COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2010 Legislative Session, Legislative Day No.: September 28, 2010

Bill No. : 1200

Expiration Date: December 2, 2010

Introduced by: Mr. Duncan, Mr. Foster, Mr. Harrison

A BILL TO AMEND CHAPTER 190 ZONING, SUBDIVISION, AND LAND DEVELOPMENT, TO PROVIDE DEFINITIONS, PERMITTED LOCATIONS, AND SUPPLEMENTAL STANDARDS FOR SEXUALLY ORIENTED BUSINESSES

By the Council: September 28, 2010

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, October 26, 2010 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran

Susan W. Moran, Secretary

A BILL TO AMEND CHAPTER 190 ZONING, SUBDIVISION, AND LAND DEVELOPMENT, TO PROVIDE DEFINITIONS, PERMITTED LOCATIONS, AND SUPPLEMENTAL STANDARDS FOR SEXUALLY ORIENTED BUSINESSES

WHEREAS, Talbot County is authorized by Article 25 A § 5, *Maryland Annotated Code* to enact such ordinances as it deems necessary to protect and promote public health, safety, and welfare, including zoning, subdivision, and land use ordinances, rules, and regulations; and,

WHEREAS, the County Council recognizes the significant planning, zoning, property value, and other secondary effects associated with or arising from the location and operation of Sexually Oriented Businesses; and,

WHEREAS, the County Council adopted Bill Number 1166, which placed a 9 month moratorium on Sexually Oriented Businesses, to explore and establish, as appropriate, proper zoning and other controls to reduce the negative secondary effects of such businesses; and the County Council adopted Resolution 163 to continue the moratorium for an additional 6 months; and,

WHEREAS, during the moratorium, the County Attorney, the Planning and Zoning Department's staff, the Planning and Zoning Commission, have studied the issue and have prepared a study summary of the investigation, analysis, and findings for the County Council, attached as Exhibit "A"; and,

WHEREAS, for the reasons contained in the attached study and based on the information reviewed and provided in and with the attached study, the County proposes amendments to the County's Zoning Ordinance; and,

WHEREAS, on August 14, 2010, the Planning and Zoning Commission considered the study and the zoning ordinance amendments, and has recommended that the County Council adopt this Bill.

NOW, THEREFORE, the Talbot County Council hereby ordains that the sections of the Zoning Subdivision, and Land Development Ordinance, Chapter 190, be amended as set forth below:

	KEY
Boldface.....	Heading or defined term.
Underlining.....	Added to existing law by original bill.
~~Strikethrough~~.....	Deleted from existing law by original bill.
Double underlining.....	Added to bill by amendment.
~~Double strikethrough~~	Deleted from bill by amendment.
* * *.....	Existing law unaffected.

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that:

SECTION TWO: The above recitals and the attached study are incorporated by reference and are made part of this Ordinance.

SECTION THREE: Section 190 of the Talbot County Code entitled 'Zoning, Subdivision and Land Development" is amended as follows:

Article III, § 190-16 Table III-1. General Table of Land Uses is amended as follows:

	AC	CP	WRC	RC	RR	TC	TR	VC	LC	GC	LI
Sexually Oriented Business											P

* * *

§ 190-92.1 Sexually Oriented Business

A. In addition to any buffer, buffer yard, setback, or other design criteria generally applicable to permitted uses, a Sexually Oriented Business must meet the following minimum setbacks:

(1) A building or structure housing a Sexually Oriented Business shall be located at least 1,000 feet from any land parcel zoned residential and at least 1,000 feet from any parcel containing a school, house of worship, park or recreation facility, day care center–small group, day care center–group, or day care facility–family.

(2) For this section's purposes, measurement shall be made in a straight line, between the closest points of the affected structures and the affected parcels.

(3) A lawfully operating Sexually Oriented Business shall not be rendered a non-conforming use by the subsequent change in zoning of neighboring parcels or the subsequent location of a use listed in §190-92.1 A. (1) above.

B. A Sexually Oriented Business shall:

(1) Have lighting to a level of at least two foot candles for all exterior areas including but not limited to, parking lots or areas, loading docks, and sidewalks; and,

(2) Shall be equipped with video surveillance cameras that monitor the premises' exterior from a management station located within the business.

C. A Sexually Oriented Business shall keep all parking areas visible from a public right of way to the maximum extent possible. The location or construction of a fence, wall, or

other barrier that prevents any portion of the parking lot(s) from being visible from a public right of way is prohibited. Any such barrier that exists at the time a Sexually Oriented Business is established shall be removed.

D. A Sexually Oriented Business shall post signs that limit its parking areas to the exclusive use of its patrons and employees and shall prohibit trespassing by all others.

E. A Sexually Oriented Business shall conduct, display, deliver, perform, and/or provide adult entertainment or adult material so as to be visible only from within the interior of the building. No such adult entertainment and adult material or visual representations of such entertainment and material shall be visible in any way, manner, or degree from any place outside the building.

F. A Sexually Oriented Business shall locate only on parcels or in buildings not containing any hotel, motel, bed and breakfast, inn, or boarding house. No Sexually Oriented Business may operate in any structure or portion thereof not generally open to the public and freely accessible and fully visible to patrons and employees at all times, except storage or other areas restricted to employees only.

