

Adult Entertainment Zoning:

A Case Study

In a decade when much of government's time and resources have been consumed in the fight against crime, thought about society's views on victimless crimes has been considerable. When citizens are being victimized by violent crimes and when resources are stretched thin, officials are forced to examine the priorities of the criminal justice system. Few would dispute that efforts to ensure the safety of citizens in the streets and their homes should prevail over attempts to keep a consenting adult from viewing obscene material. Yet society, in its fickle and complicated way, creates a paradox for government officials. Protection against both the real physical threat of violence and property crimes and the tenuous spiritual threat of immorality are called for. Resources are probably not great enough, however, to meet either threat, much less both of them. "Interviews with law enforcement officers and public prosecutors across the country...consistently revealed a view that fiscal and political constraints barred an aggressive drive against pornography, which would necessarily be perceived to be at the expense of other, more urgent law enforcement priorities" (Strum, 1977, p. 13). How then, other than to continue to expend already stretched resources, can government control victimless crimes?

One area that is currently receiving attention is the use of zoning as an alternative to control the proliferation of the adult entertainment business, which includes adult book stores, adult motion picture theaters, massage parlors, and adult cabarets. In examining the potential of zoning to control those activities, much attention will be directed to the experience of Fayetteville, North Carolina.

FAYETTEVILLE AND ADULT ENTERTAINMENT

Fayetteville lies in the coastal plains of southeastern North Carolina. It is a commercial center for the southeastern part of the state as well as bordering areas of South Carolina. Its neighbors to the west are Fort Bragg and Pope Air Force Base. The heavily-traveled north-south route of Interstate 95 passes along its eastern limits. As the largest city in the area, with an extensive military complex, and a busy interstate corridor, the city has attracted considerable attention as a bustling market

for various services and commodities, including adult entertainment and its accompanying conditions.

Most of the sex trade is located in the 500 block of Hay Street in the downtown business district. Other such establishments, though not in such heavy concentration, are found along Bragg Boulevard and Fort Bragg Road, two of the main arteries to the military complex. There are other sex businesses scattered on individual sites around the city as well. The "500 block," though, is the area that has drawn the attention of people from within and outside of the community.

Fayetteville's sex trade is well known. John Swope, executive secretary of the Fayetteville Chamber of Commerce told the City Council on March 12, 1979 that the Prince Charles Hotel on Hay Street was "probably the largest whorehouse east of the Mississippi, in the nation, and probably in the world" (*The Fayetteville Observer*, March 13, 1979, p. 2A).¹ On Tuesday, March 13, 1979, Senator Charles Vickery of Orange County, following a Senate Judiciary Committee hearing of the North Carolina General Assembly on the subject of prostitution, told a *Fayetteville Observer* reporter, "the situation in Fayetteville is a laughing stock across the State, known as a prostitute's paradise" (*The Fayetteville Observer*, March 16, 1979, p. 3A).

Fayetteville, like many other cities in similar situations, has had to ask itself why it should try to control its adult entertainment community, which some elements of its population enjoy. The Commission on Obscenity and Pornography, in its 1970 report, aptly stated one of the most common reasons. "The Commission has taken cognizance of the concern of many

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Possible interventions to proliferating adult entertainment businesses have sparked concern and controversy. Photo by L.C. Barbour

people of a deleterious effect upon the individual morality of American citizens and upon the moral climate in America as a whole. This concern appears to flow from a belief that exposure to explicit materials may cause moral confusion which, in turn, may induce antisocial or criminal behavior " (Radzinowicz and Wolfgang, 1977, p. 503).

Not only is there concern with the deleterious effects upon morality, but with the deleterious effects upon the surrounding neighborhood as well. Detroit made one of the earliest efforts to use zoning to control adult entertainment businesses, and its success in the resultant legal battles rested on its ability to demonstrate deleterious effects on the neighborhood.

Here, local planners zeroed in on the relationship between a series of uses that appeared to have or create a 'skid-row effect' on adjoining properties. Planners noted that concentrations of certain uses, including pornographic ones, often resulted in deteriorating property values, higher crime rates, traffic congestion,

and depressed neighborhood conditions. They used this information in preparing their now-famous anti-skid-row ordinance, which contained definitions of pornographic uses (Toner, 1977, p. 2).

