Near North Police District.

Officers were staked out at Hubbard's Adult Book Store in the 100 block of West Hubbard Street when two men matching the descriptions of suspects in earlier robberies walked into the store. Police confronted the two as they left the store.

"We identified ourselves, and one guy pulled out a black Craftsman cordless hand drill from his pocket and started running," Patrolman Martin O'Flahertysaid.

Police said the men had just robbed the store, and officers found $151 in stolen money in their pockets.

Joseph and Barney also admitted an earlier robbery at the Hubbard store and robberies at Frenchy's Adult Book Store in the 800 block of North State Street and Over 21 Bookstore in the 1300 block of North Wells Street, police said.

"It seems like lately the adult bookstores have been getting hit a couple times a week," Patrolman Patrick Bryant said.

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Published: December 02, 2009 10:18 am

Sketch of Edgewood robber released

Tony Huffman
Effingham Daily News

The Effingham County Sheriff's Department released a sketch Tuesday of the man who allegedly held up the adult book store near Edgewood at 7:43 a.m. Nov. 23.

According to Effingham County Sheriff John Monnet, a man holding a large black pistol approached an employee of the store as she left the store with a money bag on her way to the bank to deposit an undisclosed amount of money. The suspect took the money bag and fled.

The man is described as a 5-foot 10-inch tall, skinny, white male with greasy shoulder-length hair. The suspect also reportedly had a slight mustache and bad teeth and was wearing mirrored sunglasses, blue jeans, a jeans jacket and boots at the time of the robbery.

The suspect fled the scene by getting in a late-1990's model Chevrolet truck with tinted windows driven by another suspect. The truck was last seen going southbound toward the Interstate 57 interchange, according to Monnet. A description of the driver was not available.

Monnet hopes the description of the robbery suspect and getaway vehicle will produce leads that will result in the arrest of the two suspects. Anyone with information about the incident is urged to contact the Effingham County Sheriff's Department at 217-342-2101.

Tony Huffman can be reached at 217-347-7151 ext. 135 or tony.huffman@effinghamdailynews.com

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Photos

The Effingham County Sheriff's Department released this sketch of the suspect in an armed robbery at Adult Time.
None/Submitted Image
(Click for larger image)

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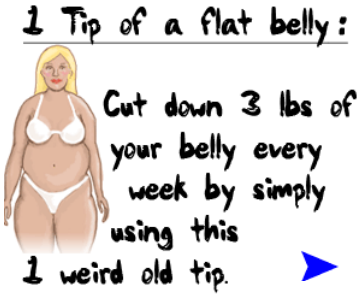

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Gunman robs Champaign adult bookstore

Wed, 11/24/2010 - 1:57pm | Mary Schenk (/author/mary-schenk) (/contact_author/418566)

CHAMPAIGN – Champaign police are investigating the armed robbery of an adult bookstore early Wednesday.

A Champaign police report said a man entered the Illini Video Arcade, 33 E. Springfield Ave., shortly after 2 a.m.

He pointed a gun at the 19-year-old male clerk and left with the clerk's cell phone, a business phone and an undisclosed amount of cash.

The report described the robber as a black man, about 30, 5 feet 11 inches tall, weighing 225 pounds, wearing a black Carhart jacket, black jeans and a brown bandana.

Police said the victim was not physically injured.

Anyone with information is asked to call Crimestoppers at 373-8477.

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Ryder (http://www.news-gazette.com/users/ryder) wrote on November 24, 2010 at 3:11 pm

When people were getting beat up for sport, I shrugged my shoulders. When peeping Toms somehow breached airtight dorm security, I said, "Oh well." But robbing the adult video store? TOO FAR, CROOKS, THAT WAS THE LAST STRAW.

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Man gets 20 years for robbing adult entertainment store

URBANA, Ill. A 21-year-old Champaign man has been sentenced to 20 years in prison for robbing an adult entertainment store last year and beating two men inside with a baseball bat.

Quentin Robinson pleaded guilty to armed robbery, admitting that he and a 23-year-old friend went into the Champaign shop at 2 a-m last August and took cash and a cellphone from the clerk and his friend.

He also admitted to hitting the men with a bat.

Prosecutors say the men also smashed glass counters, vending machines and video surveillance cameras.

Robinson will have to serve at least 17 years of his sentence.

His accomplice, Tori Starks, was sentenced to 40 years in prison in March.

Prosecutors said they have evidence linking both men to a similar attack last summer at another local adult entertainment store.

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Document Text

MARION COUNTY

Man charged in

slaying of owner

of jewelry store

A suspect in the slaying of a Fountain Square jeweler had rings and a gun linked to the crime when he was arrested, police said Tuesday.

Michael Inman, 34, Indianapolis, faces a preliminary charge of murder in the slaying of David Pedigo, 55, who was found dead Friday in his store at 1042 Virginia Ave.

Inman also is charged with robbery in an April 3 theft and assault at Cirilla's, a Northwestside adult store.

Indianapolis Metropolitan Police Department officials credited Patrolman James Sparks with linking the two crimes.

Sparks arrested Inman on Saturday outside an apartment complex at 2011 Egret Court.

Sparks had nine rings believed stolen from Pedigo Jewelry, police said. Officers also saw him toss a gun, which was matched to the one used in the slaying, police said at a news conference.

Inman was charged with felony robbery in the holdup at Cirilla's. Police said he stole $75 and beat and kicked the clerk.

Teens critically hurt

in hit-and-run

Two teen girls were in critical condition after police say they were struck by a suspected drunken driver Tuesday night on the Eastside.

A vehicle hit the girls in the 2800 block of North Keystone Avenue about 9:30 p.m. and continued driving, said Indianapolis Metropolitan Police Department spokesman Lt. Jeff Duhamell.

The girls were taken to Methodist Hospital, Duhamell said. Their identities were withheld.

Shortly after the crash, police believe they found the vehicle in a yard in the 2800 block of Hillside Avenue. Officers questioned a 36-year-old man who appeared to walk from the vehicle, Duhamell said.

Graffiti tagger, 23,

gets work release

A man known by his "CHOKE" graffiti tag was sentenced to work release and community service Tuesday in Marion Superior Court.

Miguel Villanueva -- who missed an earlier guilty plea hearing, resulting in new felony charges -- was sentenced to 18 months in a work-release jail. He also must perform 1,050 hours of community service during four years on probation, including participation in an Indianapolis graffiti cleanup program.

Villanueva, 23, formerly of Richmond, painted his tag on dozens of buildings in Indianapolis last year, causing an estimated $100,000 in damage, prosecutors said.

He pleaded guilty Tuesday to all nine counts of criminal mischief and a count of criminal gang activity; his plea agreement left the sentence open to Judge Marc Rothenberg, who opted for community corrections over jail.

The judge will decide in June whether to order any restitution.

Man kills himself

during standoff

Indianapolis metropolitan police say a 39-year-old man died Tuesday after he shot himself inside his Westside apartment during a standoff with officers trying to serve an arrest warrant.

Police arrived about 11:10 a.m. at the Darby Court Apartments in the 6300 block of Sullivan Court, on West 21st Street just east of I-465.

Officers said several shots were fired at them through the door. One officer received minor injuries from shattered glass.

Alfred S. Grice, who was wanted on four counts of child molesting, barricaded himself inside his home for more than two hours.

During the siege police and SWAT team members fired tear gas into the apartment, used an explosive to breach the door and sent in a robot to search the apartment. Police ended the standoff shortly before 3 p.m. when the man was found dead in a bedroom.

Man stabbed to death following argument

A 32-year-old man was arrested Tuesday after an apparent disagreement led him to fight with and then stab a victim shortly before sunrise, police said.

Jose Luis Tinajero-Garcia called police at 5:54 a.m. and told the dispatcher he had just stabbed someone in a Northeastside apartment in the 8200 block of Heatherton Court, said Indianapolis Metropolitan Police Sgt. Matthew Mount.

When officers arrived, Tinajero-Garcia was standing in front of the apartment with a kitchen knife on the ground near his feet.

Inside, Fabian Gutierrez-Barcenas, 23, was found dead with several stab wounds. Tinajero-Garcia was held without bond at the Marion County Jail pending formal charges.

BOONE COUNTY

Zionsville teachers

OK cuts to save jobs

Zionsville - Zionsville teachers agreed to $1.4 million in salary and benefit concessions, letting the school district make needed cuts to the 2010-11 school budget.