* * *

Article XI Definitions:

§ 190-208. Definitions

Adult Cabaret—A building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is

46 distinguished or characterized by an emphasis on the exhibiting of specific sexual activities or
47 specified anatomical areas for observation by patrons.
48
49 **Adult entertainment or material**—Any performance, depiction or text that is intended to cause
50 or provide, or which reasonably may be expected to cause or provide, sexual stimulation, sexual
51 excitement, or sexual gratification; and
52 A. In which an individual or individuals appear in a state of nudity or partial nudity; or
53 B. That consists, in whole or in part, of action, activity, poses, portrayal, depiction, or
54 description of:
55 (1) Human genitalia in a discernable state of sexual stimulation or arousal; or
56 (2) Any act, whether real or simulated, of masturbation, sexual intercourse, anal
57 intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female
58 breasts, pubic area, or genital area, sadomasochistic activity, physical contact or
59 attempted contact with clothed or unclothed genitalia, pubic areas, buttocks, anus,
60 or female breasts; or
61 C. Consists of contact with animals or inanimate objects.
62 **Nudity**—a state of dress which reveals:
63 A. The showing of the human male or female genitalia, pubic area, or buttocks with less than
64 fully opaque covering;
65 B. The showing of the female breast with less than a fully opaque covering over any part
66 below the top or uppermost part of the areola; or
67 C. The depiction of covered male genitalia in a discernibly turgid or erect state.
68 **Partial nudity**—a state of dress which reveals

69 A. The human male or female buttocks; or

70 B. The female breasts below the top or uppermost part of the areola, excluding portions of the

71 human female cleavage exhibited by a dress, or other apparel, provided the areola is not

72 exposed in whole or in part.

73 **Sadomasochistic activity**—images or live performances depicting:

74 A. Flagellation or torture, whether real or simulated, by or upon an individual;

75 B. The condition of being, or causing oneself or another to be, fettered, bound, or otherwise

76 physically restrained.

77 **Viewing booth**—a space or area for viewing a display device showing pictures, films, videotapes,

78 or other images containing adult entertainment or material.

79 **Sexually oriented business**—An inclusive term describing establishments that devote more than

80 ten percent of their public floor area and/or their stock in trade to adult entertainment or materials

81 and either:

82 A. Conduct, promote, deliver, provide, or offer performance of adult entertainment or

83 material, including, but not limited to that occurring in, at, or in connection with an Adult

84 Cabaret, lounge, night club, modeling studio, bar, restaurant, club or lodge, or other

85 establishment; or,

86 B. Sell, provide, rent, or promote adult entertainment or material, in any format, form, or

87 medium, including, but not limited to, books, magazines, videos, DVDs, CDs, movies,

88 photographs, and/or coin operated or pay-per-view viewing devices, including, but not

89 limited to, the operation of an adult book or video store, movie theatre, or viewing booth.

90

* * *

SECTION FOUR: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

SECTION FIVE: AND BE IT FURTHER ENACTED, that if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION SIX: This legislation does not abrogate or affect any statute, ordinance, regulation, or resolution that is more restrictive in the regulation of Sexually Oriented Businesses.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Susan W. Moran, Secretary