A third concern, especially for law enforcers, is the rise in criminal activity that seems to surround the adult entertainment business. Be it the entertainment itself or the nature of the people partaking of it, crime statistics in Fayetteville starkly reveal this effect. In 1978, Fayetteville's overall crime rate decreased by 11%. In the same period crime in the district encompassing Hay Street increased by 7 1/2% (*The Fayetteville Observer*, January 25, 1979, p. 50). In figures reported on June 20, 1979, the crime rate had continued to drop at a 15% rate while increasing in the downtown district by 16%. Of the ten reporting zones, the downtown district accounted for almost 12% of the city's Part I crime (*The Fayetteville Observer*, June 20, 1979, p. 1B).

"HOW THEN, OTHER THAN TO CONTINUE TO EXPEND ALREADY STRETCHED RESOURCES, CAN GOVERNMENT CONTROL VICTIMLESS CRIMES?"

A fourth reason for concern is the growing evidence that the adult entertainment business is controlled by organized crime. "Organized crime...dominates the traditional porn industry, as well as massage parlors, topless bars and strip joints. Now it is a growing presence in porn films as well. Fearful of prosecution for interstate activities, many independent producers turned the risky business of distribution over to the Mafia " (*TIME*, 1976). Local government is concerned about organized crime's involvement with the industry, but what creates real fear is the increasing potential for corruption that accompanies it.

A final reason for concern, and in Fayetteville's case a critical one, is the city's reputation, for this type of enterprise may prevent further development. In early 1979, Wilson Yarborough, past president of the Fayetteville Area Chamber of Commerce, told a local citizens' group that the Hay Street area was affecting economic growth.

Aside from moral concerns and the woes of high crime rates, Yarborough said the topless district will probably affect the decision of a \$35 million industry that is considering Fayetteville as a site for plant location. 'There is no way to put a price tag on the economic impact of the downtown district,' said Yarborough. 'But if it has already or might in the future cost the city an industry, will it have an economic domino effect?' Yarborough said

representatives of the industry that was considering Fayetteville had expressed concern about the 'open prostitution' downtown after a 'windshield tour' of the city (*The Fayetteville Observer*, January 10, 1979, p. 2B).

Each of these concerns: community exposure to immorality, physical deterioration, an increased crime rate, the influx of organized crime, and a possible barrier to development due to reputation, offer some degree of justification for efforts at control.

For a long time Fayetteville's control efforts were traditional, revolving around activities of law enforcement. The Intelligence Division, formerly the Special Operations Division, of the Fayetteville Police Department conducted numerous vigorous campaigns against the sex businesses. One avenue of attack was directed at prostitution. Surveillance, undercover officers, and the use of off-duty military personnel and civilians as willing agents were all successfully used.² But they were successful only in the sense that arrests were made. Police Chief Danny Dixon has complained often that resulting action in court did not match the efforts of his department, making the whole process futile. "To give you the picture of what we're facing, we arrested fourteen prostitutes on Friday night and all but one were back on the streets before we finished the paperwork," Dixon said. "We're going to arrest and arrest and arrest and they're (the courts) going to turn them out and we're going to arrest again" (*The Fayetteville Observer*, February 14, 1979, p. 2A). On March 13, Dixon appeared before a legislative hearing on tougher sentencing provisions for prostitution. He testified that there were between 200 and 250 known prostitutes working in Fayetteville at that time. He stated that increased mandatory sentencing would reduce that number (*The Fayetteville Observer*, March 16, 1979, p. 12A). It was following this hearing that Senator Vickery made the remark mentioned earlier. Vicker's response to Dixon's testimony was that judges should get tougher on their own, not create new laws.