The School Board voted 5-0 Monday to accept $2.1 million in cuts for the next school year. Drastic program and work-force cuts were avoided because the Zionsville teachers union agreed to concessions that included wage freezes and a halt to employer contributions to most teachers' retirement plans.

The concessions may have saved up to 30 teachers' jobs, said Union President Matt Doublestein.

HENDRICKS COUNTY

Man gets 13 years in

death of alleged rival

Danville - An Avon man has gotten a 13-year prison term in the death of a man he believed was having an affair with his wife.

John Gary Cooper, 59, was ordered to serve eight years for reckless homicide, plus five years for using a firearm, in the May 27 death of Michael R. Gelinas. Hendricks County Judge Karen Love sentenced him Monday.

Cooper had been charged with murder, but a jury found him guilty March 2 of reckless homicide after a weeklong trial.

Cooper's wife, Angela Cooper, was a caregiver for Gelinas' mother, who lived in his house.

Star reports

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BOONE COUNTY Zionsville teachers OK cuts to save jobs Zionsville - Zionsville teachers agreed to $1.4 million in salary and benefit concessions, letting the school district make needed cuts to the 2010-11 school budget. Drastic program and work-force cuts were avoided because the Zionsville teachers union agreed to concessions that included wage freezes and a halt to employer contributions to most teachers' retirement plans.

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Man tries to rob adult book store with steak knife

Muncie police are looking for a man who tried to rob an adult bookstore late Sunday night, armed with a steak knife. Police were called to the scene at a store called "After Dark," where the attempted robbery took place. Police believe the suspect was scared away after noticing surveillance cameras inside the store.

Fox59.com

12:05 p.m. EDT, April 19, 2010

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Muncie, Ind. Man tries to rob Muncie adult book store with steak knife

THAT'S A CAN COST $10,000

Muncie police are looking for a man who tried to rob an adult bookstore late Sunday night, armed with a steak knife. Police were called to the scene at a store called "After Dark."

The attempted robber didn't get away with any items or money, police believe he got nervous after noticing surveillance cameras inside the store.

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Posted on Sun, Aug. 15, 2010

Crime down in core, up in Wichita's outer areas

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BY HURST LAVIANA
The Wichita Eagle

As he drove through Midtown last week, Officer Bart Norton recalled the days when crime was threatening to overwhelm his North Broadway beat.

"South Broadway always had the moniker, but there was a time that North was just as bad," he said.

The prostitution and drug dealing that had long plagued South Broadway were spreading north across Douglas.

But by focusing on the heart of the problem — the hotels — police and many who live and work in the area think North Broadway may be turning the corner on crime.

In an effort to closely monitor neighborhood crime trends, Wichita police divide the city into 491 crime reporting zones. Two of the three zones that saw the steepest drop in crime last year were along North Broadway in Norton's Beat 41.

A closer look at 2009 figures shows that many neighborhoods near the city's center saw significant decreases in crime last year.

PHOTOS

Gallery: Crime down in core area

See reported crimes on our daily Wichita crime maps

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CRIME DOWN IN CORE AREA

Click here to see the video in full screen or to e-mail to a friend.

Wichita overall saw a 1.5 percent drop in major crimes last year when compared with 2008. The figures show that the drop occurred because the increases in crime on the fringes of town were more than offset by decreases in the inner city.

Consider:

* In the 19 crime reporting zones that are within a mile of Douglas and Broadway, crime was down 4.7 percent last year when compared with the average of the previous four years.

* In the 39 zones that are 1 to 2 miles from the city's center, crime was down 5.4 percent.

* On the outskirts of the city, in the 242 zones that are more than 5 miles from Douglas and Broadway, crime was up 11.4 percent.

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But the figures also suggest that the bulk of the city's crime is still occurring in and around downtown Wichita.

Those 19 zones in the city's center cover 5.8 square miles — about 3 1/2 percent of the city's area. But they accounted for 11 1/2 percent of the city's auto thefts, 8 1/2 percent of the burglaries, 17 percent of the robberies and 10 1/2 percent of the homicides.

Crime on the move

Deputy Police Chief Terri Moses said it's no secret that crime follows people as they move toward the fringes of town.

"I always point to where I live now" she said of her east Wichita home. "It used to be a wheat field, so the chances of a crime occurring there were null."

As the city grows, she said, police monitor call loads to make sure that officers are allocated to areas where crimes are occurring.

Moses said there were probably several reasons for the sharp drop in crime last year in Beat 41, which covers neighborhoods west of Broadway between Central and 21st Street.

Part of the drop, she said, could be attributed to the construction of the Nomar International Marketplace on West 21st. The project forced the closing or relocation of several businesses, she said, including an adult bookstore that had often been the site of robberies and other crimes.

Construction today has limited access to businesses around 21st and Broadway.

"You couldn't commit a crime at that intersection now," she said.

Moses said that in any part of town, it's important for police to work with residents to fight crime. She said that appears to be happening on North Broadway.

"I would like to think it's a combination of the police as well as the community policing itself," she said.

On patrol on Beat 41

As Norton was starting his day last Wednesday, Ellis Dixon was cleaning up his barbershop. Burglars had broken a window overnight in the business in the 1900 block of West 13th Street and carried out a 42-inch television and other electronic equipment.

That afternoon, Norton was awaiting the results of fingerprint samples that he had sent to the lab. Dixon was making plans to beef up security.

"If I have to put bars up, if I have to put in more security, that's what I'm going to do," he said.

Norton asked anyone with information about the barbershop burglary, or any other crime on his beat, to contact him at the department's Patrol North Bureau.

Norton's beat stretches west from Broadway past North High School to the Arkansas River, but he spends much of his time working with businesses on Broadway. As he drove east from the barber shop, he described the area.

"It's pretty diverse in all aspects — race, income, housing," he said. "We've got some very nice houses, but then we've got some that need a lot of work.

"The majority of people over here go to work and live their lives doing what they're supposed to be doing. But there's a very small percentage..."

When he pulled into the Auto Motel at 1230 N. Broadway, owner Sanjib "Sam" Mitra was remodeling one of the rooms.

Teri Weitzman, the hotel manager, was in the office describing what it was like when she started working there 3 1/2 years ago.

"Every other door was a crack dealer," she said. "There were hookers everywhere."

Today, she said, prostitutes are discreet if they are working in the area. Drug dealers are no longer welcome, she said, and they no longer frequent the hotels.

Norton attributed the change to a crackdown that started more than five years ago after someone opened fire with an AK-47 on a second-floor hotel balcony.

Then in July 2007, a 48-year-old woman who worked as a maid at the Auto Motel was found strangled in her room. The case remains unsolved.

Today, anyone checking into a North Broadway hotel is required to show a photo identification, a copy of which is left at the desk. At the Auto Motel, visitors must leave their names and addresses with the clerk.

Norton said an important part of the crackdown required the help of hotel owners. They were encouraged to report suspicious activity and put unwelcome visitors on a "no-

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trespassing" list.

For those on the list, merely showing up on the hotel property can result in their arrest.

"If they come on my property, they go to jail," Mitra said.

Norton said the hotels on his beat have dozens of names on their no-trespassing lists.

"We've made lots of arrests, and things have calmed down a little bit," he said.

Norton said he enjoys patrolling Beat 41, an area where he rode his bicycle as a youth. His grandmother still lives on North Fairview, which is in his beat.

He said the diversity of the neighborhood makes his job interesting and enjoyable.

"It's something different every day," he said.

Reach Hurst Laviana at 316-268-6499 or hlaviana@wichitaeagle.com.

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LOCAL NEWS

Police catch the adult bookstore bandits

08:27 PM EDT on Tuesday, July 1, 2008

(WHAS11) - Police have arrested two men for robbing the same adult bookstore four times in just three months.

WHAS11 News

On one occasion Miles and Bailey allegedly left with not only cash, but with the entire cash register.

On one occasion they left with not only cash, but with the entire cash register.

Police have arrested 20-year-old Jamal Bailey and 21-year-old Anthony Miles.

Miles and Bailey are charged with robbing the Red Alley adult book store on south Seventh Street.

Police say the robbery spree began in late March before the two were nabbed over the weekend.

Each time they were armed with handguns and demanded cash.

The arrest report says that one time Bailey and Miles even took the whole register when the clerk could not open the drawer.

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Armed robbers target adult bookstore

By Michael Holtzman
Herald News Staff Reporter
Posted Feb 26, 2010 @ 08:07 PM
Last update Feb 26, 2010 @ 08:43 PM

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FALL RIVER — A Flint Street pornography shop was robbed of cash at gunpoint by two masked men early Thursday night, police and the owner said.

