SEX BUSINESSES IN SAN FRANCISCO:
How the City Could and Should Regulate Where They Locate

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1. Introduction

Sex businesses are often protested by residents, shunned by families, and regarded as a sign of an undesirable neighborhood. At the same time, sex businesses are protected under the legal umbrella of free speech and proliferating to meet the large and growing demand for pornography. The challenging question for communities seeking a quality of life is: if sex businesses must be allowed, even if they are generally unwelcome, what kind of regulatory tools do planners have to minimize negative impacts of sex businesses on neighborhoods?

The primary means that city governments use to regulate sex businesses include zoning and operational ordinances. Most of these municipal regulations are justified on the general grounds that sex businesses generate negative secondary impacts. However, recent studies and court decisions question the legality of this general justification and demand more concrete evidence to prove that sex businesses negatively impact the community. If a city wants to demonstrate the harmful effects of a sex business, the first natural step would be to refer to an up-to-date, well-documented record of the current locations of the sex businesses. This report documents that such information is not available in San Francisco.

This report further examines the correlation between current planning regulations and the actual location of sex businesses in selected neighborhoods in San Francisco and concludes that the reality does not reflect the policies. Exploring reasons for the gap, this report shows how the lack of locational information for these businesses, as well as the lack of awareness on the seriousness of their harmful effects, is directly related to the prevailing zoning violations. This up-to-date analysis of current conditions is followed by recommendations on how to upgrade the city's policies in a way that would meaningfully address the gravity of the negative impacts of sex businesses without interfering with their right to operate. Highlighted among the recommendations is the need for a locational database, which the City can use to enforce current regulations. Such a database would also provide the City a solid foundation for conducting a comprehensive impact study to demonstrate what harmful effects sex businesses may have on surrounding communities.

Specifically, this report attempts to answer the following key questions:

- What is the legal basis for the City to regulate sex businesses?
- How does the General Plan set a direction on regulating sex businesses in San Francisco? Do other policies follow the direction set by the General Plan?
- Are the current policies effective at addressing harmful effects of sex businesses? If not, why? How should the policies be updated to make them more effective?

1.1. Basics of Sex Business Regulations

This section introduces basic information on what sex businesses are and why they should be regulated. This section also establishes a parameter for the scope of this report and reasons why San Francisco needs to take a hard look at the reality of sex businesses. Each topic will also be further explored in later chapters.

1.1.1. What are Sex Businesses?

The American Planning Association (APA)'s Planning Advisory Report on regulating sex businesses emphasizes that, for enforcement to be effective, it is important to employ a correct regulatory definition of sex businesses and the materials they handle.[1] To clarify which types of sex oriented-materials raise land-use issues for specific localities, the APA Report distinguishes *soft-core* pornography from *hard-core* pornography.[2] Because soft-core pornography is not place-specific and is available through mainstream media, such as network television and unrestricted cable channels, local governments can neither appropriately nor effectively confront it via land-use regulation.[3] Therefore, my research will focus on businesses with hard-core pornographic content whose availability and display are mostly limited to physical places, such as a retail outlet or an on-site theater.

Acknowledging that the term *sex business* can refer to a range of different types of businesses, the APA Report classifies them into two groups in the context of land-use: retail and on-premise entertainment.[4] The retail sex businesses include adult-only stores, such as adult media stores and sex shops, and *percentage stores*, which carry a significant percentage of adult-oriented materials as well as some non-adult materials. The on-premise adult entertainment businesses include theaters, live entertainment places, viewing booths, and touching/encounter services, such as lingerie modeling, nude photography, nude encounters, body-painting, and non-therapeutic massage parlors. Other hard-core pornographic businesses whose operations are not bound by physical places, such as phone, internet, and mail-order sex businesses, are beyond the scope of this report, but they should be taken into account when assessing the full impact of pornographic materials in general.

Although the terms *adult business* and sex business are often used interchangeably, the term sex business is used in the APA Report to distinguish the business under examination from other businesses that trade age-limited substances, such as liquor stores and gambling establishments.[5] In line with this approach, I will primarily use the term sex business to refer to the type of sex-oriented commercial establishments that necessitate a distinctive regulatory approach. Certain conventional terms, such as *adult entertainment businesses*, will be used to refer to the way they appear in existing municipal codes.

1.1.2. Why Regulate Sex Businesses?

Sex businesses are characterized by pornographic features that are inappropriate for general access. The effects of pornography have been a subject of research in the fields of psychology, sociology, child development, and women's studies, and the debate on the nature and extent of their harm persists.[6] Some argue that pornographic materials and services have a cultural and artistic value and offer a distinct choice for personal enjoyment. To others, sex businesses act as an agent to perpetuate the denigration of human beings as sexual objects by selling items and services that

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[1] Eric Damian Kelly and Connie Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses* (Chicago: American Planning Association, 2000), 2-3. This report contains the most comprehensive research and analysis of the legal framework, as well as empirical data, concerning sex businesses to date.

[2] Ibid., 3-6.

[3] Ibid., 6.

[4] Ibid., 25.

[5] Ibid., 4, 89.

[6] The studies and debating points will be discussed and cited more extensively in Chapter 2.

insinuate distorted images of sexual partners and relationships. The former often wins a general tolerance by claiming the supremacy of freedom. In contrast, voices of the latter are less frequently heard because victims of pornography tend to remain silent in fear of retaliation and public shame. Nonetheless, one cannot ignore the powerful testimonies from courageous victims who do speak out about the impacts of pornography and the proof of harm supported by expert studies.[7]

Therefore, it is essential for a city government to understand the deeper ramifications of pornography and devise regulations that effectively address the harm from pornography. In the context of land use planning, this aspect is applicable to the sex businesses that openly emphasize and promote potentially harmful features through signage or displays viewable by the public, including minors.

Perhaps more pertinent to the discussion of land use and neighborhood planning, sex businesses are commonly associated with low property values and criminal activities, especially when concentrated, damaging a neighborhood's safe and family-friendly environment. These businesses are mainly concentrated in predominantly low-income areas, and appraisers have consistently associated sex businesses with factors that decrease property values. The reported criminal activities associated with sex businesses range from drug dealing and gang fights to prostitution and sex slavery.[8]

This is not to say that having sex businesses in neighborhoods lacks legitimacy. For example, the medical benefits of some sex toys have been academically examined and upheld in courts.[9] The challenge to a city government is to involve the public to discern the types of activities that tend to create more harm than benefit and to craft regulations in a way that maximizes the benefits, minimizes the harm, and eradicates sex crimes against human dignity. Such regulations would not deter legitimate and beneficial sex businesses from opening and operating but would rather promote their rights by distinguishing them from illegitimate and harmful sex businesses.

1.1.3. Can Sex Businesses be Regulated?

The on-going debate on the nature and effects of sex businesses has raised questions about the extent to which municipal regulations of sex business are justified. The protection of the First Amendment, which is almost a mantra to supporters of pornography and sex businesses, is actually not extended to materials that are *obscene* and/or that generate significant harmful effects.[10] Even with respect to the materials determined not to be obscene and thus protected by the First Amendment, a local government has the responsibility and authority to regulate how such materials are distributed and displayed if they pose potential risks to public health, safety, or welfare.

Indeed, most local regulations on sex businesses, including zoning and operational ordinances, are legally justified on the grounds that such businesses generate negative impacts. Therefore, a local government wishing to regulate sex businesses must demonstrate what kind of standards the community holds regarding sex businesses and what kind of negative impacts such businesses impose on surrounding neighborhoods. Cities have used records and responses from police, real

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[7] Catharine A. MacKinnon and Andrea Dworkin, eds., *In Harm's Way: the Pornography Civil Rights Hearings* (Cambridge: Harvard University Press, 1997), contains a special collection of testimonies made by victims of pornography at a public setting. See Section 2.5 for details.

[8] These issues will be further explored in Sections 2.4 and 4.5.

[9] Kelly and Cooper, "Health Science and 'Sex Toys,'" 31.

[10] Chapter 2 explains what constitutes "obscene" materials in greater detail.

estate brokers, and residents to demonstrate the negative impacts of sex businesses. Recent studies and some court decisions are requiring cities to support their argument with more concrete, locality-specific evidence. This report will examine whether San Francisco is ready to meet such a challenge.

1.2. Organization of the Report

Chapter 2 discusses the legal basis for regulating sex businesses and the debates surrounding the validity and effectiveness of these regulations. Chapter 3 provides an overview of sex business-related regulations in San Francisco, with an emphasis on their planning implications. Chapter 4 illustrates examples of sex businesses in San Francisco neighborhoods that showcase the prevalence of zoning violations. Finally, Chapter 5 gives recommendations on how to make the regulations more applicable and enforceable to address the urgency of the current situation with action.