Police efforts were also directed for a while at the merchandise of adult businesses. Numerous adult bookstores were padlocked when pornographic material was found until restraining orders were issued. With this measure taken away, highly technical standards of weights and measures regulations were invoked concerning the size and labeling of adult films that provided for the seizure of violative items and businesses. The conditions were easily corrected, however, and, the standards being met, business went on as usual. When local officers and state Alcohol Law Enforcement agents had licenses revoked in topless bars because of liquor law violations, "new" businesses with a different name and "management" were operating on the same premises

within days. A task force approach was used on occasion, with State and Federal activity aimed to a great extent at the interstate aspect of the sex business (Heintzelman, 1979). Although tactically effective, law enforcement efforts were, in the long run, only a stalling mechanism of harassment rather than elimination of the problem.

"A FINAL REASON FOR CONCERN, AND IN FAYETTEVILLE'S CASE A CRITICAL ONE, IS THE CITY'S REPUTATION ..."

Realizing the futility of the law enforcement efforts, the Fayetteville City Council, in early 1977 requested the Cumberland County Joint Planning Board to propose zoning measures to address the problem. There were two basic models from which to choose: Detroit and Boston. Detroit had chosen the strategy of dispersing its adult entertainment to prevent clustering and its consequences. Boston, on the other hand, chose to contain these businesses in selected areas to prevent their spread throughout the city. It is useful to briefly examine both of these cities' zoning measures before returning to Fayetteville's efforts.

DETROIT'S ADULT ENTERTAINMENT ZONING

Detroit's original skid-row zoning regulation was formulated in 1962. At that time it was directed at bars, pawnshops, pool halls, public lodging houses, etc. As mentioned earlier, planners had discovered that certain uses accelerated certain deleterious effects. In the late '60s and early '70s attention was given to sex businesses, and the city added these uses to its ordinance in 1972. William Toner termed the Detroit strategy "divide and regulate." He explained in a 1977 ASPO Report:

Detroit city officials didn't set out to regulate pornographic uses. They were trying mainly to prevent the development of more skid rows. They had two objectives: first, to keep typical skid-row uses separate from one another, and, second, to keep these same uses separate from residential areas. These added up to one major policy of dispersing skid-row uses and spreading them throughout the commercial and industrial areas of the city (Toner, 1977, p. 3).

The first objective was met by not allowing a listed use within 1,000 feet of two other like uses. The second objective was met by another distance limitation: that no listed use be located within 500 feet of a residential unit. This latter provision was found unconstitutional by a federal district court and was amended to change "residential dwelling unit" to "residentially zoned district."

Listed in the ordinance along with the earlier skid-row establishments were four sex businesses, adult book stores, adult motion picture theaters, adult mini-motion picture theaters, and group "D" cabarets.

Adult book stores were defined as having a "substantial or significant portion" of their literary contents "distinguished or characterized by their emphasis on matter depicting, describing, or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas...'" (Official Zoning Ordinance of the City of Detroit Sec. 32.0007).

The two types of motion picture theaters were similarly defined by this phrase as describing "material distinguished or characterized by an emphasis on matter depicting, describing, or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas...'" The differences between an adult motion picture theater and an adult mini-motion picture theater was that the latter was limited in its capacity to "less than 50 persons." 'Specified Sexual Activities' and 'Specified Anatomical Areas' were graphically defined further on in the same section of the ordinance (Detroit Zoning Ordinance Sec. 32.0007).

"FACED WITH AN AREA ALREADY CONSUMED BY THE SEX BUSINESS, BOSTON SOUGHT TO PREVENT ITS FURTHER SPREAD."

A Group "D" cabaret was defined as one "which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers" (Detroit Zoning Ordinance Sec. 32.0023).

Detroit's ordinance was challenged in the courts and was ruled constitutional by the Supreme Court in 1976.

BOSTON'S ADULT ENTERTAINMENT ZONING

Boston, unlike Detroit, chose both a different location strategy and a different definitional determination in its zoning ordinance. Faced with an area already consumed by the sex business, Boston sought to prevent its further spread. Toner describes the Boston locational strategy in the following way:

The adult entertainment district - the Combat Zone - is really a special overlay district that applies to only seven acres of the city. The overlay zone has two main purposes: 1) to concentrate similar adult entertainment uses into a single small area; and 2) to prevent the spread of these uses to other parts of

the city, especially to residential areas. Not only did the Boston Redevelopment Authority (BRA) create a special zoning category for book stores, peep shows, X-rated movie houses and strip joints, they also threw in a bundle of renewal dollars to make the whole thing work (Toner, 1977, p. 7).