It was the first time it had been robbed in their 15 years of business, said Paul Balasch, owner of XXXTRA Video at the corner of Pleasant Street. He said they stole about $400.

“We wanted to make everybody aware of what’s going on,” Balasch said.

No one was harmed.

The armed robbery adds to about 50 others that have occurred since December, acting Police Chief Cathleen Moniz told the City Council this week during an extended dialogue over how to combat the spike in crime and reduced police staffing.

Half of that total were in December, and the number had dropped significantly this month, Moniz reported.

Police are offering a cash reward leading to an arrest for this latest armed crime, police spokesman Paul Gauvin said.

Balasch had left the store for the day to his brother, Michael Ponte, 54, who said one of the men carried a rifle that looked like a .22-caliber, while standing watch at the door.

He said they were in and out of the store “in two minutes.”

“One guy threw me a bag and told me to empty the cash register, and the other guy held the rifle on me,” he said.

They entered right after a customer exited the 203 Flint St. shop about 6:35 p.m., police said.

Both men were described as thin, white or light skinned, in their early 20s, wearing gloves and with black masks pulled up over their noses, Gauvin said.

The one carrying what looked like a small-caliber rifle with a wooden stock handle was about 5-foot-10 and 160 to 170 pounds, wearing a dark New York Yankees cap with white lettering and a dark hooded sweatshirt, Gauvin said.

The other man was described as an inch or two shorter and about 160 pounds, wearing a dark jacket with a white design.

After fleeing on foot south on Flint Street in the direction of Alden Street, the report filed by Officer Alan Beausoleil said, a silver sport utility vehicle was seen headed in that direction at a high rate of speed.

The incident is being investigated by the Major Crimes Division, and anyone with information is asked to contact Det. Richard Saraiva or the TIPS hot line, 508-672-8477.

Balasch said he closes his store the six days a week its open at 7 p.m. “just so I can avoid this kind of thing.”

He said they have video cameras showing the robbery. “But they had masks and gloves on. It (the cameras) doesn’t deter these guys,” he said.

E-mail Michael Holtzman at **mholtzman@heraldnews.com**

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How absolutely horrible preying on these nice, hardworking, honest, taxpaying, entrepreneurs. I was talking about the two young men ha ha ha. Hey what

about THEIR civil rights & THEIR choice to make money blah blah blah. Smut is smut & it shouldn't be sold on the street, if the people don't want it. Can't feel all that sorry for them, making a living by ruining everyones lives.
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Perhaps the robbers were strip club entrepreneurs trying to stifle competition and amass some needed capital?

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Just a couple of chaps looking 'Behind The Green Door' or some good ole 'Swedish Erotica
voiceofreason72
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when they get caught they will probably have it get dismissed just every other case in da riva.....they should be put away
voiceofreason72
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victim you are a fool. its a local business that people can go to if they choose. just because you don't choose to doesn't make it a bad thing
founding father
1 year ago
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I did not know that business was there...now that i do i will go there and spend some money.....as for the robbers i hope the next person they rob defends themselves and doesn't miss.....get a real job and stop hurting your families.....
name something after me
1 year ago
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It just keeps coming 3 shooting last night in Fall River one person murdered, HN has not reported as of this post.
tone611

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armed robbery for 400 dollars how pathetic can you be?
jnap1979
1 year ago
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Victimofchoice you are so ignorant. It doesn't matter what kind of business they run, it's a legal business and they are following the law. Getting robbed is awful, period. It doesn't matter what business you are in.
jonbetty
1 year ago
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staged! what an *** you are, maybe you should try standing infront of a gun pointing at you and see if you call it staged. I know this guy and he's messed up over this, not to mention his wife who feels that the next time could be worse. Did anyone mention the variety store around the corner has been hit atleast four times this year, I guess the people there are ok with you and they didn't stage it.
Just Dick
1 year ago
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I'm surprised this Mom and Pop store still survives when you can go online and buy whatever you want. Sorry for the loss. Hope they had insurance and hope the criminals get hard time.
WDW_Dad
1 year ago
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Seeing everyone is ok without serious injury....
I'm glad to see Mike is ok and didn't try to be a hero. $400 is peanuts and not worth the price of a life. Mike did the right thing and although I'm being a

monday morning quaterback, maybe it's time to put a buzzer lock on the door and allow entry to only one at a time.The buzzer system works. No one is allowed entry without that eletric lock opening.And if it's a robbery, most thiefs seeing this type of system do not bother. I know these fools are low-lifes and druggies and really don't care. But they want it to be fast too. They want easy entrance and exit. If they know they have to be buzzed in and out, it does curb future troubles. 'JONBETTY, if you personally know them, pass this idea over to Paul. It's not all that much to install and it lower insurance as well. Feel free to pass my email over to him.. WDW_Dad@yahoo.com
SSmith
1 year ago
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One of the 3 adult stores in Fall River, this one has been there for I would guess about 10 years maybe longer with no troubles. The tone for some comments displays personal disagreement with this legitimate and yes tax paying business. The flint neighborhood has made zero complaints about this business. Check your history books, pushing ones beliefs on others went out in 1776 in this country. Disagree or not they and all deserve equal protection under the law and save me that lip that the founding fathers are rolling in their graves, maybe they are, maybe theyre not.

Some of the commenters believe their personal opinions or beliefs trump the fact that someone was on a city street with a rifle, walking into a legitimate business with the threat of serious injury or death to rob. That should be your outrage. I could care less about porn or strip clubs. I dont think store 24, 7-11 or other stores should be open all night in Fall River either and they are asking for problems, but I dont think they should be robbed. If you dont like that stuff, fine, but some statements say all that needs to be said about your individual psyche. Whats next, someone who is poor deserves (what they get) or will color or race matter to you or do you think if a woman wears a dress she should deserves what happens? Some of you are truly lost in this world and have some very deep problems, and should probably double up on the daily doses.

alwaysAgoodtimewith theGoodLord
1 year ago
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Why do they call them adult stores? They really should call them juvenile stores because there really isn't anything adult about it. Really, they should.
frhviolet
1 year ago
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Report Abuse

First banks then stores now this . What is next ?
102945tfp
1 year ago
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well, almost a passive bunnyrabbit of choice, maybe you should push that idea at your church, get those sickos straightened out first, then come back and take care of the rest of us. Good luck with that, little fella.
irate taxpayer
1 year ago
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Some of you have the sense of humor of a quahog. Let's see a bank on one corner and adult store on the other. Hmmm, which one can we score? Probably customers of the store who knew only one person would be in there and no cameras!
vmc
1 year ago
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Alot of comics around
iknowit
1 year ago
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If u dont like adult stores or things like that u dont have to go there but they have a rite to operate and they pay taxes and i dont ever remember any problems there, so VICTIM OF CHOICE shut up k thanks
bengalsurock
1 year ago
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how sad...these drug addicts will rob anyone for any amount just to keep using,,,,,,Fall River needs to remove the gangs and addicts off the streets before the crime rate wil drop....The Fall River Police Department needs to step up their game and stop turning a blind eye!!! Public safety needs to be the number one priority!
Jethro Clambert
1 year ago
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Interesting a parrallel in the lows of society - Adult book store robbed by a couple of gun men who likely would patronize the strip club. The stripper then can recieve 1 dollar bills from the robbers who stole the cash from the adult book store. Micro economy going on here!!!
passive Lamb VI
1 year ago
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Despite these 2 fumbling men, exercising THEIR right to operate & their choice ...I think they deserve an award of some sort.
neverhadtoknockonwood
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Babes in thailand how is that offensive.....
myopinion79
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Just wondering why most of the time no one sticks to the point of the article?? Not only on this article but most that are posted on here. Herald News should really keep a close eye on some of the idiotic comments posted on here. Majority of the comments most likely come from people who have no education but think they know it all.

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ClickOnDetroit.com

Employee Shot At Adult Bookstore

Deputies Investigate Whether Shooting Occurred During Robbery

POSTED: 12:07 pm EDT July 25, 2005

An employee was critically wounded in a shooting at an adult bookstore in Highland Park Monday morning.

The shooting occurred at the Worldwide News bookstore located on Woodward Avenue, south of McNichols Road, according to the Wayne County Sheriff's Department. A 31-year-old Highland Park man was shot in his chest, Local 4 reported.

The shooter is described as a black man in his early 20s, about 5 feet 7 inches tall and wearing blue jeans, a black jacket and a dark-colored cap.