* * *

Most of San Francisco's Planning Codes pertaining to sex businesses are more than ten years old. Notably, the section of the Police Codes that defines adult theaters and bookstores, and on which the Planning Codes are based, was last amended in 1985. Three and a half years have passed since a community member testified at a Planning Commission meeting to support a 1,000 foot separation requirement between adult entertainment uses and schools. As he deplored, "The City has almost studiously avoided regulating this [adult entertainment] industry."[11]

This report will make evident why it is time for the City to stop avoiding the issue of regulating sex businesses and to update regulations in a holistic way that accounts for not only business interests but also the livability of neighborhoods and a respect for humanity.

[11] San Francisco Planning Commission, *Meeting Minutes*, 10 June 2004 <http://www.sfgov.org/site/planning_page.asp?id=26738> [7 December 2007].

2. The Legal Basis for Regulating Sex Businesses

The primary purpose of this chapter is to present the legal basis for regulating sex businesses and the debates on regulatory validity and effectiveness. I will start with the overarching constitutional framework concerning commercial speech, including 1) constitutional protection of sex businesses and 2) conditions legitimatizing regulation of such businesses. This overview will orient readers to understand, at the most basic level, why sex businesses are part of our neighborhoods and, at the same time, subject to governmental regulation under certain conditions.

Since the legitimatizing conditions for regulating sex businesses differ mainly by the lawfulness of their commercial activities, I will describe the sex-oriented commercial activities that are deemed unlawful, focusing on the most contentious criteria, *obscenity*. I will briefly present 1) how the legally-loaded term obscenity has been defined in various court cases; 2) how much authority a local government has in utilizing the obscenity criteria to regulate sex businesses in reality; and 3) which types of sex-oriented businesses have specifically been determined as constitutionally unprotected.

Next, I will introduce two typical ways to regulate the lawful sex businesses that are constitutionally protected: *content-sensitive* and *content-neutral* regulations. I will first give a quick background on why content-sensitive regulations stand on a weak legal ground, since many of the currently successful regulations consist of content-neutral efforts to restrict the manner in which the sex-oriented goods and services are presented. After illustrating the gist of the content-neutral approach, which focuses on regulating the secondary impacts of sex businesses, I will further review the methods and results of local efforts to demonstrate such secondary impacts, as well as the analytical soundness of the content-neutral approach in general. Lastly, I will discuss an unconventional approach to regulating sex businesses that addresses the illegitimacy of sex businesses from the civil rights perspective.

This chapter reviews and synthesizes various court decisions, as well as legal and policy analysis, to help the reader understand 1) which type of regulations concerning sex businesses have withstood trials and why; 2) the weaknesses and strengths of the current regulatory trend; and 3) the need for a local government to grasp the comprehensive, up-to-date status of these contentious businesses.

2.1. The Protection and Regulation of Sex Businesses: Overview

2.1.1. Protection of Sex Businesses

The primary constitutional protection of expression, known as the freedom of speech clause in the First Amendment, extends to sex-oriented materials: "Congress shall make no law… abridging the freedom of speech…" In fact, the Supreme Court has explicitly included a discussion of sex as one of the protected forms of speech:

> The portrayal of sex, e.g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press. Sex, a great and mysterious motive force in human life, has undisputably been a subject of absorbing interest to mankind through the ages."[12]

[12] Roth v. United States, 354 U.S. 476 (1957).

Citing the above statement, renowned psychoanalysts Eberhard Kronhausen and Phyllis Kronhausen delineate sex-oriented materials that are excluded from the general protection, legally termed as obscene, at the start of their landmark discussion on a legal framework surrounding pornography.[13] In fact, where and how to draw the line between a "motive force in human life" and "obscenity" is one of the main debating points surrounding pornographic materials and businesses that handle such materials. As acknowledged by Supreme Court Justice Antonin Scalia:

> … we have been guided by the principle that "sex and obscenity are not synonymous." The former, we have said, the Constitution permits to be described and discussed. The latter is entirely unprotected, and may be allowed or disallowed by States or communities, as the democratic majority desires. Distinguishing the one from the other has been the problem.[14]

In sum, the court-tested constitutionality of one's right to express a sexual theme has provided the foundation for sex businesses' existence in our communities—as long as the expression is not obscene.

2.1.2. Basic Justification for Regulation of Commercial Speech

If the constitutional protection of free speech represents one side of the legal framework concerning sex businesses, then the protection of the public welfare represents the other side. Eric Damian Kelly and Connie Cooper, planners specializing in land use controls and community planning with a legal, teaching, and consulting background, explain the key conditions that legitimatize regulation of sex businesses in the APA Planning Advisory Report.[15] For the most basic and encompassing principles justifying governmental restriction of commercial speech, Kelly and Cooper cite the Central Hudson case decision, as later summarized in the Macromedia billboard case (which I will refer to as the Commercial Speech test) to include the following elements:[16]

(1) Commercial speech that includes unlawful activity or is misleading is not protected;
(2) Restriction on otherwise protected commercial speech should purport to implement a *substantial governmental interest*; and
(3) Such restriction should be directly linked to and stay within the scope of implementing that interest.[17]

In the next section, I will further discuss obscenity, the most controversial category of potentially unlawful activities under the first part of the test, as well as other activities that have been declared to subvert a governmental interest to the extent that they do not deserve constitutional protection.

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[13] Eberhard and Phyllis Kronhausen, *Pornography and the Law: The Psychology of Erotic Realism and "Hard Core" Pornography* (New York: Ballantine Books, 1959), 146-174. Kelly and Cooper praise the famous psychoanalysts for providing "a landmark, and now historical, perspective on the concepts of pornography and obscenity in modern society" (Kelly and Cooper, 168). The legal term "obscenity" will be discussed more extensively in Section 2.2.

[14] FW/PBS, Inc. v. City of Dallas, 493 U.S. 250 (1990).

[15] Kelly and Cooper, "Chapter 5. Major Legal Issues in the Regulation of Sex Businesses," 89-118.

[16] Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980), as summarized in Metromedia, Inc., v. City of San Diego, 453 U.S. 490 (1981).

[17] Kelly and Cooper, 90 (the authors' four-part list has been modified to a three-part list in this report).

2.2. Unprotected Types of Sex Businesses

2.2.1. The Obscenity Test as a Way to Distinguish the Unprotected Speech

The first part of the Commercial Speech test, precluding unlawful activity from the protected form of speech, is a hotly contested item in the realm of sex businesses because of their perceived, potential, and/or actual association with obscenity. Differentiated from a legitimate portrayal of sex, obscene commercial materials and activities have been determined to lack the First Amendment protection, and the federal government, as well as most states, has adopted statutes on obscenity.[18]

However, judges have had difficulty establishing a precise definition of obscenity, as reflected in Justice Potter Stewart's famous opinion: "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it."[19] Consequently, judges have only succeeded in giving general guidelines, leaving the primary responsibility to the *average person* applying *contemporary community standards*.[20] Kelly and Cooper summarize the guidelines determining a work's obscenity as clarified by the Supreme Court in the Miller case (often referred as the Obscenity test):

(1) If the work, taken as a whole, lacks *serious literary, artistic, political or scientific value*;
(2) If the work includes *patently offensive* materials;[21] and
(3) If the patently offensive materials are determined to be obscene according to contemporary community standards.[22]

Materials that have been prosecuted as obscene include, but are not limited to: bestiality, excretory activities, rape, and torture.[23]

2.2.2. Criticisms of the Obscenity Test

In spite of (or, perhaps, because of) the Court's attempt to select the words carefully, the test opens the floodgate to a wide range of interpretations and criticisms. On one hand stand those who argue that the Obscenity test thwarts the intention of the First Amendment. Mocking the ambiguity and subjectivity of the Court's decision, Nadine Strossen, a former president of the American Civil Liberties Union, compares the Obscenity test to a "Rorschach test for judges and jurors," arguing

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[18] Morality in Media, "A Quick Primer on Obscenity Laws and the First Amendment," *Pornography and the First Amendment* <http://www.obscenitycrimes.org/obsclawprimerV1.cfm> [15 April 2008].

[19] Jacobellis v. Ohio, 378 U.S. 476 (1964).