Harrison _____

Pack _____

Duncan _____

Foster _____

Bartlett _____

August 27, 2010

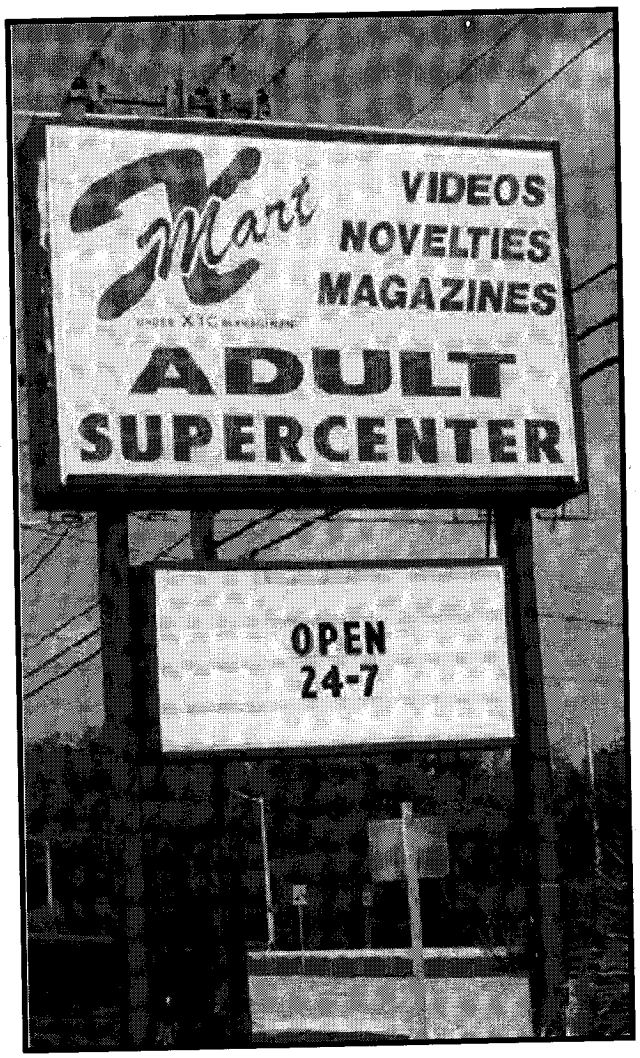
Exhibit A

Sexually Oriented Business Draft Study Talbot County, Maryland

Introduction

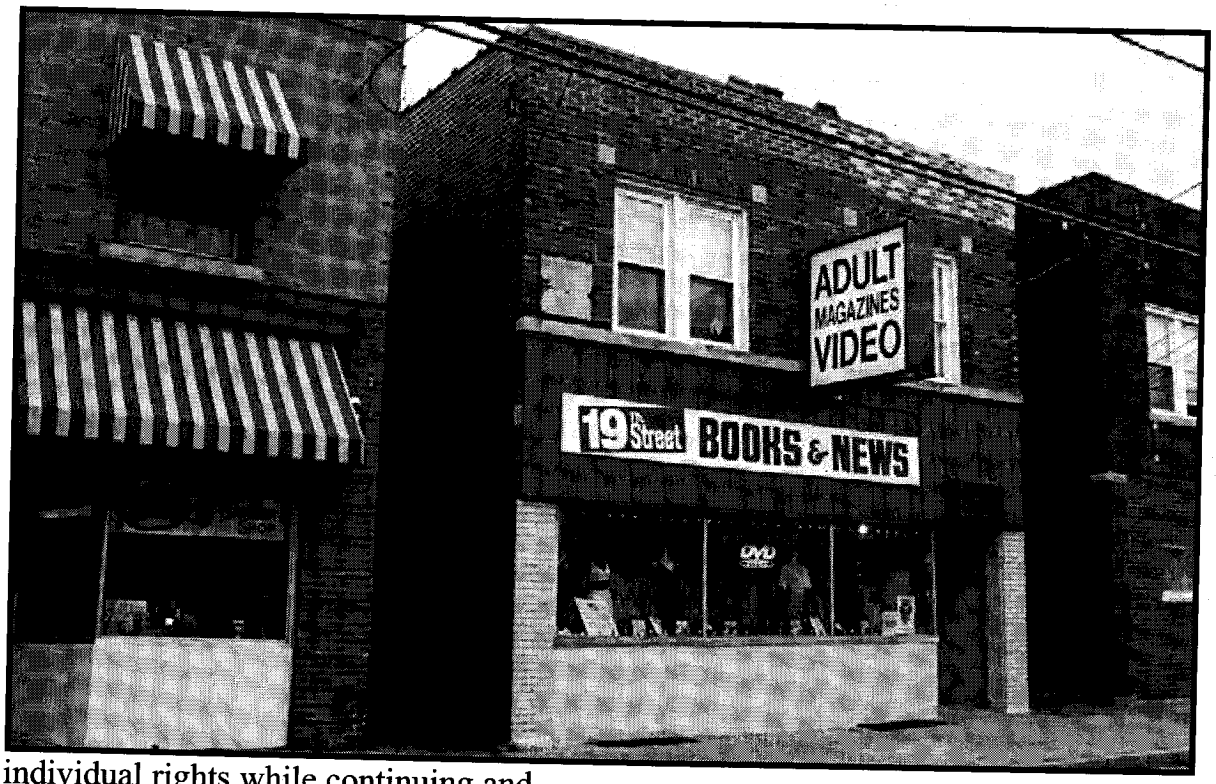
Talbot County's comprehensive plan contains the following vision:

> *The primary goal of Talbot County's Comprehensive Plan is to preserve the* ***Quality of Life*** *and* ***Rural Character*** *while protecting the health, safety and well-being of its citizens. Recognizing that the overall environment is an economic asset of the County, protection of our agricultural lands and waterways, and their harvests, is a high priority. . . The high quality of the County's infrastructure (including schools, roads, and sewer and water) is maintained as the County's needs change and grow. The livability and economic vitality of our towns, along with our historical treasures and cultural amenities, are highly valued.*
>
> *Talbot County affords those who live here an unusually high Quality of Life. Our comprehensive planning, our land use decisions, and our growth management strategies are all completely oriented to sustaining and enhancing this remarkable place "where land and water intertwine."* [1]



[1] Excerpted from "Vision Statement for Talbot County Comprehensive Plan", *Comprehensive Plan Talbot County*, Maryland, 2005, page V.

To foster this vision, Talbot County has carefully developed and implemented a land use strategy which respects individual rights while continuing and striving to improve the County's quality of life. The Talbot County Council recognized that the County's present codes do not specifically address sexually oriented businesses and that such uses could have negative effects if improperly sited and/or operated. Therefore, the County Council determined that this issue should be studied and a menu of legitimate regulatory options should be considered.



To this end, the Talbot County Council directed its staff and Planning Commission to study sexually oriented businesses determine their potential neighborhood and regional impacts and recommend how to accommodate such uses while reducing their negative effects in a manner consistent the federal and state law as well as the *Talbot County Comprehensive Plan.*

The purpose of this document is to identify through the experience and research of other communities the secondary effects and the most appropriate methods to mitigate them while maintaining the First Amendment rights granted by the United States Constitution. Generally, the courts have held that regulation of sexually oriented businesses cannot target the content of the material or entertainment, but rather regulating them to avoid negative secondary effects of such uses is appropriate[2].

2 St. Croix County Planning Department, St. Croix County, Wisconsin, *Regulation of Adult Entertainment Establishments in St. Croix County*, 1993, page 8.

Background

On August 25, 2009, the County Council adopted Bill #1166 imposing a temporary moratorium on sexually oriented businesses. The moratorium began on October 25, 2009. The moratorium gave the County:

1. The opportunity to evaluate the sexually oriented businesses' potential effects on property values, crime and community values,
2. The ability to determine what if any regulatory and administrative response was necessary, and
3. The time if required to construct a well thought out response complete with necessary legislation and administrative mechanisms to further the public health, safety and general welfare …

During the moratorium period, the Planning and Zoning Commission discussed sexually oriented businesses at several meetings, and county staff reviewed and summarized applicable studies for the Planning Commission and County Council to aid in their consideration of regulating sexually oriented businesses

For the purpose of this study, sexually oriented businesses include but are not limited to:

1. Establishments that sell adult (sexually oriented) books and magazines and adult (sexually oriented) videos (XXX), and
2. Bars, restaurants, clubs, cabarets and other establishments that feature live partially nude or nude oriented entertainment, dancing, and/or other venues of an adult and sexually oriented nature.

At this time there are no sexually oriented businesses in Talbot County. The County's zoning ordinance does not specifically define nor distinguish sexually oriented businesses from other commercial establishments other than by reference to the American Planning Association's publication, *A Planners Dictionary*. See Appendix 1 for *The Planners Dictionary* definitions. As a result, a sexually oriented business could open in a vacant retail store or replace an existing establishment today without formal consideration of its secondary effects on property values, crime, and community character. Below this study

identifies these secondary effects as a basis for appropriate review and regulation of such uses in Talbot County.

This study follows standard practice for addressing sexually oriented businesses. This approach requires a jurisdiction to conduct a study of sexually oriented businesses' potential secondary effects and how they could affect the jurisdiction. Once the potential effects have been established, a set of regulatory measures can be developed to address them. This study provides the first step in this process.