Sheriff's deputies are investigating whether the shooting occurred during a robbery attempt. Investigators are reviewing a surveillance tape from the store.

No further information was available.

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chuckle & grin CID: crying in disgrace CUL: see you later YOU DON'T KNOW WHAT YO
CYO: see you online DBA: doing business as usual DL: dead link DLTBBB: don't let the b
you? EMFBI: excuse me for butting in F2F: face to face FC: fingers crossed FISH: first

INTERNATIONAL Herald Tribune AMERICAS

Armed robber steals $140 cash, $22,000 in porn movies from Michigan adult bookstore

The Associated Press

Published: April 13, 2007

PONTIAC, Michigan: Police are hunting for a man who held up an adult bookstore, stealing $140 (€103) in cash and locking the clerk in the bathroom before also escaping with $22,000 (€16,336) worth of pornographic movies.

Authorities said the unidentified man walked into the store on Wednesday night and browsed for several minutes. He then asked the clerk for help, pulled out a large semiautomatic handgun and demanded money from the register, Pontiac police Sgt. William Ware said.

The robber took $140 and locked the clerk in the bathroom, Ware said. He said the store employee emerged after several minutes and noticed that several cases of adult movies also were missing.

"It's possible the man may try to sell the stolen movies," Ware told The Oakland Press.

Fantasies Unlimited store manager Tim Merriwether said Friday that this was the first time the store had been robbed since it opened in Pontiac, a suburb north of Detroit.

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Ware and Merriwether said they do not think the robber was a regular customer at the store.

The man, who can be seen on a surveillance tape, grabbed four cases holding about 800 movies, while leaving behind about seven other cases, the manager said. He said there was no apparent pattern in what the robber stole and what he left behind.

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"Apparently, he took all that he could grab," Merriwether said.

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Man Dressed As Woman Robs Berkeley Adult Video Store

Jennings Police Wonder If It Is The Same Bandit That Hit Clothing Store Friday

Video

Male Robber Dressed As Woman Hits Berkeley Adult Video Story
(2:17)

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By Chris Regnier
FOX2now.com
9:28 p.m. CST, February 15, 2010

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BERKELEY, MO (KTVI-FOX2now.com) A man dressed up as a woman pulls off an armed robbery at a **Berkeley** adult entertainment store and it is all caught on surveillance video. It might not be the first robbery that this cross dressing bandit has committed. Berkeley police are talking to cops in Jennings to see if this cross dressing bandit may be on a crime spree.

On Monday, FOX 2 obtained exclusive surveillance video of a man dressed as a woman who robbed a Berkeley adult store over the weekend. A similar crime happened in Jennings last Friday.

The surveillance video shows just how far the suspect was willing to go to look like a woman in the Berkeley case. The cross dressing bandit had a dress on as well as a sweater and a scarf when he robbed the Hustler Hollywood store on Natural Bridge Road in Berkeley. Investigators say the suspect came in about 12:40am Sunday. He shopped for a few minutes, got in line, paid for a small item, then pulled a long barrel handgun on the clerk and came around the counter.

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Berkeley Police Chief Frank McCall described what happened next.

"He says something to her. I haven't ascertained what that is at this time. But he decides he's going to take the entire drawer. And he reaches in- I guess there's a cable or something that attaches it to the computer system. He rips that out and as I said takes the entire drawer."

Berkeley police are now looking into whether the same cross dressing bandit is responsible for a robbery last Friday afternoon at the Workwear for Less store on Halls Ferry Road in Jennings. In that case, investigators say a man dressed as a woman again used a long barrel handgun to pull off the crime.

Berkeley and Jennings police are now combining resources.

McCall says, "We have contacted and spoken with Jennings. We will be working with Jennings to ascertain if were dealing with the same individual," explained McCall.

Investigators say in both cases, the suspect may have had either a short beard or a goatee. The suspect in both robberies also hid the gun in his clothes.

Nobody was hurt in either case.

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Police look for adult bookstore robber

by Newsdesk KRCG

Posted: 12.16.2009 at 11:00 AM

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PULASKI COUNTY, MO. -- Pulaski County Deputies are on the lookout for an armed robber who held up the Lions Den Adult Bookstore on Highway 17 in Waynesville before 1 a.m. Wednesday.

The sheriff said the male suspect threatened the clerk with a knife.

The clerk said the suspect was about 6'3", weighing 190 pounds, had a brown mustache and goatee. At the time of the robbery the suspect was wearing a white baseball cap, light colored jeans and a green Carhart style coat with a white tee shirt with a Chevrolet emblem. The suspect drove away in a mid-1990's purple Buick Regal or Century.

Anyone with information on this robbery is asked to call the Pulaski County Sheriff's Office at 573-774-6196.

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Do You Know This Armed Robber?

Last Edited: Thursday, 03 Apr 2008, 9:22 PM CDT
Created: Thursday, 03 Apr 2008, 3:45 PM CDT

By Teresa Woodard

Armed Robbery

(KTVI - myFOXstl.com) -- Police in St. Charles are looking for a criminal carrying a bold weapon and wearing a weird disguise. He robbed an adult bookstore at gunpoint, while his face was painted white.

At least police believe it was white paint on his face. The man walked into the Pure Pleasures Adult Mega center on Old Highway 94 about 4:15 Thursday morning. Police say he was carrying either a rifle or a shotgun and pointed it at the clerk.

Workers say he told the clerk to give him all the money in the cash register. And he instructed him not to look at his face.

"There's some kind of white substance that's on his face," says St. Charles Police Lt. Donovan Kenton. "We're not exactly sure what that is."

"It's a little out of the ordinary for someone to look like that," Kenton says. "It's an assumption he's trying to distort his features a little bit."

"It could be some kind of a skin condition."

Police hope surveillance pictures taken by their security camera lead them to their guy, or better yet that their guy leads police to him.

"Normally what'll happen is he'll brag about it to somebody," Kenton says.

"We're hoping someone in the community knows who this individual is," Kenton says.

He was wearing a grey hoodie, and had it pulled tight around his face. Despite the white disguise on his face, police were able to determine he has a reddish goatee. He's believed to be in his early to mid 30's, approximately 6 feet tall.

Pure Pleasures workers say they were going to immediately institute new security measures, including locking their door on the overnight shift. Anyone who wants in will have to be buzzed in by workers.

If you've got a tip, St. Charles police say someone is manning the phones 24 hours a day. You can call 636-949-3520, or Crimestoppers at 636-949-3333. There is a reward.

News Release from the St. Charles City Police Department:

The St. Charles Police Department is investigating an armed robbery that occurred in the early morning hours of Thursday April 3, 2008 at the Pure Pleasure Video Store located in the 1800 Block of Old Hwy. 94 South. A white male suspect entered the business at approximately 4:13 a.m., displayed a long gun and demanded money from the clerk. After obtaining money from the register, the suspect fled the store.

The suspect is described as a white male, early to mid 30's, approximately 6 feet tall with a medium build and a reddish colored goatee. The suspect was wearing a dark colored coat and a grey "hoodie" sweatshirt with the hood pulled tight around his face and dark colored pants. The suspect is described as having a "painted white face", with some sort of white substance covering his exposed facial area.

Any person having information reference to this crime is asked to contact the St. Charles Police Department at 636-949-3520 or can do so anonymously through St.

Charles CrimeStoppers at 636-949-3333.

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Adult-bookstore robber sentenced

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Adult-bookstore robber sentenced

Gazette Staff The Billings Gazette | Posted: Tuesday, July 27, 2010 12:00 am | (6) Comments

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A man who helped rob a Billings adult bookstore was sentenced Monday in District Court.

Joel Dean Sills, 42, received a sentence of 10 years to the state Department of Corrections, with five years suspended, for the robbery at the Ball Adult Books and Video store on South 26th Street on April 8, 2009.

Sills and a co-defendant, 25-year-old Benajah Phillip Shipp, were charged with robbing the store with a knife.

Shipp died in March, and the criminal case against him was dismissed. Prosecutors said Shipp was armed with a knife during the robbery.

Sills briefly apologized before he was sentenced for felony robbery by accountability.

Judge Gregory Todd followed a plea agreement in the case after a prosecutor said Sills has at least five prior felony convictions.

Sills paid $450 in restitution at the sentencing hearing. Todd agreed to recommend Sills for a state drug treatment program.