[20] The first case explicitly excluding obscenity from the protected form of speech is Roth v. United States, 54 U.S. 476 (1957). The position was confirmed and elaborated in Miller v. California to define obscenity as a work that 1) appeals to the "prurient interest" in an average person's view, applying "contemporary community standards;" 2) shows sexual conduct in a "patently offensive way" defined by state law; and 3) lacks "serious literary, artistic, political, or scientific value." Smith v. U.S., 431 U.S. 291 (1977) further upheld "contemporary community standards," as represented by juries, to precede a state statute while leaving room for further review. Kelly and Cooper, 90-91.

[21] According to the Miller and Smith case, "patently offensive" materials depict "ultimate sexual acts, normal or perverted, actual or simulated," and "masturbation, excretory functions, and lewd exhibition of the genitals," which Kelly and Cooper define as "hard core" (Kelly and Cooper, 91-92).

[22] Kelly and Cooper, 92 (the order of the test has been rearranged by author).

[23] Concerned Women for America, "DOJ Releases List of 'Obscenity Prosecutions during This Administration," by Jan LaRue, Chief Counsel, 18 December 2003 <http://www.cwfa.org/articledisplay.asp?id=5022&department=LEGAL&categoryid=pornography> [3 May 2008].

that basically no one can objectively judge one's tastes and preferences to be obscene.[24] Franklin H. Robbins, Jr. and Steven G. Mason, attorneys specializing in First Amendment law, criticize the Court's attempt to regulate commercial speech on the basis of obscenity as "irrational, unreasonable and absurd" because it dangerously limits the scope of the freedom.[25] Arguing that people in a mature democratic society can decide for themselves what to read (and not to read), they commend Justice William J. Brennan Jr.'s proposal to eliminate the whole obscenity exclusion, except for cases involving minors or adults without consent.[26]

On the other end of the spectrum, even those who believe that pornography does not deserve any constitutional protection find the Obscenity test to be useless and obstructive to efforts to criminalize pornography. Catharine A. MacKinnon, a civil rights lawyer, and Andrea Dworkin, a feminist writer and activist, argue that, as a criminal legal term based on an inconsistent social value judgment, obscenity focuses only on the publicly perceivable value of materials while discounting the injury caused by them.[27] Such inconsistency and limitation in legal terminology practically excludes the expression and distribution of most types of sexual abuse from a prosecutable range, a practice that has led to "ill-conceived or politically motivated criminal prosecutions."[28] Moreover, MacKinnon and Dworkin argue that the term's inconsistency makes it almost impossible to measure and document the harm caused by obscenity, which hinders courts from effectively enforcing obscenity-related laws.[29] In a report documenting how pornography distorts mental and psychosexual development, Victor B. Cline, a psychotherapist specializing in family/marital counseling and sexual addictions, also notes the lack of enforcement of obscenity laws.[30]

2.2.3. Limited Local Authority in Defining Obscenity

One might think that due to the obvious difficulty of establishing a universal standard of obscenity, the Supreme Court has given the local "community" the magic wand to decide for themselves what is obscene. On the contrary, a closer examination of how the Obscenity test has actually been prosecuted tells a different story. Observing that many local communities have failed in formally recognizing sex-oriented businesses as obscene, Daniel J. McDonald, a legal scholar, points out that the Obscenity test actually employs two separate levels of standards. The first portion of the Obscenity test—to judge a work's literary, artistic, political, or scientific value—requires national

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[24] Nadine Strossen, *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights* (New York: Scribner, 1995), 53-54.

[25] Franklin H. Robbins Jr. and Steven G. Mason, "The Law of Obscenity—Or Absurdity?" *St. Thomas Law Review* 15, no. 3 (Spring 2003): 518.

[26] In a dissenting opinion for Paris Adult Theatre I v. Slaton, 413 U.S. 49, 84 (1973), quoted in Robbins and Mason, 549.

[27] MacKinnon and Dworkin, eds., 256-7. MacKinnon and Dworkin argue that pornography is specifically and concretely defined to depict "the sexually explicit subordination of women." Their argument is further elaborated in Section 2.5. Dworkin also wrote a series of books on how pornography perpetuates male supremacy and objectifies female bodies, including *Pornography : Men Possessing Women* (New York: E.P. Dutton, 1989).

[28] Ibid., 386, 256. The exclusion of "most types of sexual abuse from a prosecutable range" is reflected in the aforementioned list of the prosecuted materials.

[29] Ibid., 257.

[30] Victor B. Cline, *Pornography's Effects on Adults and Children* (New York: Morality in Media, 2001), 2.

acceptance; only the second and third elements—to discern patently offensive and obscene works according to contemporary community standards—can be determined at a local level.[31]

As for the first part of the Obscenity test, the Supreme Court has explicitly stated that the work's value cannot be determined by "an ordinary member of any given community" but by a "reasonable person" in a broader sense.[32] Jules B. Gerard, an expert on free speech and other constitutional issues, explains the Court's reasoning as to protect a work's value independently of a particular community's approval: "the value of a work does not vary from one community to the next depending on the acceptance it has won."[33] Consequently, the local community is given a crippled authority to consider the obscenity of only those materials that have failed to meet the national value test, which has been proven to be quite inclusive.

Linda Williams, in her scholarly book on the evolution of pornography in the film industry, finds it ironic that, following the Court's clarification of obscenity, "all sorts of surprising works were discovered to be not without some 'nugget' of social, historical, or even aesthetic worth."[34] Indeed, the Supreme Court has affirmed its authority to overturn a local jury's determination of obscenity.[35] Despite the Supreme Court's previous admission of its inability to establish a national obscenity standard, by reserving a final say on the first step of the obscenity test, the Court has basically reversed its own admission.[36]

2.2.4. Types of Unprotected Sex-Oriented Commercial Activities

The debates on the Obscenity test have not precluded courts from declaring certain commercial activities as unprotected, albeit not without struggles and doubts. Perhaps more relevant to this report's discussion of local regulation of sex businesses, this black list of activities provides a court-tested basis for a local government to consider banning such activities and, at the same time, to understand what kind of resistance such a ban may face.

Nude Dancing. Reviewing several court cases involving nude dancing, Kelly and Cooper suggest that nude dancing lies "only within the outer ambit of the First Amendment's protection," citing the pluralist opinion that upheld the local ban on public nudity.[37] However, one should note that, even in this most recent Supreme Court case, the majority based the ordinance's legitimacy on the

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[31] Daniel J. McDonald, "Regulating Sexually Oriented Businesses: The Regulatory Uncertainties of a 'Regime of Prohibition by Indirection' and the Obscenity Doctrine's Communal Solution," *Brigham Young University Law Review* no. 2 (1997): 361.

[32] Pope v. Illinois, 481 U.S. 500-01 (1987), quoted in McDonald, 361.

[33] Jules B. Gerard, *Local Regulation of Adult Businesses*, 1996 ed. (Deerpark, Il: Clark Boardman Callaghan, 1996), 78, quoted in McDonald, 361.

[34] Linda Williams, *Hardcore: Power, Pleasure and the "Frenzy of the Visible,"* (1989; exp., Berkeley: University of California Press, 1999), 89, quoted in Kelly and Cooper, 16.

[35] Jenkins v. Georgia, 418 U.S. 153 (1974), quoted in McDonald, 361.

[36] "Under a National Constitution, fundamental First Amendment limitations on the powers of the States do not vary from community to community, but this does not mean that there are, or should or can be, fixed, uniform national standards of precisely what appeals to the 'prurient interest' or is 'patently offensive.' These are essentially questions of fact, and our nation is simply too big and too diverse for this Court to reasonably expect that such standards could be articulated for all 50 States in a single formulation, even assuming the prerequisite consensus exists." Miller v. California, 413 U.S. 15, 30 (1973), quoted in McDonald, 383 (n122).