Secondary Effect Studies

Without local experience with sexually oriented businesses, the County has gathered and reviewed the available literature on the subject. The County's review began with United States Supreme Court's record on this matter. The Supreme Court has held in several cases that:

1. A jurisdiction may rely on evidence that is reasonably believed to be relevant for demonstrating a connection between speech and a substantial, independent government interest.[3]
2. There is no requirement that a jurisdiction conduct an independent study, or that there actually be adverse effects from existing businesses before the jurisdiction can act.[4]

In addition the courts have established a four part test to determine if a jurisdiction's response to sexually oriented businesses is constitutional:

1. The regulation is within the constitutional power of the government;
2. The regulation furthers an important or substantial government interest;
3. The government interest is unrelated to suppression of free expression' and
4. The incidental restriction of First Amendment freedom is no greater

[3] *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002), quoting *Renton v. Playtime Theatres*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986).

[4] *Pack Shack, Inc. v. Howard County*, 377 Md. 55, 832 A.2d 170 (2003).

than necessary to further the government interest.[5]

Over the last several decades, seminal studies of sexually oriented businesses' effect on their neighborhoods were conducted across the nation. Important studies were conducted for:

- Kansas City, Missouri
- Rochester, New York
- Denver, Colorado
- Fort Worth, Texas
- Indianapolis, Indiana
- New York City, New York
- Newport News, Virginia
- St. Paul, Minnesota
- Tucson, Arizona
- Whittier, California

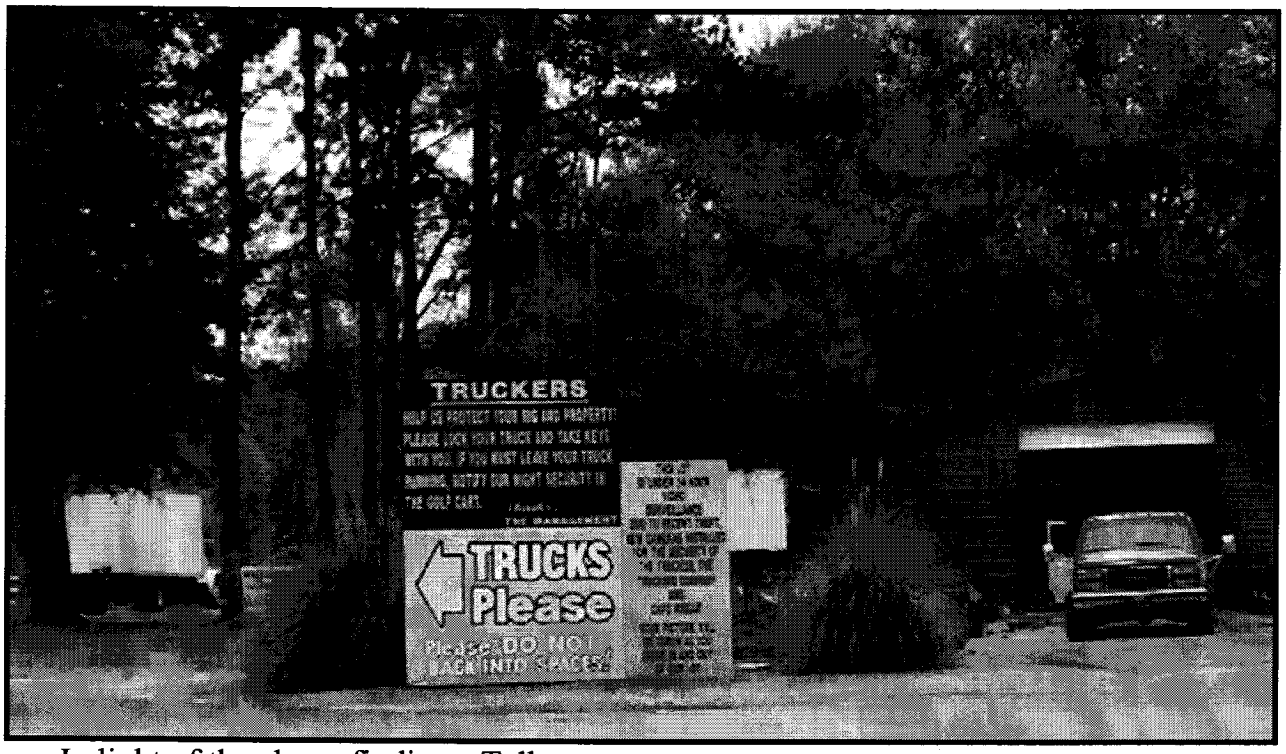
These studies involved several designs including surveys of businesses within the area of sexually oriented businesses, queries of real estate brokers and/or appraisers, comparisons of crime and property values and their trends, resident turnover rates, and business vacancies.

The studies' findings of negative impacts can be summarized as follows:

1. Real estate professionals believe that there are significant negative impacts on both residential and commercial properties within 500 feet of a sexually oriented business.
2. The greatest negative impacts on property values accrue to properties on the same block.
3. Residential properties suffer greater declines in property values than commercial properties.
4. The most significant impacts on neighbors results from live entertainment and/or businesses with direct interaction between patrons and entertainers or employees.
5. There is a greater correlation between crime incidents with businesses with on-premise entertainment as opposed to retail sales businesses.
6. Crimes increase in areas of concentrated sexually oriented businesses, but they are not necessarily violent crimes and the increase in crime is similar to that associated with bars, nightclubs and other non-sex oriented adult entertainment. In one study (New York) the link between crime and sexually oriented business was inconclusive.
7. Prostitution flourished in two studies of adult oriented business concentrations (Denver and Whittier).6

[5] McClendon, Bruce W., "Zoning for Adults Only", *Zoning News*, August 1985, pages 2-3.

6 Kelly, Eric D. and Cooper, Connie, *"everything you always wanted to know about regulating sex businessessxxx"*, American Planning Association, Planning Advisory Service Report Number 495/496, Chicago, Illinois, 2000, page 65.



In light of the above findings, Talbot County, to protect the public health safety and general welfare seeks to control sexually oriented businesses to prevent the secondary effects identified.