Toner goes on to talk of the BRA's design.

To fight against the skid-row effect, Boston embarked on a renovation program to upgrade the district. With a few new parks, new street lighting, sign removal, improved streets, and renovated store fronts, they hoped to make the Combat Zone more like the celebrated entertainment districts of London, San Francisco, and Copenhagen (Toner, 1977, p. 2).

Whereas Detroit defined its adult uses according to the content of the literature, movies, and entertainment, Boston's ordinance was markedly different. Boston relied on an age classification. Relying on ordinances and licensing requirements that already prevented minors from patronizing certain businesses,



The 500 block of Hay Street in Fayetteville, N.C. contains a concentration of sex businesses. Photo by L.C. Barbour

Boston merely added the phrase "customarily not open to the public generally but only to one or more classes of the public excluding any minor by reason of age" to the listed uses in the new zone. Boston, then, stressed "adult" in controlling its sex businesses (Boston Zoning Code Sec. 8-7).

From a planning viewpoint, Toner seems to prefer Boston's approach. He comments:

The single outstanding quality of the Boston approach is that it legitimized what already existed. The reality was that the Combat Zone had a high concentration of adult entertainment uses long before the city considered any police power action. Instead of trying to chase them off to another location -- or worse, to pretend that they did not exist -- the city adopted special land-use regulations to control what existed (Toner, 1977, p.8).

"THE SECOND ISSUE WAS WHETHER THE ORDINANCE WAS A PRIOR RESTRAINT ON CONSTITUTIONALLY PROTECTED MATERIAL."

He also lists six additional advantages to the Boston approach:

- 1) "like uses are treated alike,"
- 2) "lower administrative costs,"
- 3) "control over both the total growth of pornographic uses and the development of specific new uses,"
- 4) "no definitional vagueness,"
- 5) "apparent constitutionality," and
- 6) "easier evaluation of total public service impact of pornographic uses" (Toner, 1977, p.8).

SUPREME COURT REVIEW OF THE DETROIT MODEL

The American Society of Planning Officials (ASPO) surveyed zoning approaches in several cities and found that most copied the Detroit ordinance. It was theorized that this resulted from the Supreme Court ruling that the Detroit ordinance was constitutional (Toner, 1977, p. 9). Detroit's ordinance was challenged in 1974 by the owners of two adult motion picture theaters. The Federal District Court found the 1,000-foot provision unconstitutional. The latter was amended and was not challenged again. On appeal by the plaintiffs, the U.S. Court of Appeals for the Sixth Circuit overturned the ordinance on the basis that a prior restraint was imposed on "constitutionally protected

communication and thus could not be justified merely by establishing that they were designed to serve a compelling state interest" (*Young v. American Mini Theatres, Inc.*, 49L. Ed. 2d 310 (1976)). Detroit then took the case to the Supreme Court, which reached its decision on June 24, 1976.

The Court addressed three broad issues. The first issue was the contention that the ordinance was too vague to enable a determination of whether the material could be "characterized by an emphasis" on matter defined as 'specified sexual activities or anatomical areas.' The Court answered the vagueness claim by saying:

The only vagueness in the ordinances relates to the amount of sexually explicit activity that may be portrayed before the material can be said to be 'characterized by an emphasis' on such matter. For most films the question will be readily answerable; to the extent that an area of doubt exists, we see no reason why the ordinances are not 'readily subject to a narrowing construction by the state courts' ...since the limited amount of uncertainty in the ordinance is easily susceptible of a narrowing construction, we think this is an inappropriate case in which to adjudicate the hypothetical claims of persons not before the Court (*Young v. American Mini Theatres, Inc.* at 320).