[37] City of Erie v. PAP's A.M. tdba Kandyland, 146 L.Ed.2d 265, 120 S.Ct. 1382 (U.S. 2000) (for a more detailed discussion, see Kelly and Cooper, 106).

demonstrated negative secondary impacts of nude dancing establishments, not on the obscene content of nude dancing.[38] In fact, a few states with strong freedom of expression provisions, such as Washington, Oregon, and New York, explicitly protect nude performances.[39]

Some authors, especially those in the fields of art, anthropology, and cultural studies, argue that the artistic, social, and cultural values of nude entertainment squarely deserve constitutional protection. Judith Lynne Hanna, a staunch advocate of exotic dance, has compiled a bibliographic summary of literature supporting such values and warns planners of "legal difficulties over restrictions they try to impose on this industry."[40] Ben Urish, a culturologist specializing in entertainment and popular culture, recognizes striptease as artistic and cultural expression and asserts that it should not be treated differently from any other art form.[41]

Nonetheless, as recently as in February 2008, the Supreme Court again tacitly approved a local ban on nudity by denying a hearing on the case that challenges the City of Daytona Beach's ordinance banning nude dancing in adult clubs.[42] According to Mike Johnson, a constitutional attorney, the City of Daytona successfully demonstrated the linkage between this type of activity and harmful effects on a community, including rape, sexual molestation, and assault.[43]

Touching. Touching businesses involve direct (or a risk of direct) contact between an entertainer and a customer. Examples include lap dancing, non-therapeutic massages, body painting, nude photography, and lingerie modeling. Kelly and Cooper call these businesses most problematic, since most of these activities occur in an enclosed space where sexual contact can happen with no effective control.[44] Kelly and Cooper cite several court cases that have upheld local ordinances banning one-on-one physical contacts, rejecting the First Amendment protection argument for this type of businesses.[45]

Arcades and Peep Shows. Likewise, Kelly and Cooper have found that arcades and peep shows, often shown in an enclosed space equipped with boxes of tissues and waste baskets for bodily fluids, have no public value that warrants the First Amendment protection.[46] Kelly and Cooper again support their claim with several court cases that have unsympathetically upheld statutes banning arcades and peep shows, calling them promoters of "anonymous sex."[47]

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[38] The difference between ordinances based on a business's secondary impacts and that based on its content will be further discussed in Section 2.3.

[39] Kelly and Cooper, 34.

[40] Judith Lynne Hanna, "Exotic Dance Adult Entertainment: A Guide for Planners and Policy Makers," *Journal of Planning Literature* 20, no. 2 (November 2005): 116.

[41] Ben Urish, "Narrative Striptease in the Nightclub Era," *Journal of American Culture* 27, no. 2 (June 2004): 165.

[42] Steve Jordahl, "Nude Ban in Daytona Beach Stays," *Family News in Focus* <http://www.citizenlink.org/fnif/A000006627.cfm> [24 March 2008]. Ludmilla Lelis, "Supreme Court Tells Daytona Beach Dancers to Cover Up, Follow Rules," *Orlando Sentinel*, 20 February 2008.

[43] Jordahl.

[44] Kelly and Cooper, 113.

[45] Ibid., 113-5.

[46] Ibid., 33.

[47] Ibid., 112-113; Chez Sex VIII, Inc., v. Poritz, 688 A.2d 119 (N.J. Super 1997), cert. denied, 694 A.2d 114 (N.J. 1997), cert. denied, 118 S.Ct. 337, quoted in Kelly and Cooper, 33.

In sum, while sex businesses are protected by the First Amendment, the distinction between lawful and unlawful sex businesses, or between constitutionally protected and unprotected commercial activities, is far from clear. At first glance, court decisions seem to give a local government wide discretion to use contemporary community standards to determine the unlawfulness, or obscenity, of sex businesses. Conversely, people's divergent views on obscenity and a work's value make it difficult to establish a definite and prosecutable classification of obscene businesses at the local level. Notwithstanding the difficulty, some local governments and courts have successfully determined certain types of businesses as constitutionally unprotected by demonstrating that their harm overweighs their value, and other local governments could use these decisions as a basis for banning such businesses.

The following section addresses the legal basis and local efforts to deal with constitutionally protected sex businesses.

2.3. Regulation of the Protected Types of Sex Businesses

2.3.1. Limited Local Authority in Regulating the Content of Protected Businesses

As reviewed in the previous section, local governments' hands are limited in categorizing all sex businesses as obscene. Consequently, most local governments have accepted sex businesses as lawful commercial operators and taken an alternative approach to regulation: restricting the content of their goods and services. Considering the difficulty local governments have faced in trying to prove the obscenity of such businesses, it is not hard to construe that any efforts influencing the content of commercial goods and services would ignite resistance.

Let us recall the Commercial Speech test, which describes the conditions that justify governmental regulation:

(1) Commercial speech that includes unlawful activity or is misleading is not protected;
(2) Restriction on otherwise protected commercial speech should purport to implement a substantial governmental interest; and
(3) Such restriction should be directly linked to and stay within the scope of implementing that interest.

As the second portion of the test signifies, for a local government to impose a restriction on the content of sex-oriented goods and services, it needs to prove that the restriction constitutes a "precisely drawn means" of pursuing a "compelling state interest."[48] Upon reviewing court cases and justices' opinions on the test, McDonald recognizes that almost no local ordinances will be able to pass the test, aptly quoting Justice John Marshall's comment on the test as being "strict in theory, but fatal in fact."[49]

[48] Playtime Theatres, 475 U.S. at 62 (Brennan, J., dissenting) (quoting Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. 530, 540 (1980)), quoted in McDonald, 344.

[49] Fullilove v. Klutznick, 448 U.S. 448, 519 (1980) (Marshall, J., concurring in judgment); Playtime Theatres, 475 U.S. at 46-47, quoted in McDonald, 344.

2.3.2. The Content-Neutral Approach

Since local governments have realized that they cannot realistically regulate the content of sex-oriented goods and services, they have turned to another way of regulating sex businesses: taming the external problems such businesses actually or potentially create. This approach has been termed as a *content-neutral* or *time, place, or manner* approach to regulation, since the content of the speech is protected, but the time, place, or manner of presenting the speech is regulated. McDonald summarizes the time, place, and manner test (also called the O'Brien test), which I will refer as the Content-Neutrality test, as laid out by the Supreme Court:[50]

(1) Restriction should serve an important or substantial government interest;
(2) It should narrowly serve the interest; and
(3) It should not "unreasonably limit alternative avenues of communication" for the protected commercial speech.

The following list gives examples of content-neutral ordinances whose validity has been confirmed at various levels of courts:

- Designating sexually oriented businesses as a distinct category of land use;[51]
- Limiting their locations within certain areas, e.g. commercial and manufacturing zones;[52]
- Requiring separation of sex businesses at a certain distance (also called the Dispersal Requirement);[53] and
- Concentrating sex businesses into a single area (also called the Red-Light-District or Concentration approach).

These examples show how relevant and effective zoning ordinances can be in regulating sex businesses. In fact, as McDonald observes, zoning ordinances have been the "tool of choice" to regulate sex businesses. Steven I. Brody, another legal scholar, attributes the popularity of zoning ordinances to the fact that "local zoning regulation has enjoyed a strong presumption of validity."[54]

2.3.3. Need for Secondary Impact Studies

The intention of the content-neutrality test seems to strikingly resemble that of the Obscenity test, but the important difference is that the former is based on sex businesses' secondary impacts while the latter is based on their content. In other words, to fulfill the requirement of the content-neutrality test, the local government needs to demonstrate that the secondary impacts of sex businesses—not their content per se—are negative enough to call for the governmental regulation. McDonald emphasizes that "the ultimate success of any such zoning scheme almost always turns

[50] United States v. O'Brien, 391 U.S. 367 (1968), quoted in McDonald, 345-346.

[51] Young v. American Mini Theaters, 427 U.S. 50 (1976); City of Renton v. Playtime Theatres, 475 U.S. 41 (1986); quoted in Kelly and Cooper, 95.

[52] Stringfellow's of New York v. City of New York, 91 N.Y.2d 382, cert. den. 142 L.Ed.2d 658, quoted in Kelly and Cooper, 95.

[53] Ibid.; also Young v. American Mini Theaters and City of Renton v. Playtime Theatres.

[54] Steven I. Brody, "When First Amendment Principles and Local Zoning Regulation Collide," *Northern Illinois Law Review* no. 12 (1992): 671-2, quoted in McDonald, 383.

upon whether the government has demonstrated the negative secondary effects these types of businesses have on a community" in so-called *Secondary Impact* studies.[55]

Consequently, the Secondary Impact studies play a critical role in legitimizing most of the current regulations, generating yet another set of debates on the validity of such studies as well as the effectiveness of the Content-Neutral ordinances. The next section explores examples and results of the Secondary Impact studies and debates surrounding the validity of the studies.