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Posted in Crime-and-courts on *Tuesday, July 27, 2010 12:00 am* | Tags: Joel Dean Sills, Ball Adult Books And Video, Robbery

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Adult Bookstore Clerk Cut During Armed Robbery

Clerk Cut In Face, Drives Self To Hospital

POSTED: 1:43 pm EST January 15, 2010
UPDATED: 1:51 pm EST January 15, 2010

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HIGH POINT -- A clerk at the Market Video and News adult bookstore on South Main Street was cut in the face by a man who robbed the business Friday morning, High Point police said.

Police said a man went into the business at about 6:10 a.m., pulled out a knife, and began slashing at the clerk.

The clerk drove himself to High Point Regional Hospital to be treated for three lacerations on his face.

Police said by the time officers arrived, the man was gone. He was described as white, between 30 and 40 years old, with short hair and a goatee. He was also wearing camouflage pants and a dark toboggan hat, police said.

Police spokesman Lt. Steven Myers said something was stolen from the store, but wouldn't say what.

Myers said officers are reviewing surveillance video.

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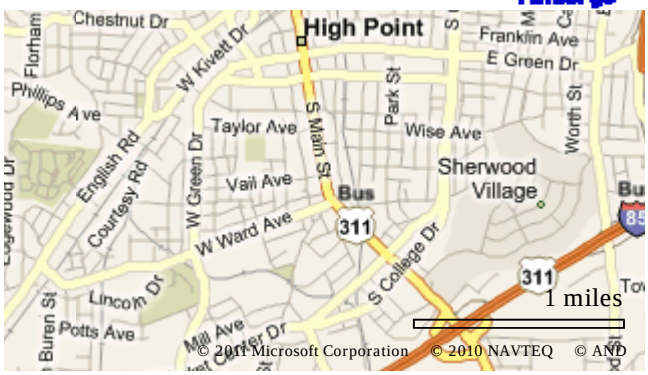

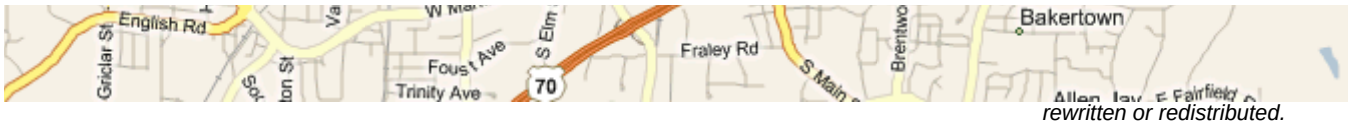

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  ncrangerwillie, tea baggers are those guys who dumped a lot of tea into lakes/rivers after Obama was elected to protest...I'm not sure what the point was, other than to show their dissatisfaction with the changing of the guard. Additionally, it is also a gay sex term (which I find ironic).
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  pardon my dumbness, but whats a tea bagger.....
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  I have to agree, aliluyya and billde (nice use of the Miller quote--and how applicable, considering the headline). Those who think the clerk "got what he deserved" probably also agree with Pat Robertson when he said that essentially, the Haitians got what they deserved because they "made a pact with the devil" during the Haitian revolution.
- billde [Profile]
  Member
  Jan. 18, 2010 12:06pm EST
  billde
  Inappropriate
  I have to agree with aliluyya. It seems that the right-wings idea of rights is that they are free to tell everyone how to live. I quote Henry Miller. "People who go around trying to save the world have either no problems of their own or do not want to deal with them." Tea baggers just go away.
- aliluyya [Profile]
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  Jan. 18, 2010 10:13am EST
  aliluyya
  Inappropriate

even if you work at a less-than-reputable establishment you don't deserve to get slashed on your shift. where are all the tea baggers (how well that term works here) complaining about their possible loss of rights?

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April 10, 2008

Tip leads to arrests of store robbery suspects

Reno police credit an anonymous tip for the arrest of two suspects in the March 30 robbery of a Reno adult bookstore.

Police said they interviewed Robert Mendoza, 44, and Michael Jason Cox, 26, both of Reno, on Tuesday and arrested them on suspicion of robbery, conspiracy to commit robbery and burglary.

Police believe they went into the Adult Theatre and Bookstore at 1052 S. Virginia St. and loitered before one of them used a black handgun to rob a clerk of an unspecified amount of money.

NIAGARA GAZETTE

August 1, 2010

BLOTTER: Police reports published Aug. 2 (http://niagara-gazette.com/policereports/x1936216986/BLOTTER-Police-reports-published-Aug-2)

Police sig

Staff Reports
Niagara Gazette (http://niagara-gazette.com)

NIAGARA FALLS — NIAGARA FALLS

Clerk foils attempted bookstore robbery

A clerk at an adult bookstore managed to disarm a sword-wielding robber early Sunday morning.

The counter clerk at the store in the 8600 block of Niagara Falls Boulevard told police a man entered the store about 3:30 a.m., wearing a goalie mask and holding a 2-foot long machete. The victim said as the suspect tried to come behind the counter, he grabbed the machete and disarmed him.

The suspect and the clerk then struggled with each other before the robber was able to break free and flee the store.

He was last seen running southwest on Cayuga Drive.

Man rescued after fall near Horseshoe Falls

Niagara Parks Police rescued a New Hampshire man after he tumbled in the Niagara River, just above the Horseshoe Falls on Friday.

The incident happened at 7:20 p.m. when parks officers were alerted to an injured man at the corner of Fraser Hill and the Niagara Parkway in the Falls, Ont.

When officers arrived on the scene they found a 43-year-old man from Londonderry, N.H., who had fallen about 10 feet down a steep bank into shallow water about 650 feet above the Horseshoe Falls.

The victim, who happened to be a paramedic, had fallen while trying to get a picture of the falls. He was unable to help himself back to shore because he had fractured his right leg.

Officers were able to climb down to the water level and assist the victim, who was becoming fatigued. He was extricated and then transported to Greater Niagara General Hospital with nonlife threatening injuries.

Police said the victim, who was just starting his honeymoon, was last seen apologizing profusely to his new wife.

Niagara Falls

• THEFT: Police are investigating a car break-in in the 2400 block of South Avenue. A 27-year-old woman told officers sometime between 9:45 p.m. Saturday and 7:30 a.m.. Sunday someone broke into her 2007 Dodge Caliber by smashing a rear driver's-side window. The victim said 15 cents was taken.

• ARRESTS: Two Falls men were arrested on drug and other charges. Keith K. Jackson, 25, 602 18th St., was charged with restricted use of alcohol and unlawful possession of marijuana. Kevin L. Jackson, 21, 1302 Garden Ave., was charged with unlawful possession of marijuana and false personation. Officers said they observed a crowd of people around a car being driven by Keith Jackson in a parking lot in the 1500 block of Pierce Avenue at 12:50 a.m. Sunday. When police approached the car, they found Keith Jackson drinking a beer while he was at the wheel. He also had 12 baggies containing marijuana in his possession. Kevin Jackson gave officers a fake name to avoid being arrested on an outstanding parole violation warrant and also had pot in his possession when he was taken into custody.

• ARREST: A Falls man was arrested after he caused a disturbance when he was stopped for traffic violations. Jeremy Scouten, 32, 2502 Falls St., Apt. 2, was charged with disorderly conduct in addition to the traffic violations. Officers said they stopped Scouten at 19th Street and Welch Avenue at 6:19 p.m. Saturday for running a stop sign and failing to signal a turn. After being stopped, Scouten got out of his car and began screaming and swearing at the officers.

Niagara Gazette 310 Niagara Street Niagara Falls, NY 14302

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Published: 9/1/2012

Adult-bookstore robber sought by Oregon police

BLADE STAFF

Oregon police are seeking information about an armed robbery at an adult bookstore.

Police said a man with a gun entered X-Spot, 2246 Woodville Rd., about 6:20 a.m. Sunday and demanded cash from a clerk. He fled with an undisclosed amount of money.

Police describe the suspect as 30 to 40 years old, about 5 feet tall, 150 to 180 pounds, and of small build.

Anyone with information is asked to call police at 419-698-7060.

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- Man robs same bank 3 times in 3 months
- Four armed robberies in four days hit Eugene

Story Published: Nov 17, 2008 at 10:18 AM PST

By KVAL Web Staff

Video

EUGENE, Ore. -- Two masked men robbed an adult bookstore at gunpoint late Friday night, taking cash and merchandise before fleeing the scene.

The two suspects entered The Adult Shop at 720 Garfield Street around 11:50 p.m. and ordered the two employees to the ground at gunpoint.

The first suspect is described as a white male approximately 20 years-old. He is 5’8” tall with a thin build. He was wearing dark baggy clothing and his face was covered with a bandana.