Secondary Effects and Talbot County

Talbot County's rural character and the historic charm of its incorporated municipalities and its unincorporated villages should be protected from unnecessary diminution of property values, increased crime and a decline in community character. Easton, the County seat, recently ranked as one of the ten best small towns in America and as one of the best small towns in America for the arts. [7]

Talbot County quality of life and economy are rooted in our rural and agricultural character, extensive Chesapeake Bay shoreline, historic villages, municipalities and properties. The County relies on its natural resources and rural character to retain and attract visitors and residents alike. Talbot County has a significant trade in recreational tourism, and the County serves as second home destination.

Potential Adult Uses

The County Council enacted its moratorium on sexually oriented businesses in response to an adult oriented business attempting to locate in the Town of Easton. The County did not have code provisions to appropriately regulate such businesses. Several other

[7] N. Crampton, "The 100 Best Small Towns in America" and J. Villani, "100 Best Small Art Towns in America: Discover Creative Communities", *Fresh Air and Affordable Living* p. 121 (2d Ed., 1995) and (3rd Ed., 1998).

locations on Maryland's Eastern Shore have experienced interest from sexually oriented businesses, e.g. Ocean City. On the Eastern Shore there exist adult businesses in Salisbury, Maryland and Dover, Delaware[8].

In 2000, Talbot County's year round population was 33,890 which is estimated to have grown to 36,262 by 2009. The Town of Easton had 11,708 inhabitants in 2000. Easton is the third largest year-round town on the Eastern Shore. It is only behind Salisbury and Elkton. Easton's population estimate for January 1, 2009, was approximately 15,250. Another major population source is the traveling public along U.S. Rt. 50. On average, over 30,000 vehicles move on through U.S. Rt. 50 in Talbot County. The Town of Easton as a significant population center along with the transient population traveling on U.S. Rt. 50, makes Talbot County a potential location for sexually oriented businesses.

Possible Secondary Effects

Without firsthand experience with sexually oriented businesses, Talbot County must seek the experience and information from other communities. As noted earlier, many communities have prepared secondary effects studies of adult oriented establishments. These studies provide a variety of analysis techniques from communities of varying scales. For this study the resulting regulatory approaches of a variety of communities regulating sexually oriented businesses were consulted.

Of necessity, this study relies on the findings of other sexually oriented business secondary effect studies. See Appendix 2 for a list of the studies reviewed. This work was done to develop an appropriate strategy for addressing adult uses in Talbot County. While some of the communities reviewed differ greatly in size and location, the potential effects from adult uses at the neighborhood level proves to be similar and largely consistent across the many and varied studied areas.

The secondary effect reports have been made available to the County Planning Commission and County Council. This area of local regulation has been litigated over the last several decades. The major cases are listed in Appendix 3.

The studies and court cases provide sufficient documentation to support the following findings:

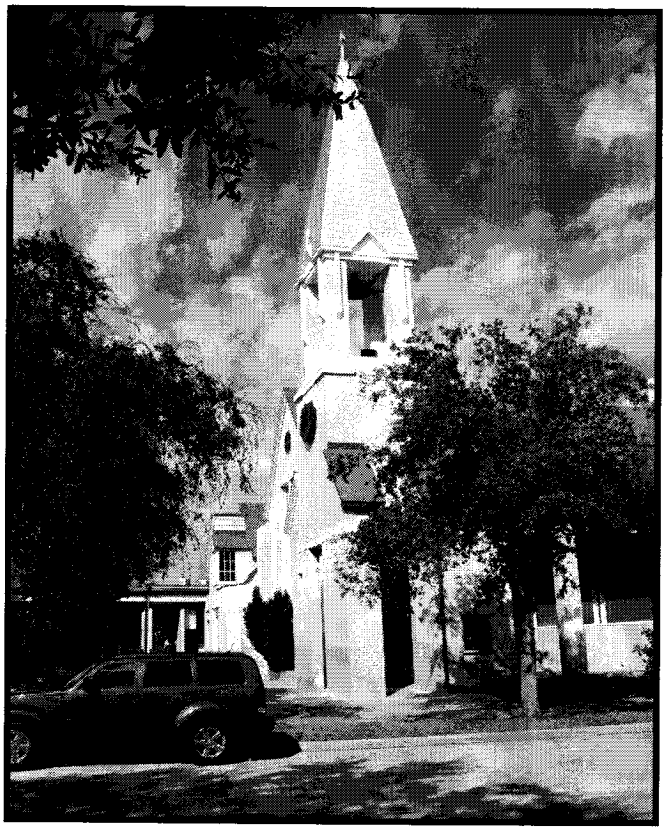
1. Sexually oriented businesses, as a category, are associated with adverse secondary effects including, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, decrease in property values, urban blight, litter, and sexual assault and exploitation.

[8] Adult book stores are located in these jurisdictions.

2. Sexual acts may occur inside such uses or in the parking lot, especially uses which provide private or semi-private areas for viewing films, videos, or live shows. Such acts pose a risk to public health through the spread of sexually transmitted diseases.

3. Sexually oriented businesses attract and are often supported by a transient population with not ties to the community and therefore, no inherent motivation to refrain from defiling the community.

4. Each of the above secondary effects, along with those cited on pages 3 and 4 earlier in this study, constitute unnecessary and unacceptable negative impacts which the County has a substantial government interest in preventing and/or abating. This substantial interest exists independent of any comparative analysis between adult oriented and non-sexually oriented businesses.



Talbot County's rural character, coupled with its strong recreational/tourism component of the economy, create a direct relationship between the County's community and visual character and the health of the local economy. This character's definition arises in part from the desirability of County's commercial areas and the general ambience of the County's historic towns, villages and properties. If sexually oriented businesses were to locate indiscriminately within the County, this would significantly impact the County's property values, economy and quality of life.

