



**Negative Secondary Effects  
of Sexually Oriented  
Businesses --**

**City of Mason  
City Council Meeting  
September 11, 2006**

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***Renton v. Playtime Theatres,  
Inc.*, 475 U.S. 41, 51-52 (1986)**  
**(legislative secondary effects  
information need not be local)**

**"The First Amendment does not require a city,  
before enacting such an ordinance, to conduct  
new studies or produce evidence independent of  
that already generated by other cities, so long  
as whatever evidence the city relies upon is  
reasonably believed to be relevant to the  
problem that the city addresses."**

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**Sources of Secondary Effects  
Information**

- 1. Land Use Studies**
- 2. Crime Reports**
- 3. Judicial Opinions**
- 4. Investigator Affidavits**
- 5. Anecdotal Reports**

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### **Types of Secondary Effects**

- 1. Diminished property values or growth in property values; adverse impacts on nearby commercial or residential sites**
- 2. Personal and property crimes, public safety risk**
- 3. Lewdness, public indecency, illicit sexual activity and potential spread of disease**
- 4. Illicit drug use and trafficking**
- 5. Litter, aesthetic impacts, noise, blight**

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### **Secondary Effects Rationale**

**Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, and the City of Mason has a substantial government interest in regulating to prevent each of those secondary effects.**

**This substantial government interest exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses.**

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### **Sampling of Cases Relied Upon:**

**Cases in preamble, including, but not limited to:**

- 1. *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004)**
- 2. *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000)**
- 3. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)**
- 4. *California v. LaRue*, 409 U.S. 109 (1972)**

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**Cases upholding regulation of sexually oriented businesses, including retail adult bookstores:**

1. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9<sup>th</sup> Cir. 2004)
2. *Ablene Retail #30, Inc. v. Dickinson County*, 2005 U.S. Dist. LEXIS 30491 (D. Kan. 2005)
3. *Richland Bookmārt, Inc. v. Nichols*, 137 F.3d 435 (6<sup>th</sup> Cir. 1998)
4. *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10<sup>th</sup> Cir. 1998)
5. *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8<sup>th</sup> Cir. 1994)

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**Cases upholding regulation of erotic dancing establishments and peep booths:**

1. *Schultz v. City of Cumberland*, 228 F.3d 831 (7<sup>th</sup> Cir. 2000)
2. *Matney v. County of Kenosha*, 86 F.3d 692 (7<sup>th</sup> Cir. 1996)
3. *Gammoh v. City of La Habra*, 394 F.3d 1114 (9<sup>th</sup> Cir. 2005)
4. *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6<sup>th</sup> Cir. 1991)
5. *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9<sup>th</sup> Cir. 1996)

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**Secondary effects data relevant to regulating sexually oriented clubs and bookstores:**

Studies cited in preamble, including, but not limited to:

1. Summaries of Key Reports
2. Phoenix, Arizona
3. Indianapolis, Indiana
4. Garden Grove, California
5. Whittier, California

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**Secondary effects data relevant to regulating sexually oriented businesses:**

6. Austin, Texas
7. Greensboro, North Carolina
8. Amarillo, Texas
9. Kennedale, Texas
10. Spokane, Washington Evidence re: Retail Adult Bookstores
11. McCleary Report (responding to Linz report and addressing its flaws)
12. Peep Show Booth Reports (Warren, Michigan)

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**Findings of expert witnesses:**

1. Finding of secondary effects from sexually oriented businesses is scientifically robust, being confirmed in wide variety of data sources
2. City has a substantial government interest in regulating adult businesses to prevent the identified negative secondary effects
3. Industry "counter-studies" based on ever-changing methodologies and faulty data (calls-for-service (CFS) to the police)
  - CFS are weakly correlated to actual crime
  - Most vice crimes never result in CFS

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**TO:** City Council  
**FROM:** Eric Hansen *EH*  
**DATE:** August 11, 2006  
**RE:** Updating City's Sexually Oriented Business Ordinance

In early 2005 City Council had approved utilizing Scott Bergthold, an attorney specializing in defending municipal adult business regulations, to update the City's own regulations. Wood & Lamping staff have worked with Mr. Bergthold to review the existing ordinance, case law developments, and constitutional issues to draft an appropriately amended ordinance.

The attached CD contains Mr. Bergthold's research on the secondary negative effects that adult-oriented businesses bring to a community and is the basis for the proposed amendments. Also attached is a draft of the amended ordinance. Mr. Bergthold will, via telephone, be leading a Power Point presentation during the August 28<sup>th</sup> Council Meeting to further explain the proposed legislation. I am also planning on having this Ordinance on that meeting's agenda to adopt the revisions that Mr. Bergthold and Wood & Lamping are proposing.

If you have any questions, please let me know.