The second suspect is described as a white male approximately 20 years-old. He is 6’0” tall with a thin build. He was wearing dark baggy clothing and his face was covered with a bandana.

Both subject’s coats were described as “puffy.”

A week earlier, armed robbers committed four crimes in as many days between Friday, Nov. 7, and Monday, Nov. 10. Armed suspects robbed a tavern Friday, a gas station Saturday, a restaurant Sunday and a private residence Monday in the Eugene area.

No one was reported injured in any of the robberies.

"While crime statistics naturally fluctuate, we are indeed seeing a higher-than-typical number of armed robberies this fall," said Kerry Delf with the Eugene Police Department.

Anyone with information about this incident is asked to call Detective Jeff Donaca at (541) 682-5193.

Find this article at:
http://www.kval.com/news/local/34591104.html

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Alert cops and a K-9 capture adult store robbery suspect

BY DAVID F. ASHTON
The Bee, *Sep 8, 2010*

When the 5 ft. 10 in. tall, 170 lb man came strolling into the Fantasyland Video Store — just north of S.E. 52nd Avenue on S.E. Foster Road, at 6 am on the morning of Saturday, August 7, turned out he wasn't looking to check out adult entertainment.

Charges against this suspect, 36-year-old Benjamin Anthony Gomez, include Second Degree Robbery.

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Instead, the man's early Sunday morning plans included confronting an employee, and snatching the store's cash, before riding off into the sunrise.

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"It helped that our police offers got a detailed description of the suspect and his vehicle," commented Portland Police Bureau East Precinct Commander Bill Walker about the case.

"From there on, officers demonstrated great police work," Walker continued. "For instance, the license plate number given them wasn't quite right; it didn't come up. An officer kept running similar plate numbers, and finally pulled the registration of a vehicle that matched the description [of the getaway car], at an address on the 3500 block of S.E. Kelly Street."

At that location, in the neighborhood north and west of S.E 39th Avenue and Powell Boulevard, a non-English- speaking neighbor communicated that he saw a man, matching the suspect's description, running in the area.

"There was a short foot pursuit," Walker revealed.

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A Washington County Sheriff's Office K-9 Unit happened to be nearby, heard the call, and also headed to the location. With the help of the dog, officers took the suspect into custody about a block south of the suspect's listed residence — all happening before 7 am.

"Like I said, this is an example of great police work," Walker concluded, "and, good interagency cooperation."

36-year-old Benjamin Anthony Gomez was charged with the crime, reported police spokesperson Lt. Kelli Sheffer.

The Multnomah County Department of Corrections' records show that Gomez remains in custody, with bail set at more than $250,000 for charges that include Second Degree Robbery, Second Degree Theft, and First Degree Trespass.

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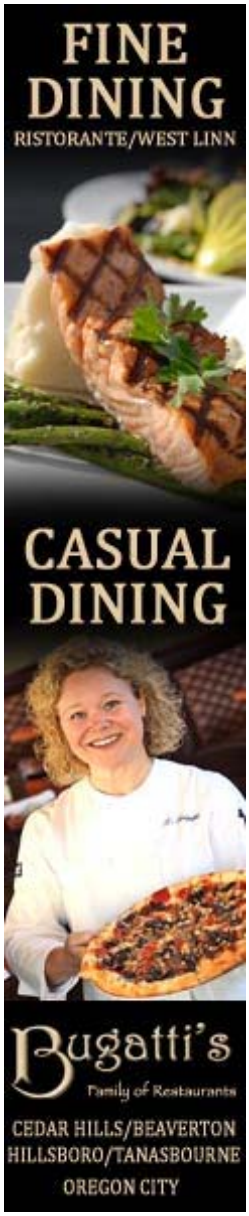

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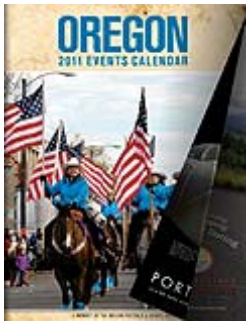

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May 5, 2010

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May 4, 2010

Man pleads guilty to 2 robberies

Robert Landis of Center Valley said he held up gas station, adult bookstore for drug money.

January 14, 2011 | By Kevin Amerman, OF THE MORNING CALL

A Center Valley crack user who was shot during a holdup at an Allentown gas station in May has pleaded guilty to two robbery charges.

Robert Leroy Landis, 41, admitted to Lehigh County Judge Robert L. Steinberg on Thursday that he robbed a Valero gas station on N. Fourth St. in Allentown and the Adult Arcade on Route 309 in Springfield Township, Bucks County, in May.

Each of the felony counts carries a maximum penalty of 10 years in prison.

Landis, who has four previous robbery convictions, according to authorities, was shot in the shoulder by a cashier's son after robbing the Allentown gas station.

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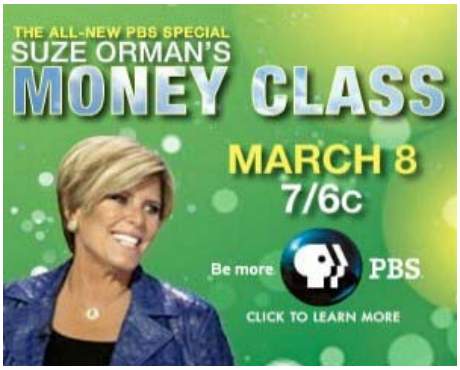

Landis insists he didn't have a weapon, although authorities say he pretended to have a gun. Landis said he was trying to get money for crack cocaine.

"I wasn't out to hurt no one or nothing like that," he said. "I know they didn't know that."

According to Assistant District Attorney Craig Scheetz and a police affidavit:

Landis entered the Valero mini-mart just before 10:30 a.m. May 4 and bought a soda. He then demanded money — holding one hand in his pocket as though he had a gun — and began smashing items on the counter. He pushed the cashier, Laila Hadeed, and stole the cash register and cash drawer, valued at $500. Police didn't say how much cash was in the drawer.

Hadeed told her son, Terry Hadeed, that she had been robbed and the son confronted Landis in the parking lot with a gun. Terry Hadeed told police he fired two warning shots in the air to get Landis to stop while he was entering a station wagon. The son said Landis recklessly tried to drive away, nearly striking him and a customer, Sarina Smith.

Scheetz said after Terry Hadeed was nearly run over, he "emptied his gun into the car," hitting Landis.

At 10:43 a.m., an officer who saw Landis driving away with a smashed back window tried to pull Landis over. Landis wouldn't stop and drove on a sidewalk in an attempt to elude police. Landis eventually ditched the station wagon about two miles south of the gas station and ran into woods east of Basin Street. He was captured around 11 a.m. after yelling that he was hurt. Landis was taken to Lehigh Valley Hospital-Cedar Crest, where he was treated for a non-life-threatening wound.

In an interview with police, Landis admitted robbing the Adult Arcade the day before. In the robbery, he also stole the cash register, injuring employee Sharon Heebner.

Landis' attorney, Andrea Olsovsky, suggested that Terry Hadeed didn't have the right to shoot Landis, saying evidence suggests shots were fired before Landis started driving.

"If he was hit and killed, there would be some sympathy for Mr. Hadeed and not much for your client," Steinberg replied. "When you rob a store, you run the risk that a victim will be armed."

Scheetz noted that Landis had an aluminum baseball bat next to the driver's seat. Olsovsky said he coaches Little League baseball, but acknowledged the rest of the equipment was in the back of the vehicle.

"I think we could all agree he wasn't going to the batting cages that day," Steinberg quipped.

The judge is scheduled to sentence Landis in March.

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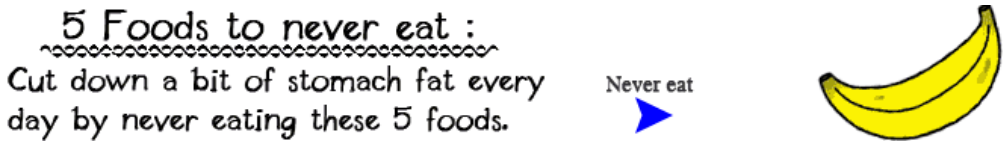

THE MORNING CALL

Porn Shop Robbery

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Reported by: Nate Potter
Friday, August 20 2010

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ANTIS TOWNSHIP, BLAIR COUNTY - Police in Blair County are searching for the person who robbed an adult bookstore with a gun, early Friday morning.

Police say a man walked into the Adult World on Old Route 220 outside of Bellwood, just before 2:00 a.m., pointed a gun at an employee and demanded money.