2.4. Secondary Impacts of Sex Businesses

2.4.1. Municipal Studies Demonstrating Harmful Impacts of Sex Businesses

Kelly and Cooper devote a whole chapter of their report to analyzing numerous studies, conducted by or for local governments, on measuring the secondary impacts of sex businesses.[56] While these studies are frequently cited by other cities as supporting materials for adopting related regulations, Kelly and Cooper highlight studies from Denver, Indianapolis, and New York as the most complete and carefully done and thus applicable in other localities. On the other hand, they do not recommend generalizing the findings of some other studies, due to their uncontrolled variables, overly inclusive definition, and special characteristics of the study area, as in Newport News, St. Paul, and Whittier, California, respectively. In any case, the authors aptly point out various methods undertaken by local governments that may be useful in any locality for gauging the relationship between sex businesses and real estate values, crime rates, and neighborhood conditions, as follows:

- *Real Estate Values.* Some localities conducted surveys of local residents and business owners to uncover people's perceptions of the impacts adult entertainment uses have on surrounding property values, as in Denver. Others surveyed real estate brokers or appraisers, as in New York and Indianapolis, respectively. Appraisers' opinions are particularly important because they determine the mortgage value and thus become "self-fulfilling prophecies."[57]

- *Crime Rates.* Crime rates were documented through research on the history of licensing and criminal violations (Denver and Tucson), the number of police responses (New York and Newport News), and an interview with a police captain (Fort Worth). Some localities, like Indianapolis, compared the crime rates and/or real estate value appreciation in areas with sex businesses to the data in areas without them, as well as to the city as a whole. Whittier, California, compared areas with a concentration of sex businesses to areas with similar land-use patterns but no concentration of sex businesses.

[55] McDonald, 346-7.

[56] Kelly and Cooper, "Chapter 3. Formal Studies of Sex Businesses: What They Tell Us About Real and Perceived Impacts," 45-67.

[57] Cooper, Kelly, and Garry L. Edmondson. "Regulating Sex in the County" (PowerPoint presentation, national conference of the American Planning Association, Las Vegas, NV, 30 April 2008), slide 28.

- *Neighborhood Conditions*. Various localities added field observations of signage and the interior[58] of sex businesses, as well as surrounding residential properties, as in Denver, New York, St. Paul, and Tucson.

Most of these studies demonstrate the negative impacts sex businesses have on property values and crime levels, especially when the businesses are geographically concentrated. On-site entertainment businesses seem to be most closely related with the number of crime incidents. The distance from a sex business matters, as the impact is shown to be greatest within the same block. Table 2.1 summarizes some of more ubiquitous impacts of sex businesses found in the studies described.

Table 2.1. Impacts of Sex Businesses Found in Local Studies

Impacts of Sex Businesses on Neighborhood	*Studies Cited*
Decrease in property values and/or appreciation rates of both residential and business properties	Rochester, Indianapolis, New York City; some supporting data from Denver
- Greatest impact on the same block	Denver and Rochester
- Greater impact on residential properties	Rochester and Indianapolis
Increase in crime around concentrations of sex businesses	Phoenix, Denver, Indianapolis, Whittier, and St. Paul
- Higher correlation of crime incidents with on-site entertainment businesses than with retail ones	Denver
- Association with prostitution	Denver and Whittier
- Evidences of masturbation and illegal sex activities in video-viewing booths	Tucson
- No clear association with "violent" crimes	Phoenix and Denver
- No clear association between sex businesses and crime activities	New York
Most significant impacts attributed to concentrations of businesses with on-site entertainment and/or direct physical interaction	Newport News, St. Paul, Whittier

Source: These studies are all referenced in Kelly and Cooper, "Chapter 3. Formal Studies," 45-67. Copies of the studies are available at the APA's Planning Advisory Service (PAS) and can be loaned for a fee to non-PAS subscribers.

A rigorous survey of residents and business owners/managers in Kansas City, Missouri, confirms the negative image of sex businesses held by neighbors. The study found that as many as 96 percent of the respondents specifically pointed to sex businesses (or businesses carrying sex-oriented materials) as a "business that should not be in [their] neighborhood."[59]

At the same time, it is noteworthy that a few of these studies produced contradictory findings. For example, New York's research, one of the most thorough studies, found no obvious relationship between sex businesses and criminal activities. The next subsection gives more examples of independent researches that produced contrasting results.

[58] The interior of sex businesses are often good indicators of the illegitimacy of sex businesses, e.g. businesses with a substantial portion of stock in both sex-oriented and general items (to avoid the sex-business classification) and enclosed booths with soiled mattresses and tissues.

[59] Oedipus, Inc., *Survey Regarding Businesses with Video-viewing Booths or with Less than a Significant or Substantial Portion of Their Stock in Trade in Adult Materials, Kansas City, Missouri* (Boulder: Oedipus, Inc., 1998), quoted in Kelly and Cooper, 48. For a further discussion of the survey, see Kelly and Cooper, 45-51.

2.4.2. Independent Studies Demonstrating No Significant Impacts of Sex Businesses

Daniel Linz is a First Amendment expert who tests assumptions made by the local governments' Secondary Impact studies.[60] Specifically, he and two other researchers conducted empirical analysis to compare the frequency of reported crimes in the areas immediately surrounding adult erotic dance clubs to that in comparable local areas in Charlotte, NC, over the three-year period.[61] Contrary to the assumed association between sex businesses and negative impacts, the analysis concluded that the areas surrounding adult businesses had fewer crime incidents reported than the comparison areas. Their later study on the secondary effects of peep shows in San Diego also concluded that the crime level was not particularly higher around peep show businesses than in other areas of the City.[62]

Bryant Paul, one of the co-authors of Linz's previous studies, led another effort to analyze the methods and findings that municipalities have used to support regulations banning nudity. The authors conclude that the most cited methods are "seriously and often fatally flawed" and that the studies "do not adhere to professional standards of scientific inquiry."[63] On the other hand, the authors found that "scientifically credible" studies show no negative effects or even less of such effects from adult businesses.[64]

Likewise, Hanna quotes two police studies' findings that exotic dance clubs had no more negative impact on crime than other businesses. In fact, they found that clubs that served alcohol only (without nude dancing) had more problems.[65] Hanna also finds that alcohol businesses induced a higher number of crime-related calls than exotic dance entertainment clubs.[66]

2.4.3. Other Evidences of Negative Secondary Impacts

However, other researches point out errors in some of the studies rebutting the negative secondary impacts of sex businesses. For example, Richard McCleary and James W. Meeker, University of California professors of criminology, assess the findings of the peep show study by Linz et al. as "a methodological artifact of their novel design… compounded by a common hypothesis testing fallacy."[67] Moreover, Cooper, Kelly, and Garry L. Edmondson, Kenson County Attorney, argue

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[60] For more details on his research, please see his website *Communication, Community, and Law* <http://www.myaonet.com/linz/index.html> [5 November 2007].

[61] Daniel Linz, et al., "An Examination of the Assumption that Adult Businesses are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina," *Law & Society Review* 38, no. 1 (2004): 69-104.

[62] Daniel Linz, Bryant Paul, and Mike Z. Yao, "Peep Show Establishments, Police Activity, Public Place, And Time: A Study of Secondary Effects in San Diego, California," *The Journal of Sex Research* 43, no.2 (May 2006): 182-194.

[63] Bryant Paul, Bradley J. Shafer, and Daniel Linz, "Government Regulation of 'Adult' Businesses through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects," *Communication Law and Policy* 6, no. 2 (Spring 2001): 355-391.

[64] Ibid.

[65] Ron Fuller and Sue Miller, *Fulton County [Georgia] Police Study of Calls for Service to Adult Entertainment Establishments Which Serve Alcoholic Beverages*: *January 1995-May 1997*, County Attorney's Office, 1997; Major W. D. Phifer and Accreditation Staff of the Fulton County Police Department, *Alcohol And Non-Adult Entertainment Establishments Statistical Analysis from 1/1/98 to 12/31/00*, Fulton County Police Department, 2001; quoted in Hanna, 128.

[66] Hanna, *Legal Predicate: High Number of Calls for Service,* Presentation to the Prince George's County Council Public Hearing for CB-86, 26 November 2001.

[67] Richard McCleary and James W. Meeker, "Do Peep Shows 'Cause' Crime? A Response to Linz, Paul, And Yao," *The Journal of Sex Research* 43, no. 2 (May 2006): 194-197.

that unlawful activities associated with sex businesses often go unreported because 1) some are categorized merely as misdemeanors, petty offenses, or municipal infractions; 2) violators can often pay citations without trial; and 3) some people simply choose not to report illegal activities they witness or even crimes committed against them because they do not want to publicly acknowledge that they were in or near a sex business.[68]

The increased level of crimes around sex businesses in San Francisco reflects the consistent findings of McCleary.[69] The types of violations associated with sex businesses in San Francisco include: licensing violations, prostitution, organized crimes involving gangs, drug dealing, and human trafficking. A police officer interviewed for this report has heard complaints from ex-employees of sex businesses regarding their maltreatment,[70] and the accounts of abuses eventually led to legal battles (to be discussed in Section 5.3). Additionally, he knows a few sex businesses that are operated and/or frequented by gangs. For example, members of a particular gang hold an annual meeting in a sex business, and the occasion is usually accompanied by a couple of shootings. In fact, quite a few sex businesses in San Francisco appear in the Final Report produced by Attorney General's Commission on Pornography under the "Individual Corporate Organizational Profiles," a section that describes the structure and relationships of corporations linked to organized crime.[71] The police officer also notes that most of the sex businesses try to resolve an issue before receiving criminal charges because they do not want to risk the magnitude of money involved.