Sensitive Land Uses

The secondary effect studies show that sexually oriented businesses should be separated physically from certain land uses to mitigate potential negative effects. Separation standards protect uses e.g., residential areas, playgrounds, that attract families and youths so that they will not be exposed to the negative secondary effects of sexually oriented

businesses. In addition, the historic and cultural centers should also be buffered. Specifically these uses and places most sensitive to the adverse impacts of sexually oriented businesses include:

1. Residential neighborhoods
2. Schools
3. Houses of worship
4. Park or youth oriented recreation facilities
5. Day care facilities
6. Historic districts and areas

Recommendations

To address secondary effects of sexually oriented businesses a combination of zoning and licensing requirements are recommended. This strategy provides for suitable location, design and operation standards. More detailed recommendations follow.

1. Permitted Zoning District— Industrially zoned areas serve as the most appropriate zoning districts for sexually oriented businesses. This zoning provides the least conflict between sexually oriented businesses and the neighboring uses. The "Limited Industry" (LI) zoning districts provide the best opportunities for sufficient buffering from the sensitive land uses identified above while allowing them reasonable location opportunities.

2. Separation Distances— Sensitive land uses listed above should be buffered from sexually oriented businesses. Based on the studies consulted for this document the following minimum separation distances are recommended:

a. Residentially zoned property 1,000 feet
b. Schools 500 feet
c. Houses of worship 500 feet
d. Parks or Recreational Facilities 500 feet
e. Day Care facilities 500 feet
f. Historic areas 500 feet

3. Licensing—Create a licensing structure that will require adult businesses to obtain and maintain a sexually oriented business license. This will provide for annual inspections to ensure the properties do not become a health issue or safety hazard.

4. Operation Standards—The license should require:
   a. Physical contact between employees and the clientele be limited to the extent allowed by law
   b. Staffing minimums
   c. Visibility of clients and their activity requirements
   d. Preventing lewd and other illegal conduct should be the responsibility of the licensee
   e. Create reasonable standards for hours of operation
   f. Prohibit individuals under the age of 18 from entering sexually oriented businesses
   g. Establish specific standards for video viewing booths

5. Design and sign standards—Create reasonable standards for the architecture, physical configuration, lighting, parking and signage of sexually oriented businesses for safety and neighborhood compatibility purposes.

Conclusion

This document summarizes the legal considerations and potential secondary effects of sexually oriented businesses. Such businesses are protected by the First Amendment's freedom of speech provisions, but such uses have demonstrated negative secondary effects which Talbot County has a legitimate interest in minimizing. Talbot County reviewed the literature and available studies from other jurisdictions on sexually oriented businesses, which has been summarized in this document.

After careful consideration of this body of work, the Department of Planning and Zoning staff recommends to the Talbot County Planning Commission that they recommend to the County Council the adoption of regulations, standards and license requirements to ensure the location and operation of sexually oriented businesses maintains property values and community standards to the maximum extent feasible while protecting such use's legitimate rights.

Attachment 1

Adult Business Definitions

Excerpted from the American Planning Association, *A Planners Dictionary*, pages 47-51.

▪adult use definitions
Commentary: *There are a number of difficult legal issues to consider in drafting regulations for adult uses. The ordinance definitions can be of critical importance in determining whether the regulations violate constitutional protections of free speech. Vaguely worded definitions that leave the business owner uncertain as to whether his or her business falls within the ordinance definition of adult uses are likely to be rejected by the courts. Most of the definitions provided here use the terms "specified anatomical areas" and "specified sexual activities" to make clear what the community considers to be aspects of adult use activity.*
▪adult use, adult arcade--An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. *(San Bernardino, Calif.)*
Any business which provides on its premises four or more machines which upon the insertion of a coin or slug may be operated for use as a game, contest, or amusement of any description, not including musical devices. *(Beverly Hills, Calif.)*
Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video, or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas. *(Loveland, Colo.)*
▪adult use, adult bookstore--Any premises from which minors are excluded and in which the retail sale of books, magazines, newspapers, movie films, devices, slides, or other photographic or written reproductions is conducted as a principal use of the premises; or as an adjunct to some other business activity, but which constitutes the primary or a major attraction to the premises. *(Rock Hall, Md.)*
An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other periodicals or photographs, drawings, slides, films, video tapes, recording tapes, and novelty items which are distinguished or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section devoted to the sale or display of such material. Such establishment or the segment or section devoted to the sale or display of such material in an establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age. *(Beverly Hills, Calif.)*
An establishment which has as a substantial portion (25 percent or more of gross floor area) of its stock-in-trade and offers for sale for any form of consideration any one or more of the following: (1) Books, magazines, periodicals or other printed matter, or films, motion pictures, photographs, slides, video cassettes or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or (2) devices, instruments, or paraphernalia which are designed for use in connection with "specified sexual activities." *(Truckee, Calif.)*
adult bookstore
administrative decision adult use, adult bookstore
A business having as a substantial and significant portion of its stock-in-trade, revenues, space, or advertising expenditures of one or more of the following: (1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, laser discs, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or (2) instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities. *(Loveland, Colo.)*
An establishment that rents or sells media that meets any of the following tests: 50 percent or more of the gross public floor area is devoted to adult media as defined in [city code]. 50 percent or more of the stock-in-trade consists of adult media as defined in [city code]. *(Normal, Ill.)*
▪adult use, adult cabaret--A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides, or other photographic reproductions in which more than 10 percent of the total presentation time is devoted to the showing of material that is characterized by