The second issue was whether the ordinance was a prior restraint on constitutionally protected material. The Court replied: "The ordinances are not challenged on the ground that they impose a limit on the total number of adult theaters which may operate in the city of Detroit. There is no claim that distributors or exhibitors of adult films are denied access to the market or, conversely, that the viewing public is unable to satisfy its appetite for sexually explicit fare. Viewed as an entity, the market for this commodity is essentially unrestrained" (*Young v. American Mini Theatres, Inc.* at 321). The Court went on to say:

The city's general zoning laws require all motion picture theaters to satisfy certain locational as well as other requirements; we have no doubt that the municipality may control the location of theaters as well as the location of other commercial establishments either by confining them to certain specified commercial zones or by requiring that they be dispersed throughout the city. The mere fact that the commercial exploitation of material protected by the First Amendment is subject to zoning and other licensing requirements is not a sufficient reason for invalidating these ordinances (*Young v. American Mini Theatres, Inc.* at 321).

The final issue of contention was that the classification of the theaters on their content violated the Equal Protection clause of the Fourteenth Amendment. The Court reviewed its history in showing that the nature of content of speech and material had been a basis for various kinds of governmental sanctions in the past. The Court reported:

Even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammelled political debate... Even though the First Amendment protects communication in this area from total subpression, we hold that the State may legitimately use the content of these materials as the basis for placing them in a different classification from other motion pictures (*Young v. American Mini Theatres, Inc.* at 326).

"IT IS IMPORTANT TO NOTE THAT THE COURT EMPHASIZED THAT DETROIT HAD REASONABLY JUSTIFIED THE ZONING ORDINANCE."

It is important to note that the Court emphasized that Detroit had reasonable justified the zoning ordinances. Early in its decision the Court said: "In the opinion of urban planners and real estate experts who supported the ordinances, the location of several such businesses in the same neighborhood tends to attract an undesirable quantity and quality of transients, adversely affects property values, causes an increase in crime, especially prostitution, and encourages residents and businesses to move elsewhere" (*Young v. American Mini Theatres, Inc.* at 317). It closed its decision by saying almost the same thing: "The record discloses a factual basis for the Common Council's conclusion that this kind of restriction will have the desired effect (*Young v. American Mini Theatres, Inc.* at 326).

The finding resulted in a five-to-four decision with the dissenting opinions concerned that the ordinances were too vague and that regulations affecting "protected expression must be content-neutral..." (*Young v. American Mini Theatres, Inc.* at 311). The closeness of the decision prompted Strum to write:

Thus, the Court's decision in *Young* falls far short of a blanket approval of any and all zoning measures which might be enacted against adult uses. The city council or town planning board which would enact such zoning ordinances must

be extremely careful in its language and drafting, and be content with achieving limited results if it is not to have its ordinance struck down in any of the several constitutional grounds considered by the Court in *Young* (Strum, 1977, p. 2).

FAYETTEVILLE'S ADULT ENTERTAINMENT ZONING

As mentioned earlier, the Fayetteville City Council had asked the Cumberland County Joint Planning Board to come up with a land use proposal to counter the growing sex business problem. On February 14, 1977, the City Council was presented with the Board's proposal.

Fayetteville had been in a situation much like Boston's. The sex business had accumulated in a concentrated are - Hay Street - long before the ordinance was even considered. The staff of the Planning Board, under the direction of Cliff Strassenburg, felt the best approach was to contain what already existed in that area. At that time some figures showed that approximately 90% of the businesses concentrated in the 1 1/2 block section of Hay Street were adult entertainment businesses. New concentrations were developing on Fort Bragg Road. It was felt that unless the problem was contained, other areas of town would become vulnerable, especially since there was little space left downtown.³

The Planning Board approved of the approach but opposition developed. Strassenburg felt there were two key sources of this opposition. The first was from downtown businesses. Even though the Downtown Revitalization Commission supported the proposal, individual businessmen felt that their businesses would only be further destroyed by the spillover of illegal and unattractive activity. Strassenburg indicated it was hoped that the proposal, like Boston's original idea, would result in a broader type of entertainment district that could possibly reduce the emphasis on sex. The second source of opposition Strassenburg identified was the city's police department. The police were devoting many resources to Hay Street without sustained success. Strassenburg stated that the proposal was well on its way to being doomed when the "chief made a public statement to the effect that he didn't want to commit his officers to enforcing a free-for-all zone" (Strassenburg, 1979).