As for drug dealing, Randy Shaw, a long-time local activist and editor of a local on-line newspaper, frequently witnesses drug dealers doing business outside sex businesses, which take no action to remove them.[72] Dina Hilliard, a community organizer for the Tenderloin, notes a strong link between pornography and drug abuse, especially the use of methamphetamine (Meth).[73] She estimates a Meth user will simultaneously seek pornographic materials about ninety percent of the time. She views the concentration of sex businesses in the Tenderloin as the reason why the neighborhood has become a haven for Meth users. Becky Dunlap, a Victim Services Specialist for domestic and sexual violence, supports her argument: "When a community has a Meth 'problem' they will also have a porn 'problem.' When a Meth user experiences hypersexuality, he will seek out porn. When he experiences aggressiveness, he will seek out a victim."[74]

On the issue of human trafficking on a global scale, the U.S. State Department estimates that out of about 600,000 to 800,000 trafficked people each year, eighty percent are women and girls, most of whom are exploited in commercial sex establishments.[75] In the Bay Area alone, the U.S. Attorney's

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[68] McCleary quoted in Cooper, Kelly, and Edmondson, slide 37.

[69] Ibid., slide 30.

[70] Interview with a police officer, San Francisco, CA, 20 February 2008. A *police officer* as used in this report does not refer to a specific title but may denote enforcement staff at any levels.

[71] Attorney General's Commission on Pornography, "Part 4: Chapter 4: Organized Crime," *Final Report* (Washington, DC: U.S. Department of Justice, 1986), also posted on web <http://www.porn-report.com/404-organized-crime-and-pornography.htm> [14 May 2008].

[72] Randy Shaw, "Tenderloin Breakthrough: Art Gallery Replaces Porno Shop," *BeyondChron*, 21 May 2007 <http://quartz.he.net/~beyondch/news/index.php?itemid=4535> [1 April 2008].

[73] Dina Hilliard, interview by author, San Francisco, CA, 10 April 2008.

[74] Becky Dunlap, *Porn, Meth & Violence: Making Some Connections* (Jasper, IN: Crisis Connection) <http://www.crisisconnectioninc.org/pdf/Porn.pdf> [14 May 2008], 7.

[75] Meredith May, "San Francisco is A Major Center For International Crime Networks that Smuggle and Enslave," *San Francisco Chronicle*, 6 October 2006. May ran a four-part series on the City's sex trafficking in the *San Francisco Chronicle* from 6 to 10 October 2006 <http://www.sfgate.com/sextrafficking> [28 August 2007].

Office's nine-month investigation recovered about a hundred women from an illegal sex trafficking ring and confiscated millions of dollars in cash.[76] In fact, San Francisco, famous for its livable qualities,[77] is also infamous for its abundance of international sex trafficking, which fills the needs of many sex businesses.[78] The situation and implication of international sex trafficking in San Francisco will be further explored in Section 4.5.

2.4.3. Instability of the Content-Neutrality Test

Taking these contrasting pictures into account, McDonald contends that even though localities may "temporarily enjoy secondary effects successes," the content-neutral way of regulating sex businesses will eventually fall apart for multiple reasons.[79] First, it is hard to dissociate the content of the sex-oriented materials a business handles completely from its secondary impact. Conceivably, most of the secondary harms sex-oriented businesses cause would not have been afflicted if not for the content of their goods and services. Robert Post, a Yale law professor whose specialization includes constitutional law and the First Amendment, says about so-called content-neutral ordinances regulating adult movie theaters, "It is clear that the harms these restrictions sought to avert would not have occurred if the movie theaters in question had simply displayed white screens that conveyed no communicative content whatever."[80] Post concludes that "the Court has so far failed to articulate any substantive First Amendment theory to guide its distinction between primary and secondary effects."[81] On a similar vein but with a slightly different focus, Hudson asserts that the content-neutral regulation undermines the First Amendment protection because almost all forms of expression leads to some kind of secondary effects.[82]

Besides, the content-neutral ordinance's reliance on Secondary Impact studies leaves a room for court challenges. As McDonald warns of "Money's power to tell the 'truth,'" the sex business industry, with its enormous profits, has the ability to fund research that would appear even more favorable to sex-oriented businesses.[83] Describing the pornography industry's power as "largely

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[76] MSNBC, *Undercover: Sex Slaves in America,* 3 December 2007 <http://today.msnbc.msn.com/id/22056066> [9 May 2008].

[77] San Francisco ranked 28th (and second among the U.S. cities) in *Business Week*'s pick of the world's Top 100 most livable cities <http://bwnt.businessweek.com/interactive_reports/livable_cities_worldwide> [28 August 2007]. The City also ranked second in *Places Rated Almanac*'s pick of America's most livable communities in 2007 <http://www.placesrated.com> [28 August 2007].

[78] May quotes Donna M. Hughes as listing the following reasons for making San Francisco one of the largest sex-trafficking centers: "liberal attitude toward sex, the city's history of arresting prostitutes instead of pimps, and its large immigrant population." Hughes, an expert on sex trafficking at the University of Rhode Island, also wrote articles and policy reports demonstrating the relationship between sex businesses and international sex trafficking, including: *Hiding in Plain Sight: A Practical Guide to Identifying Victims of Trafficking in the U.S.* (Kingston: University of Rhode Island, 2003); "Trafficking of North Korea Refugees in China" (presentation, Conference on Criminal Trafficking and Slavery, University of Illinois—Urbana Champaign, Urbana Champaign, IL, 23-25 February 2006) <http://www.uri.edu/artsci/wms/hughes/pubtrfrep.htm> [27 August 2007]; "Enslaved in the U.S.A.," *National Review*, 30 July 2007 <http://article.nationalreview.com/?q=ZDU0OGNlMDcwM2JmYjk0N2M0OTU4NGVlMTBlMmEyMjI=> [27 August 2007]; "How Can I be Sold Like This," *National Review*, 19 July 2005 <http://article.nationalreview.com/?q=YmZhMmZhNjgxN2JlYzdkZDQ5MDIzZDNiYTg1NTQwNDQ=> [27 August 2007].

[79] McDonald, 348-359.

[80] Robert Post, "Recuperating First Amendment Doctrine," *Stanford Law Review* 47 (1995): 1267.

[81] Ibid.

[82] David L. Hudson, "The Secondary Effects Doctrine: 'The Evisceration of First Amendment Freedoms'," *Washburn Law Journal* 37, no. 1 (1997): 93.

[83] McDonald, 357.

hidden and institutionally without limits,"[84] MacKinnon tells a story of a leaked memo that revealed a public relations firm's proposal to run a press campaign specifically to "discredit" the Commission on Pornography for the Media Coalition, a group that is substantially funded by a major pornography publisher.[85] The firm got the contract of about a million dollar budget and focused their strategy on showing that "there is no factual or scientific basis" that pornography causes harm.[86] Ironically, public testimonies from victims of pornography were not published for fifteen years in the U.S. because of the lack of willingness by a publisher. Everywoman, who published some of the hearings in Britain at an earlier date, notes:

> It has proved impossible to persuade any publisher, in the very country where pornography is itself protected as "freedom of speech," to risk any association with evidence about its harmful effects on society—and especially on women and children. This is one of many indications that in the United States, freedom of speech is available only to the assailants and not to the victims. The power and wealth of the pornography industry, and interconnections with "respectable" publishing, distribution, and sales outlets, mean the power to censor those who do not participate, do not agree with what is being said, and seek to expose the harm they are doing.[87]

2.4.4. Current Trend

Despite such precautions, most of the current regulations, especially effective ones, are content-neutral ordinances based on the Secondary Impact studies. Kelly and Cooper recommend focusing on the land-use activities and impacts of sex businesses, rather than attempting to control the content of materials handled by sex businesses, because of the risk of raising the First Amendment issues.[88] Kelly believes that, because one of the prime values of having a Secondary Impact study is in providing reasonable evidence to the law, the close association between primary and secondary impacts is actually not that crucial from a city's standpoint.[89]

As summarized earlier, cities have used records and responses from police, real estate brokers, and residents to demonstrate sex businesses' negative impacts. Whereas a local government could use research from other jurisdictions,[90] recent court decisions question the validity of such evidence and demand more concrete, locality-specific evidence to prove the linkage between sex businesses and their harmful effects. For example, James Lawlor, a regular contributor on legal issues in *Planning*, illustrates two court cases that established higher standards on municipalities to validate their zoning regulations on sex businesses.[91] In the first case, the court ruled that if a city amends its ordinance to increase the scope of the regulation, the city also needs to supply new evidence to support the change. In the second case, the court declared a city's evidence without empirical data is insufficient. This trend underscores a local government's responsibility to conduct a thorough survey of sex businesses in order to understand the impacts on surrounding communities.