Police said he got away with an undisclosed amount of cash.

Anyone with information is asked to call the Pennsylvania State Police in Hollidaysburg, (814) 696 - 6100.

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May 27, 1993

Bethlehem police investigate armed robberies

January 07, 2011 | By Pamela Lehman, OF THE MORNING CALL

Bethlehem police are investigating two armed robberies Thursday night at area businesses, but don't believe the holdups are related, according to police.

No one was injured in either robbery, said police Lt. Mark DiLuzio. He said police are still investigating exactly how much cash was stolen from each business.

According to police:

The first robbery happened shortly before 10:30 p.m. at the Lukoil, 2450 Catasauqua Road. Police said a man armed with a sawed-off shotgun came in and stole money from the register before running away.

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He is Hispanic, about 5 feet 7 inches tall with a thin build. He was wearing a black baseball cap with a logo on it – possibly the New York Yankees. Police said he had a black bandana covering his face and was wearing a dark hoodie and baggy jeans.

The second robbery happened around 11:15 p.m. at the adult bookstore at 1162 Pembroke Road. Police said three men, one armed with a semi-automatic handgun, entered the store and robbed the clerk.

Two of suspects are Hispanic men who were both wearing bandanas to cover their faces – one white and one black. One man is about 5 feet 11 inches tall and the second is about 5 feet 7 inches tall. Police said they were also wearing dark hoodies.

The third suspect is a black man wearing a black jacket who stood watch at the door while the other men stole the cash.

Anyone with information may call the police crime tip line at 610-691-6660.

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East Neighborhoods

Gunman arrested in adult bookstore robbery

Sunday, December 04, 2005

Murrysville police arrested a Penn Hills man early yesterday morning just a few minutes after an armed robbery took place at an adult bookstore.

Solomon Kenneth Hickman, 36, faced charges on three counts of robbery, carrying a firearm without a license, reckless endangerment, resisting arrest, and receiving stolen property.

Shortly before 2 a.m., a masked gunman fled from The Adult Mart at 6094 William Penn Highway. Three Murrysville officers stopped a vehicle on Route 22 when they saw a driver fitting the description of the gunman. Police said the vehicle's driver, Mr. Hickman, was abusive and struggled as officers tried to arrest him.

Mr. Hickman is being held at the Westmoreland County Jail.

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TRIBUNE-REVIEW

Robbers use adult bookstore's handcuffs to restrain employee

By Paul Paterra
TRIBUNE-REVIEW
Tuesday, July 19, 2011

A clerk in an adult bookstore in Murrysville was restrained by handcuffs taken from the shelves by two masked robbers toting handguns early Monday morning.

Murrysville police Chief Thomas Seefeld said the two men entered Murrysville Video News on Route 22 at about 2:15 a.m. as the male clerk was closing for the night.

"The clerk was walking through the shop, and a man appears wearing a mask and gloves and displaying a handgun," Seefeld said. "Another male appears dressed the same way, also showing a handgun."

Police were contacted when the clerk's female friend arrived to pick him up and saw two men rushing out of the store to a pickup and driving west on Route 22. When she found the door locked, she called police.

Officers arrived at the bookstore and shattered the glass door to get into the building. The clerk was found in a utility room cuffed to a metal section of the wall, Seefeld said.

"Using handcuffs from the business, they secured (the clerk) to a stationary object," Seefeld said. "They ended up getting an undetermined amount of cash, some of the clerk's personal belongings, including his wallet, and a couple of items from the shop. The (bookstore) had some video surveillance. We don't know if it will be any benefit to us."

Westmoreland County Detectives are assisting with the investigation.

The bookstore, which opened in 1975 under the name Adult World, has a colorful and sometimes violent history marked by two slayings.

• On Nov. 25, 1992, clerk James Scott Swoyer, 23, was shot four times and stabbed once while working the overnight shift. Swoyer's wallet and car keys were not taken; about $80 remained in the cash register. The slaying of the Westmoreland County Community College student remains unsolved.

• In April 1992, the bookstore was raided as part of a statewide crackdown on pornography.

• In 1986, Richard "Rick" Drylie was sentenced to eight to 20 years for the stabbing death of Daryl G. "Larry" Vincent. According to court records, Vincent made a homosexual advance toward Drylie after asking him if he wanted to smoke marijuana. Vincent was stabbed more than 30 times, and his throat was slashed. His body was discovered in a wooded area behind the store.

• On Jan. 13, 1977, a war over the business between two factions escalated into a shootout. William Birdseye, the notorious owner of area pornography dens, and another bookstore operator, John VanEmburg, were in a turf war with Adult World operator Allen Morrow of eastern Pennsylvania. Birdseye was the building's legal owner at the time. He and VanEmburg barricaded themselves in the building with a small arsenal. Morrow, at least five other men, and a Doberman stormed the building. Two of Morrow's cronies were struck by shotgun fire.

Paul Paterra can be reached at ppaterra@tribweb.com or 724-836-6220.

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Tribune-Review

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Pair of suspects sought in heist at Adult Video

By Paul Peirce
TRIBUNE-REVIEW
Tuesday, June 4, 2002

Murrysville police are seeking help from early-morning commuters in solving a robbery Monday at an adult bookstore along Route 22.

Police Chief Thomas Fitzgerald Jr. said a masked man entered Adult Video at 6 a.m. and pointed a gun at a store clerk. Police said the armed robber and an accomplice fled with an undetermined about of cash and merchandise, including a number of adult DVDs.

"The clerk was not watching the door. He heard the door open and when he turned, there was a guy wearing a mask, pointing a handgun at him," Fitzgerald said. "The robber came right over the rack, pointing a handgun at him, and immediately put the clerk down on the floor, tying him up with plastic handcuffs."

Police Detective John Verner said the clerk was unharmed. The clerk said that while he was restrained on the floor behind the counter he heard a second voice, according to police.

"There were at least two people involved," Fitzgerald said.

Verner said the robbers ransacked the store before fleeing out the front door.

"We believe they ran away through the woods to their car, which was parked farther (west) in a field just off Route 22. With all the traffic coming past here toward Pittsburgh at 6 a.m. we believe somebody must have seen something," Verner said.

Police said they believe the thieves parked a vehicle in a field about 100 yards west of the store, just off Route 22.

The clerk, who was not identified, was able to trip an alarm to summon police, but the robbers got away before authorities arrived.

"The clerk's pretty shook up, but otherwise he's OK," Fitzgerald said.

At the time of the robbery, no customers were in the bookstore, which is open 24 hours a day, Verner said.

Although the store is equipped with surveillance cameras, they were not operating at the time of

Photo Gallery

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Murrysville police officers

S.C. Spangler/Tribune-Review

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Hugh Shearer
S.C. Spangler/Tribune-Review

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the holdup, Fitzgerald said.

"We'd appreciate some help from the public on this one," he added.

Police said that while the bookstore has not been the subject of many police calls in recent months, it has, over the years, been the site of numerous incidents of violence.

Store clerk James Scott Swoyer of Jeannette, a 23-year-old Westmoreland County College student, was stabbed to death at the store early on the morning of Nov. 25, 1992. The murder of Swoyer, whose body was discovered by police behind a counter after they broke through a glass door to enter the building, remains unsolved. Police were summoned to the scene when a store manager could not get through a locked door to begin his shift at 9 a.m. the day before Thanksgiving.

Swoyer's was the second murder at the store in less than a decade. Store customer Daryl G. "Larry" Vincent of North Huntingdon Township was stabbed to death in the woods behind the store in 1985. Another customer, Richard "Rick" Drylie, also of North Huntingdon Township, eventually was sentenced to serve eight to 20 years in prison for killing.

According to court records, Drylie became angered after Vincent asked him to come to the woods to smoke a marijuana cigarette and then made a homosexual advance toward Drylie. Vincent was stabbed more than 30 times and his throat was slashed.

Even the issue of the store's ownership has prompted violence. A shootout took between warring factions claiming ownership of the business took place on Jan. 13, 1977, at the store, about two years after it opened as Adult World.

The late William Birdseye, a notorious owner of pornography-related businesses who owned the structure, and another bookstore operator, John VanEmburg, barricaded themselves inside the store.

Allen Morrow, an eastern Pennsylvania man who operated several Adult World chain stores, and five of Morrow's cronies stormed the building with a Doberman. Two of Morrow's men were injured by gunfire.

Anyone with information on yesterday's robbery is asked to call Fitzgerald or Verner at 724-327-2111.