A third source of opposition surfaced at the February council meeting. Local citizens complained that the proposed zone would only condone and endorse the businesses, instead of controlling them. Dr. C.R. Edwards, a prominent minister, said the action would be "condoning questionable actions that will lead to further moral decay" (*The Fayetteville Times*, February 15, 1977, p. 2A). Reverend

Albert Beame said that " 'mere policy of containment...does not work in fighting moral pollution' " (*The Fayetteville Times*, February 15, 1977, p. 2A). David Jones, a former North Carolina Secretary of Corrections and no person to mince words, stated that "this zone is nothing in the world but a magnet to draw the scum of the earth" (*The Fayetteville Times*, February 15, 1977, p. 1A).

With the mayor ill and not present, and the mayor *pro tem* presiding and not voting, the proposal failed by a three-to-two decision. Realizing the action was in trouble, proponents tried to have the decision postponed. The defeat of that motion led to the decisive vote that ended Fayetteville's efforts to enact zoning to contain its adult businesses.

"... A COUNCIL IS POLITICALLY SUSCEPTIBLE TO CHARGES THAT IT IS CONDONING SEX BUSINESS WHEN IT APPROVES CONCENTRATION..."

Even with the measure defeated, it was obvious that the opposition, especially that of the general public, was to the method, not the idea, of controlling the problem. Certain members of the council continued to explore the problem, as Strassenburg said, "quietly behind the scenes for awhile." With a new council elected, the efforts began to take more shape. A task force headed by Bill Hurley began consultations. The members included the city manager, the planning staff, the city attorney, law enforcement personnel, and eventually finance personnel specializing in licensing. The approach this time was dispersal along with licensing of specified uses. Strassenburg stated that, as a planner, he felt dispersal was not the best approach because it "exposes more areas of the community." He also pointed out that even with the proposed 1,000 foot limitation, what may technically be dispersed "may appear to be clustered along major commercial avenues due to the fact that bars, beerhalls, and clubs not featuring adult entertainment activities, and thus not regulated by the dispersal zoning may tend to fill the 1,000 space between two adult entertainment establishments." At any rate, the rejection of the containment measure, the police chief's support of dispersal, and the legal upholding of Detroit's ordinance, all helped to encourage the dispersal proposal (Strassenburg, 1979).

On February 13, the Fayetteville Revitalization Commission endorsed the proposal, as it had the earlier one. Horace Thompson, the chairman, stated, "this is one of the most important steps taken by government to improve the quality of life in Fayetteville" (*The Fayetteville Observer*, February 14, 1979, p. 1B).

On February 20, the Joint Planning Board gave its approval to the proposal. Old wounds



Like Boston and Detroit, Fayetteville chose to use zoning as a technique to control adult businesses. Photo by L.C. Barbour

and memories of 1977 surfaced during the meeting. The Board had been criticized by some council members and obviously did not relish such treatment again. Hurley, Thompson and Strassenburg convinced the Board that not only was the plan legal and the result of the task force's work, but a new council was seated that offered a broader range of support. The hesitancy to approve the plan was overcome and for the second time the Board forwarded a proposal to the Fayetteville City Council (*The Fayetteville Observer*, February 14, 1979, p. 1A).

On March 12, 1979, the council considered the proposal. The opposition at this public meeting was quite different from that in 1977. This time the other side complained. Sneed High is a prominent Fayetteville lawyer and had interests in two adult entertainment establishments. "Why should these people (owners, operators, and employees of the adult establishments) be singled out for harassment and embarrassment?" High asked. "The sole purpose of these charges is to put the finger, the spotlight on the people involved in these establishments" (*The Fayetteville Observer*, March 13, 1979, p. 1A). The other speakers, public citizens and officials, gave the proposal strong support. The new council unanimously approved dispersal zoning. Coupled with the zoning measure was a new licensing regulation of a fee and renewal for adult uses. A more controversial measure of requiring identification registration with the police department was withdrawn.