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[84] MacKinnon and Dworkin, eds., 20.

[85] Letter from Steve Johnson to John M. Harrington, 5 June 1986, 2, quoted in MacKinnon and Dworkin, eds., 21.

[86] Ibid., 4, quoted in MacKinnon and Dworkin, eds., 21.

[87] Minneapolis City Council, *Pornography and Sexual Violence: Evidence of the Links* (Britain: Everywoman, 1988), 1, quoted in MacKinnon and Dworkin, eds., 3.

[88] Kelly and Cooper, 116.

[89] Kelly, answer to author's question, "Regulating Sex in the County."

[90] City of Renton v. Playtime Theatres, 51-52, quoted in McDonald, 347.

[91] James Lawlor, "Adult Business Rules Subject to Closer Scrutiny," *Planning* 72, no. 4 (April 2006): 49 [on For the People Theatres of N.Y. v. City of New York (2001) and Daytona Grand v. City of Daytona Beach (2006)].

2.5. Alternative Approach to Regulating Sex Businesses

Deploring the common pitfall of prioritizing the freedom of speech over the actual harms inflicted on individuals and the society, MacKinnon and Dworkin took a drastically different approach to regulating the creation and distribution of pornographic materials in the 1980's. On the basis of numerous real life testimonies from victims of pornography, as well as professional studies and opinions,[92] they proposed an ordinance that defines pornography as "a form of discrimination on the basis of sex."[93] Based on the evidences of "environmental terrorism and private abuse" promoted by pornography, including "rape, pain, humiliation, and inferiority,"[94] the central feature of this ordinance is to provide a tool for a victim to file complaints to the Human Rights Commission and the courts. The first-hand testimonies, as well as professional opinions on the negative effects of pornography, gave powerful voices to supporters of the proposed ordinance in public hearings held in Minneapolis, Indianapolis, Los Angeles, and Boston between 1983 and 1992.[95] Such ordinances even won the support of city councils in Minneapolis and Indianapolis.

Nevertheless, the ordinances did not become law for a number of reasons, including political compromises, mayoral vetoes, and lawsuits initiated by the pornography industry.[96] What is worse, the victims and professionals who had courageously testified about the actual harms of pornography were attacked on various fronts by the pornographers, armed with lawyers and the media, making it "more difficult than it was before" to take a stand against pornography."[97] Such dire consequences do not negate but strengthen the needs to explore the civil rights approach.

Moreover, MacKinnon and Dworkin explain that the pornography industry's successful legal challenge against the Minneapolis Ordinance is by no means automatically duplicatable and has actually left "substantial latitude for another ordinance to be introduced, to be found constitutional in another circuit, and to be reviewed and upheld by the Supreme Court."[98] Alexander Reichl, a political science professor and an author of *Reconstructing Times Square*, also spoke positively on the viability of the civil rights approach if sufficient public support can be garnered.[99] This latitude suggests how a city may benefit from expanding the scope of the Secondary Impact study to include stories of victims who have suffered from primary impacts of the sex-oriented commerce.

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[92] Dworkin and MacKinnon draw from a wealth of literatures "the direct evidence of a causal relationship between the consumption of pornography and increases in social levels of violence, hostility, and discrimination," consistently shown across social studies, laboratory studies, professional testimonies, and testimonies of victims [*Pornography and Civil Rights: A New Day for Women's Equality* (Minneapolis: Organizing against Pornography, 1988), 25]. Cited works include: Neil M. Malamuth and Edward Donnerstein, eds., *Pornography and Sexual Aggression* (New York: Academic Press, 1985); Diana E.H. Russell, "Pornography and Rape: A Causal Model," *Political Psychology* 9, no. 1 (March 1988): 41-73; and Dolf Zillman, *Connections between Sex and Aggression* (Hillsdale: Lawrence Erlbaum, 1984).

[93] MacKinnon and Dworkin, eds., 428 (excerpt from the proposed Minneapolis Ordinance, 1983).

[94] Ibid., 253-4 (excerpt from "Minneapolis: Memo on Proposed Ordinance on Pornography, December 26, 1983"). This book contains a record of public hearings, press conferences, and interviews, as well as exhibits, written submissions, a supplemental memo, and brief *Amicus Curiae*.

[95] The proposed ordinances can be found in ibid., 426-461.

[96] Ibid., 17-18.

[97] Giving some specific, real-life examples, MacKinnon lists the types of attacks they had to endure: "professional shunning and blacklisting, attacks on employment and publishing, deprivation of research and grant funding, public demonization, litigation and threats of litigation, and physical assault." Ibid., 18-20.

[98] Ibid., 464.

[99] Alexander Reichl, answer to author's question, "Sex Businesses and Social Equity" (presentation, national conference of the American Planning Association, Las Vegas, NV, 30 April 2008).

2.6. Conclusion

This chapter describes three basic ways and one seemingly radical strategy for a local government to regulate sex businesses. First, its political leaders or juries, as representatives of the community, can determine that the content of certain materials carried by sex-oriented businesses is so obscene that businesses carrying such materials should be banned from the community. This approach does not have a high chance of success because, according to the national standard set by the Supreme Court, it is very difficult to prove that there is no value of any sort in such materials. Likewise, the second approach—local governments' attempt to regulate the content of sex-oriented materials carried by these businesses—has been proven to be futile.

As a result, local governments have resorted to regulating the time, place, or manner—not the content—of sex businesses' operations as a strategy to minimize their demonstrated secondary impacts. Most zoning ordinances fall in this category, requiring separation of sex businesses or limiting their location to areas where their negative secondary impacts would be minimal, such as non-residential zones. These examples can serve as a reference for a city when considering options on how to upgrade its land use regulations involving sex businesses.

While this type of content-neutral ordinances has withstood court trials and is often the most recommended approach, local governments' reliance on the Secondary Impact studies has also brought skepticisms on two grounds: 1) the indefinable line between primary and secondary impacts, and 2) such studies' contradictory results, which could be potentially misused by those who want to make their points with an inaccurate or biased data. Reflecting the precariousness of the Secondary Impact studies, the current trend shows that the studies are under increasingly strict scrutiny, stressing the need for locality-specific investigation of sex businesses.

Civil rights advocates would argue that such investigation should address the primary impacts of pornographic materials and services as well, including their discriminatory practices and abuses on the basis of sex. This approach is certainly unconventional and has fallen short of becoming a formal regulation. Nonetheless, it deserves a further exploration and certainly another try, given an abundance of strong first-hand evidences of the harm.

The natural question then arises: has San Francisco conducted any kind of impact studies that justify its regulations on sex businesses? What needs to be answered first is, in fact, whether San Francisco does regulate sex businesses and if so, how. The next chapter lays out the City's guiding policies and implementing regulations on these businesses.

3. San Francisco Policy

This chapter provides an overview of sex business-related regulations in San Francisco, with an emphasis on their planning implications. San Francisco mainly uses three types of regulations to limit the location, operation, and signage of sex businesses: the Police Codes, Planning Codes (accompanied by the Zoning Maps), and Administrative Codes.

- *The Police Codes* describe certain characteristics of hard-core pornographic materials to distinguish adult theaters, adult bookstores, and encounter studios from general entertainment businesses, thereby establishing the official umbrella definition of sex businesses in San Francisco.[100] The Police Codes also include signage and visibility regulations, as well as violation penalties.

- *The Planning Codes and Zoning Maps* are the most inclusive and detailed regulatory tools regarding the land-use aspect of sex businesses, specifying distance limits and restricted areas.[101] The Planning Codes use the Police Code definition of sex businesses.

- *The Administrative Codes* reinforce the unacceptability of sex businesses in special use districts, such as waterfront land uses and the Candlestick District.[102]

While this chapter involves an analysis of all three types of codes, it focuses on land use regulations found in the Planning Codes.