any emphasis upon the depiction of specified sexual activities or specified anatomical areas. . . . *(Southington, Conn.)*
A commercial establishment which presents go-go dancers, strippers, male or female impersonators, or similar types of entertainment and which excludes any person by virtue of age from all or any portion of the premises. *(Burien, Wash.)*
An establishment which features any of the following: topless dancers or bottomless dancers; go-go dancers, strippers, male or female; or similar entertainers or topless or bottomless waitresses or employees. *(Beverly Hills, Calif.)*
Nightclub, restaurant, or similar establishment which regularly features live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, photographs, slides, video cassettes, or other photographic reproductions which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. *(Truckee, Calif.)*
A nightclub, bar, restaurant, or similar commercial establishment which regularly features: (1) persons who appear in a state of nudity or semi-nudity; (2) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." *(Lo*
adult use, adult entertainment business--Any adult bookstore, adult hotel or motel, adult motion picture arcade, adult motion picture theater, cabaret, sexual encounter center, or any other business or establishment that offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, but not including those uses or activities, the regulation of which is preempted by state law. *(Truckee, Calif.)*
An establishment providing nude dancing or other live or recorded performances that depict, describe, or relate to specified sexual activities: human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, oral copulation, or sodomy; fondling or other erotic touching of human genitals (pubic region), buttocks, or female breasts; or specified anatomical areas. *(Milwaukee, Wisc.)*
An adult bookstore, adult mini-theater, massage establishment, model studio, or sexual encounter or meditation center. *(Pittsburgh, Pa.)*
▪**adult use, adult media**--Magazines, books, videotapes, movies, slides, CDROMS, other devices used to record computer images, or other media that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to hard-core material. *(Normal, Ill.)*
▪**adult use, adult mini motion picture theater**--An enclosed building with a capacity for fewer than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas. . . . *(Shelby County, Tenn.)*
A building or space with a capacity for fewer than 50 persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas as herein defined, for observation by patrons therein. The phrase "used for" in this definition shall mean a regular and substantial course of conduct and not a one-time presentation of such material. *(Bloomington, Minn.)*
An enclosed building with a capacity for less than 50 persons used commercially
adult cabaret
adult use, adult cabaret adult use, adult mini motion picture theater
for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age. *(Beverly Hills, Calif.)*
A business establishment, with a capacity for 50 persons or fewer, where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and 30 percent or more of the number of which are distinguished or characterized by an emphasis upon the depicting, describing, or relating to specified sexual activities or specified anatomical parts. *(San Juan Capistrano, Calif.)*
An enclosed building with a capacity of 150 or fewer persons, and predominantly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein. *(Mishawaka, Ind.)*
▪**adult use, adult motion picture theater**--An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description

of specified sexual activities or specified anatomical areas. *(San Bernardino, Calif.)*
A building or space with a capacity of 50 or more persons used for presenting material distinguished or characterized by and emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas as herein defined, for observation by patrons therein. The phrase "used for" in this definition shall mean a regular and substantial course of conduct and not a one-time presentation of such material. *(Bloomington, Minn.)*
Abuilding, enclosure, or portion thereof, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein. *(Burien, Wash.)*
An enclosed building with a capacity of 50 or more persons used commercially for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons herein. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age. *(Beverly Hills, Calif.)*
A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. *(Loveland, Colo.)*
An enclosed building with a capacity of more than 150 persons, and predominantly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein. *(Mishawaka, Ind.)*
▪**adult use, adult retail establishment**
Any retail establishment which, for money or any other form of consideration either: (A) has as one of its principal purposes to sell, exchange, rent, loan, trade, transfer, or provide for viewing, off the premises, any adult oriented merchandise as defined in [city code]; or (B) provides, as its substantial stock-in-trade, for the sale, exchange, rental, loan, trade, transfer, for viewing or use, off the premises, any adult-oriented merchandise [as defined in city code]. *(Richland, Wash.)*
An establishment in which 10 percent or more of the gross public floor area is devoted to, or 10 percent or more of the stock-in-trade consists of, the following: books, magazines and other periodicals, movies, videotapes, compact discs, digital versatile discs, novelty items, games, greeting cards, and other materials which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified sexual activities: human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, oral copulation, or sodomy; fondling or other erotic touching of human genitals (pubic region), buttocks, or female breasts; or specified anatomical areas. *(Milwaukee, Wisc.)*
▪**adult use, adult theater**--A theater, concert hall, auditorium, or similar establishment characterized by [activities featuring] the exposure of specified anatomical areas or by specified sexual activities. *(San Bernardino, Calif.)*
An auditorium, concert hall, theater, or similar establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities. *(Truckee, Calif.)*
A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities. *(Loveland, Colo.)*
A business establishment or concern, including a theater, concert hall, auditorium, or similar establishment, which, as a regular and substantial course of conduct, presents live entertainment, motion pictures, videos, slide photographs, or other pictures or visual reproductions which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical parts. *(San Juan Capistrano, Calif.)*
▪**adult use, bathhouse** *(See also **adult use, sexual encounter establishment**)*--A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, using steam or hot air as a cleaning, relaxing, or reducing *adult use, adult motion picture theater adult use, bathhouse* agent, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas as defined herein. *(Bloomington, Minn.)*
Acommercial sauna establishment which excludes any person by virtue of age from all or any portion of the premises. *(Burien, Wash.)*
▪**adult use business operator**--A person who supervises, manages, inspects, directs, organizes, controls, or in any other way is responsible for or in charge of the premises of an adult-oriented business or the conduct of activities occurring on the premises thereof. *(San Juan Capistrano, Calif.)*
▪**adult use, hotel/motel**--A hotel or motel or similar business establishment

offering public accommodations for any form of consideration that (1) provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or (2) rents, leases, or lets any room for less than a sixhour period, or rents, leases, or lets any single room more than twice in a 24-hour period. *(Mission Viejo, Calif.)*

A hotel, motel, or similar commercial establishment which: (1) offers accommodations to the public for any form of consideration where patrons are provided closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public rightof-way advertising the availability of this adult type of photographic reproductions; (2) offers a sleeping room for rent with rates for a period of time that is less than 10 hours; or (3) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours. *(Hilton Head Island, S.C.)*

Amotel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, photographs, slides, video cassettes or other photographic reproductions which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. *(Truckee, Calif.)*

A hotel, motel, or similar commercial establishment which: (1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of such adult type of photographic reproductions; (2) offers a sleeping room for rent for a period of time that is less than 10 hours; or (3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours. *(Loveland, Colo.)*

A motel wherein material presented which is distinguished or characterized by an emphasis on matter depicting or describing sex act(s) or specified anatomical areas. *(Bondurant, Iowa)*

▪**adult use, modeling studio**--An establishment whose primary business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers. *(Houston, Tex.)*