Paul Peirce can be reached at ppeirce@tribweb.com or (724) 837-5374.

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Police seek robber of adult bookstore on Penn Street

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Reading police are asking for help in identifying a man who robbed the Reading Adult Outlet, 316 Penn St., on Jan. 15.

Police said a black man wearing dark sunglasses and a black hat entered the store about 4 a.m. and ran behind the counter.

Investigators gave this further account:

A male clerk hit the panic button, alerting police dispatchers of the robbery.

The robber ordered the clerk to open the register, then grabbed an undisclosed amount of money, jumped over the counter and left the store. He was last seen running across Penn Street.

He was described as 5 feet 9 inches tall with a stocky build.

The clerk wasn't injured. It was unclear if any customers were in the store.

Anyone with information to help police identify the man should call Crime Alert Berks County's tip line at 877-373-9913. Crime Alert will pay a cash reward for information, and tipsters can collect the reward without revealing their identity.

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Courtesy of Reading police

Reading police are seeking this man, who they say robbed the Reading Adult Outlet on Jan. 15.

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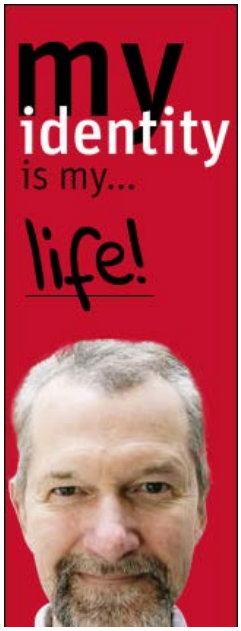

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08/28/2006

Sioux Falls Man Charged With Robbery

A Sioux Falls man is in jail for allegedly robbing a man he had just met at the adult bookstore downtown.

Twenty-one-year-old Lucas Johnson faces a number of charges. Police say he met a 28-year-old Baltic man late Sunday night. After going to eat, police say the two men were in a car, when Johnson pulled out a gun, and took the man's wallet. He also made him get cash out of an ATM.

Police found Johnson later and after a chase on foot they arrested him, finding the gun, the money, and some marijuana in the process.

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8NEWS RightNOW WRIC-TV8/DT RICHMOND/PETERSBURG

Adult Entertainment Store Robberies in Petersburg

March 16, 2007 06:20 PM EDT

FROM 8NEWS

Petersburg Police are investigating a string of robberies by a suspect targeting adult entertainment stores.

Police say "The Thriller" bookstore on East Washington Street was robbed at gunpoint March 4th.

Then on March 10th, just four blocks away, "The LTD" was robbed. In this case, we're told the clerks were pistol whipped, and then shot at as they tried to run away.

Early Friday morning, the same store was robbed again.

In each, the suspect escaped with cash and wallets.

If you have any information, call Petersburg Crime Solvers at (804) 861-1212.

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LOCAL

Last updated June 19, 2007 4:43 p.m. PT

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Owner of Spokane adult bookstore beaten to death in robbery

THE ASSOCIATED PRESS

SPOKANE, Wash. -- The owner of an adult book and video rental store has died after being beaten in a robbery at his store, and police on Tuesday made an arrest in the case.

John G. "Jack" Allen, 74, owner of Best Buy Adult Entertainment, died Monday evening of head injuries he received in the robbery Sunday night, said his nephew, Jason Kazmark. The cash register was taken from the store, as was Allen's pickup, which police found about a block away.

Spokane police arrested Jeramie R. Davis, 36, for investigation of murder and robbery. Davis originally called 911 to report finding Allen on the book store floor. He was arrested after hours of questioning by police.

Allen bought the store in November 1995, when the city was fighting with sex-oriented business owners to curb lewd behavior, and immediately tore out eight viewing booths in favor of an expanded video sales and rental section.

Even so, the store frequently was plagued by burglaries and robberies.

Information from: The Spokesman-Review, http://www.spokesmanreview.com

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Madison police said they might be able to close the book on a half-dozen armed robberies with the arrest of three suspects in the holdup of an east-side adult bookstore.

Kiwanta Ali, 21, Norman Walker, 23 and Peter Zimmer, 29, all of Madison, were arrested in connection with the armed robbery of Red Letter News, 2528 E. Washington Ave., on Dec. 9, police said.

Ali is believed to have been the gunman who entered the store and allegedly struck a customer with a handgun before fleeing with cash, while Walker and Zimmer are believed to be parties to the crime, police said.

Ali and Walker were tentatively charged with parole violations while Zimmer was tentatively charged with being a party to the crime of armed robbery.

Police spokesman Joel DeSpain told madison.com the three suspects are "persons of interest" in other recent armed robberies dating back to mid-November.

Similar holdups over the past month, according to police incident reports, include:

— The armed robbery of the PDQ convenience store at 5280 Williamsburg Way in Fitchburg on Dec. 10.

— The armed robbery of the Speedway gas station at 4902 Verona Road on Dec. 6.

— The armed robbery of the PDQ convenience store at 4202 Milwaukee St. on Dec. 3.

— The armed robbery of Deon's gas station at 2301 Commercial Ave. on Dec. 1.

— The armed robbery of the Stop-N-Go store at 6202 Schroeder Road on Nov. 21.

— The armed robbery of the PDQ store at 7502 Mineral Point Road on Nov. 16.

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Posted in Crime_and_courts on *Wednesday, December 15, 2010 11:55 am* Updated: 5:17 pm. | Tags: Crime, Armed Robbery, Madison Police, Joel Despain, Kiwanta Ali, Norman Walker, Peter Zimmer, Speedway, Pdq, Deon's, Stop-n-go

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Red Letter News robbed again

The Capital Times
November 18, 2008

Red Letter News, 2528 E. Washington Ave., was robbed again at about 5 a.m. Tuesday by a man reportedly wearing a ski mask and saying he had a weapon.

Madison police said the clerk at the adult bookstore didn't see a weapon. The robber took money from the cash register and fled.

The store was robbed twice in April by "bandana bandits," two Madison men who committed six robberies on the east side during the spring and were convicted of the crimes this

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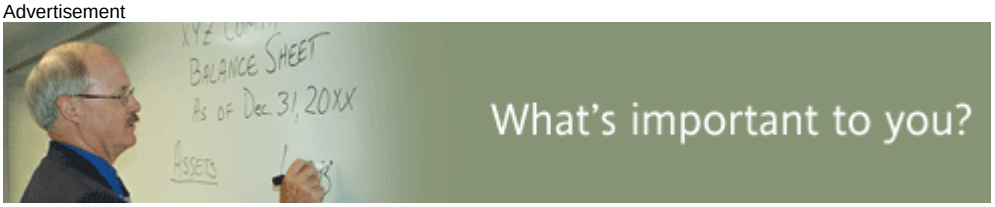

Posted September 26, 2006

Reward offered in bookstore robberies

The Post-Crescent

TOWN OF MENASHA — The owners of an adult book and product store that has been robbed twice in the last three months have offered a $3,000 reward in the case.

Lt. Doug Jahsman said the reward would be paid for information that leads to the arrests and convictions of the person or people involved in the robberies at Eldorado's Adult Book Store, 2545 S. Memorial Drive, in June and last week.

A man wearing a hooded sweatshirt and cap pulled down to his eyes entered the store Thursday, pushed a clerk to the floor and fled with an undetermined amount of money.

The clerk described the suspect as 5 feet 8 to 6 feet tall with a medium build. He was reported to be wearing dark clothing, a hooded sweatshirt an eyes.

A robber also took an undetermined amount of money June 18.

Police ask anyone with information on the incidents or suspects to call investigators

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Man charged in armed robbery

January 15, 2011

PARKERSBURG - A Parkersburg man was arrested Friday for robbing Pioneer Adult Bookstore at gunpoint this week, officials said.

Timothy Randall Constable, 21, 6337 Emerson Ave., was charged with armed robbery Friday and remains in custody waiting for a bond hearing in circuit court.

According to the Wood County Sheriff's Office, Constable and an accomplice entered Pioneer Adult Bookstore, 6603 Emerson Ave., around 11 p.m. Tuesday, threatened the clerk with a gun and demanded money. He fled with an undisclosed amount of cash and valuables, police said.

Deputy Mark Smith followed the suspect's footprints in the snow for more than a mile Tuesday night, giving officers a lead into the suspect's whereabouts, according to a press release from the Wood County Sheriff's Office.

Constable was arraigned Friday before Wood County Magistrate Brenda Marshall. Since his offense is a capital offense, his bond is set in circuit count rather than magistrate court.

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