In an interview, Strassenburg stated, "I would like to mention that we put much stock in Detroit's plan being legally tested" (Strassenburg, 1979). One can easily see the proposal's resemblance to that of Detroit; Fayetteville used the same distancing requirements of 1,000

feet between uses and 500 feet from residential zones. It defined its uses in much the same way, relying on the content criteria and the 'specified anatomical areas' and 'sexual activities' phraseology. Even though content is used to define the regulated activity, it is plain the intent is to meet the "deleterious effects" and "objectionable operational characteristics ...when concentrated." Fayetteville's special entertainment uses include:

- 1) adult book stores,
- 2) adult motion picture theaters,
- 3) clubs offering nude or semi-nude entertainment,
- 4) eating establishments offering nude or semi-nude entertainment,
- 5) physical cultural establishments, massage parlors, and
- 6) adult motels and hotels
(Zoning Ordinance of the City of Fayetteville Sec. 32-32.1).

This list seems to reflect the diversification of the industry since Detroit encountered it in 1962.

CONCLUSIONS

In conclusion, it is too early to tell whether Fayetteville's approach will be successful. What may be more important is what other cities can learn from Fayetteville's experience. The following observations are offered:

First, Fayetteville encountered several political constraints when it made its initial strategic decision to choose concentration or dispersal. It is obvious that a council is politically susceptible to charges that it is condoning sex businesses when it approves concentration, no matter what recommendations it receives from its advisory bodies. It is equally obvious that elections can change a council's outlook. In addition, concentration threatens those people on the zone's fringes. Dispersal does not target any area, and the Hay Street businessmen did not protest the dispersal approach.

Second, in preparing the ordinance itself, a city should remember that the *Young* case did not carve Detroit's ordinance in stone. Even in its approval, the Court pointed out some definitional weaknesses and stressed that Detroit had put some effort into establishing deleterious effects. To be safe, perhaps cities should *combine* the Boston and Detroit definitional models of age and content standards.

To be equally safe, some type of study should be done to verify the actual effects of the sex business. It is wise to remember that Detroit sought to curb the effects of the business, not to eliminate the business itself. Strum stated the warning well:

A municipality whose real motivation in enacting adult-use zoning legislation has been to suppress or significantly diminish legal adult uses, and whose legislation consequently operates to achieve this effect, will likely find its legislation overturned as unconstitutional in the courts. The Supreme Court in *Young* specifically and repeatedly premised its decision... upon its findings that those ordinances diminished neither the volume nor the accessibility of adult entertainment... (Strum, 1977, p. 39).

Third, the governmental administration is much better off establishing a united front in its efforts. As Fayetteville's experience indicates, when as integral an actor as a police chief is opposed to the chosen proposal, passage may become difficult. The task force committee seemed to facilitate passage the second time around. Typical of the professionalism involved was Strassenburg's initial opposition but active support once the group's decision was made.

Fourth, and perhaps most important, is the recognition that zoning is only a tool in the total effort to control the effects of adult entertainment. Strassenburg stressed that only a comprehensive approach will work. This would include zoning, licensing, active law enforcement, sign regulations, and nuisance provisions (Strassenburg, 1979).

Strum concludes:

In a society increasingly tolerant of private sexual activity, but still concerned over commercialized sex - especially its high visibility and feared influence on young people and on neighborhoods - zoning of adult uses offers a workable solution. Adult-use zoning is a solution responsive to the problem of commercial sex and, when carefully planned and executed without the unlawful motive of suppression, one that is compatible with the freedoms guaranteed under the Constitution (Strum, 1977, p. 45).

Administrators and planners should temper this endorsement of adult entertainment zoning by remembering that it is a workable solution, formed by the community, its own circumstances, and its own influences.

NOTES

¹The Prince Charles Hotel ceased operations in October 1979 when it was condemned. The city of Fayetteville entered into a purchase agreement on the building in 1977 but has yet to receive the title to it.

²Interview with William Heintzleman, former supervisor in Special Operations Division of Fayetteville Police Department, November 30, 1979.

³Interview with Cliff Strassenburg, Planning Director, Cumberland County Joint Planning Board, November 30, 1979.

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