A business which provides for any form of compensation, monetary or other consideration, hire, or reward, figure models who, for the purposes of sexual stimulation of patrons, display specified anatomical areas to be observed, sketched, photographed, painted, sculpted, or otherwise depicted by persons paying such consideration. *(Normal, Ill.)*

▪**adult use, sexual encounter establishment**--An establishment other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort in connection with specified sexual activities or the exposure of specified anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy. *(San Bernardino, Calif.)*

A companionship establishment that excludes minors by reason of age, or which provides the service for a fee of engaging in or listening to conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas as defined herein. *(Bloomington, Minn.)*

A business establishment wherein the patrons thereof are invited to discuss sexual matters or engage in sexual activities with an unclothed or partially unclothed person, and who pay a fee for such discussion or activities. This definition shall not include therapy sessions conducted by physicians, therapists, and counselors licensed and regulated by the state. *(Imperial Beach, Calif.)*

Abusiness or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one or more of the persons exposes any specified anatomical area. *(Loveland, Colo.)*

Any business, agency, or person who, for any form of consideration or gratuity, provides a place where two or more persons, not all members of the same household, may congregate, assemble, or associate for the purpose of engaging in specified sexual activities or exposing specified

anatomical areas. *(Pittsburgh, Pa.)*
adult use business operator adult use, sexual encounter establishment
▪adult use, sexual paraphernalia store
Any retail store specializing in the sale of paraphernalia, devices, or equipment distinguished or characterized by an emphasis on depicting or describing specific sexual conduct or used in connection with specified sexual conduct. *(Santa Monica, Calif.)*
▪adult use, sexually oriented material
[This term] includes but is not limited to accessories, books, magazines, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, or electronically generated images or devices including computer software, or any combination thereof. *(Concord, N.C.)*
▪adult use, specified anatomical areas
As used herein specified anatomical areas means and includes any of the following: (1) 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 (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered. *(San Bernardino, Calif.)*
(1) Less than completely or opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola. (2) Human male genitals in a discernibly turgid state even if completely or opaquely covered. *(Burien, Wash.; Beverley Hills, Calif.)*
Less than completely and opaquely covered anal region, buttock, female breasts below a point immediately above the top of the areole, human genitals, pubic region, or human male genitals in a discernible turgid state, even if completely and opaquely covered. *(Truckee, Calif.)*
▪adult use, specified sexual activities
As herein, specific sexual activities means and includes any of the following: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; or (4) excretory functions as part of or in connection with any of the activities set forth in [local code]. *(San Bernardino, Calif.)*
Human genitalia in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, or sodomy; or erotic fondling, touching, or display of human genitalia, pubic region, buttock, or female breast. *(Burien, Wash.)*
(1) The fondling or other erotic touching of the anus, buttocks, female breasts, human genitals, or pubic region; (2) all sex acts, actual or simulated (e.g., intercourse, oral copulation or sodomy); (3) masturbation, actual or simulated; or (4) excretory functions (e.g., human excretion, menstruation, urination, vaginal or anal irrigation, etc.) alone or as part of or in connection with any of the activities described above. *(Truckee, Calif.)*
(A) Human genitals in a state of sexual stimulation or arousal; or (B) acts of human masturbation, sexual intercourse, or sodomy, whether between persons of the same or opposite sex; (C) fondling or other erotic touching of human genitals, pubic region, buttock, or female breast; or (D) excretory functions as part of or in connection with any of the activities set forth in this chapter. *(Richland, Wash.)*
Real or simulated acts of human sexual intercourse, human/animal sexual intercourse, masturbation, sadomasochistic abuse, sodomy, or the exhibition of human sexual organs in a stimulated state or the characterization thereof in printed form. *(Multnomah County, Ore.)*

Appendix 2
Sexually Oriented Businesses Secondary Effects Studies

The studies reviewed and relied upon include, but are not limited to:

1. Garden Grove, California - 1991; Los Angeles, California - 1977;
2. Whittier, California - 1978;
3. Cleveland, Ohio - 1977;
4. Toledo, Ohio - 2002;
5. Austin, Texas - 1986;
6. Phoenix, Arizona -1979, 1995-1998;
7. Minneapolis, Minnesota - 1980;
8. Houston, Texas - 1997;
9. Tucson, Arizona B 1990;
10. Indianapolis, Indiana B 1984;
11. St. Paul, Minnesota - 1988;
12. Amarillo, Texas;
13. Centralia, Washington - 2004;
14. Beaumont, Texas - 1982;
15. Seattle, Washington - 1989;
16. Oklahoma City, Oklahoma - 1986;
17. Newport News, Virginia - 1996;
18. Dallas, Texas - 1997;
19. New York, New York - 1994;
20. New York Times Square study - 1994;
21. Findings from the Report of the Attorney General's Working Group on the Regulation of Adult Uses, (June 6, 1989, State of Minnesota); and
22. National Law Center Summaries of Sexually Oriented Businesses Land Use Studies.

Appendix 3
Sexually Oriented Businesses Major Litigation Cases

1. *Town of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 784, 124 S.Ct. 2219, 159 L.Ed.2d 84 (2004);
2. *Town of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002);
3. *Pap' s A.M. v. Town of Erie*, 529 U.S. 277 (2000);
4. *Town of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986);
5. *Young v. American Mini Theatres*, 426 U.S. 50 (1976);
6. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991);
7. *FW/PBS, Inc. v. Town of Dallas*, 493 U.S. 215 (1990);
8. *North Avenue Novelties, Inc. v. Town of Chicago*, 88 F.3d 441 (1996);
9. *World Wide Video of Washington, Inc. v. Town of Spokane*, 2004 U.S. App. LEXIS 10443 (9th Cir., May 27, 2004) (including exhibits cited therein), *aff' g* 227 F.Supp.2d 1143 (E.D. Wash. 2002);
10. *Bigg Wolf Discount Video v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *104 West Washington Street II Corp. v. City of Hagerstown*, 173 Md.App. 553, 920 A2d 482 (2007)