First, I will explain how the term sex business is defined in the City's Police Codes and examine how effective and current the definition is in regulating them. I will then review the types of constitutionally unprotected sex businesses (as discussed in Section 2.2) and check how they are treated in the City's Police Codes. Next, I will present a summary review of the General Plan's guiding policies on the acceptable locations of sex businesses, followed by a survey of the Planning Codes, which describe in greater detail the types and characteristics of areas permitting or prohibiting such businesses. After sketching out other local policies and operational regulations relevant to sex businesses, I will conclude the section by analyzing how well these regulations synchronize with one another and augment the intent of the General Plan—the overarching vision of the community.

3.1. Definition

All of the City codes regarding sex businesses follow the Police Codes for the definition of the so-called *Adult Entertainment* businesses, which include the following:

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[100] *San Francisco Police Codes*, Sec. 791 and 1072.

[101] *San Francisco Planning Codes*, Sec. 790.36 and 890.36 (specific to the distance requirement) and throughout most of the specific land use sections, e.g. Sec. 815 (Residential / Service Mixed Use District) and Sec. 816 (Service / Light Industrial / Residential Mixed Use District).

[102] *San Francisco Administrative Codes*, "Chapter 61: Waterfront Land Use" and "Appendix 35: Candlestick Point Special Use District."

- An *Adult Bookstore* devotes 25 percent or more of its total inventory, product lines,[103] or space for materials with an emphasis on *Specified Sexual Activities* or *Specified Anatomical Areas.*[104]
- An *Adult Theater* devotes more than 10 percent of its presentation time (measured on an annual basis) for entertainment with an emphasis on Specified Sexual Activities or Specified Anatomical Areas.[105]
- An *Encounter Studio* provides mostly enclosed spaces (i.e. "booths, cubicles, room or rooms, compartments or stalls") for entertainment.[106]

In addition, the Planning Codes indicate in the Interpretation section that an adult video store should be defined and treated the same as an adult bookstore. [107]

Thus, what primarily distinguishes *adult* entertainment from other forms of entertainment is described as Specified Sexual Activities and Specified Anatomical Areas, except in the case of Encounter Studios.[108] Generally speaking, the Specified Sexual Activities include sexually stimulated human genitals; acts of masturbation, intercourse, and sodomy; and erotic touching of genital areas, buttocks, or female breasts. The Specified Anatomical Areas depict "less than completely and opaquely covered" areas of and around human genitals and buttocks, breasts at or below the areola, as well as human male genitals in a "discernibly turgid state," regardless of the covering. Notably, the definition employed by San Francisco is exactly the same as what Kelly and Cooper have found in other typical zoning ordinances.[109]

According to Kelly and Cooper, these definitions are "far too broad … encompassing a variety of artistic materials, marriage manuals, and other self-help books and even materials presented in mainstream movies and magazines," including network television and unrestricted cable channels.[110] The authors find it more meaningful to use the categories of soft-core and hard-core pornography in order to differentiate materials that can be accessed through mainstream channels as opposed to

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[103] In the same paragraph, the Codes describe "product lines" as "items which are all identical, such as numerous copies of the same book or periodical."

[104] *San Francisco Police Codes*, art. 11.2, sec. 791(a), last amended in 25 February 1985.

[105] Ibid., art. 11.2, sec. 791(b), last amended in 25 February 1985.

[106] Ibid., art. 15.4, sec. 1072.1(b), added in 17 June 1977.

[107] *San Francisco Planning Codes*, art. 2, sec. 221(k) [definition for Use Districts in general, last amended in 6 April 1990]; art. 7, sec. 790.36 [definition for Neighborhood Commercial Districts, added in 13 March 1987]; and art. 8, sec. 890.36 [definition for Mixed Use Districts; added in 24 April 1987]. The Interpretation, effective of February 1997, states (in part): "This definition [of an adult bookstore] will include a store, 25 percent or more of whose inventory consisted of videos whose content consist of the same characteristics as described for books. It was thought that the legislative intent was to control the content rather than the delivery media."

[108] *San Francisco Police Codes*, art. 11.2, sec. 791(c)-(d), last amended in 25 February 1985. The full text is in the below:

(c) Specified Sexual Activities.
  1. Human genitals in a state of sexual stimulation or arousal;
  2. Acts of human masturbation, sexual intercourse or sodomy;
  3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(d) Specified Anatomical Areas.
  1. Less than completely and opaquely covered
    (a) Human genitals, pubic hair, buttock, natal cleft, perineum, anal region, and
    (b) Female breast at or below the areola thereof; and
  2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Interestingly, the "Specified" sexual activities or areas are not mentioned in the definition of Encounter Studios but used only to describe images not permitted in signs (art. 15.4, sec. 1072.31).

[109] Kelly and Cooper, 2-3.

[110] Ibid., 3.

materials available only through adult outlets, which directly involve a land-use issue.[111] Compared to Kelly and Cooper's description of soft-core and hard-core pornography, terms which they acknowledge to be "often used without clear definitions" and "evolving concepts," the City's definition is closer to the soft-core category, which includes full frontal and rear nudity, as well as actual sexual intercourse without the showing of genitals.[112] Considering the City's Police Code definition was last amended in 1985, it is not surprising that Kelly and Cooper's examples in the year 2000 better reflect the society's growing tolerance toward more overt and sensational sexual expressions.

A lawsuit by adult entertainment business owners against the City in the 1970s exemplifies the inadequacy of the Police Code definition.[113] Prior to the lawsuit, adult entertainment businesses were required to obtain a permit. Having been frustrated by the outmoded definition that triggered a permit process, adult entertainment business owners sued the City for the inapplicability of the definition and the related permit process. The business owners' victory was followed not by a sensible update of the adult entertainment definition but the termination of the permit requirement. Nevertheless, the definition still remains in the Police Codes and is referred to in other codes, including the Planning Codes, to specify the sex-oriented nature of a business. Another indication that proves the obsoleteness of the definition is the fact that there are no existing Encounter Studio permits issued under the Police Codes, although the Codes indicate that the Chief of the Police is responsible for issuing such permits.[114]

3.2. Regulation of Unprotected Businesses

3.2.1. Unprotected Activities

As discussed in Section 2.2, sex-oriented commercial activities that have been determined to have a very weak or no basis for constitutional protection in various court cases include nude dancing, touching businesses, and arcades with sexual contents (or peep shows).[115] San Francisco's Police Codes contain provisions on nude dancing and the touching businesses:

- Nude performers, waiters, and waitresses who expose the Specified Anatomical Areas or employ any device that resembles or stimulates the Areas in eating/drinking establishments or Encounter Studios;[116]

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[111] Ibid., 6. In Chapter 5. Recommendations, I will elaborate on whether such a distinction is useful for effective regulation strategy; for now, I will focus on analyzing the City's current definition in light of these different categories.

[112] Kelly and Cooper, 5-6.

[113] Police officer, interview. The police officer said that the information on the lawsuit was handed down to him and he did not know where to find more specific details.

[114] "The Board further finds that there are no existing Encounter Studio Permits issued under Article 15.4, and that such regulatory permitting scheme has been ineffective at addressing the adverse secondary effects of businesses operating in San Francisco that offer live adult-oriented performances by exotic dancers." Office of Supervisor Alioto-Pier. *Regulation of Live Adult Entertainment Businesses—Draft for Review and Comment only* (17 December 2007) (hereinafter referred as *Draft Legislation*), 6. The absence of Encounter Studio permits was also confirmed by police officers in interviews by author, as well as by Captain Tim Hettrich at the Commission on the Status of Women (COSW) meeting (COSW, *Meeting Minutes*, 17 November 2004).

[115] For a discussion on constitutionally unprotected businesses, see Section 2.2.

[116] *San Francisco Police Codes*, art. 15.3, sec. 1071.1, added 5 July 1973 (for food/beverage serving establishments); art. 15.4, sec. 1072.24, added 17 June 1977 (for Encounter Studios).

- Nude performers and a customer touching each other in Encounter Studios;[117] and
- Nude models who expose the Specified Anatomical Areas or employ any device that resembles or stimulates the Areas in public photography studios.[118]

According to the Police Codes, nude performances in eating/drinking establishments or Encounter Studios are prohibited, whereas the "act of any female professional entertainer… who exposes the breast or employs any device or covering which is intended to simulate the breast" is included as a legitimate part of the Police definition of *Entertainment*.[119] Touching is explicitly prohibited in Encounter Studios. A police officer confirmed that touching is prohibited in eating/drinking establishments as well,[120] but the written Codes are not as straightforward. The Codes explicitly prohibit dancing between an entertainer (or an employee) and a customer[121] and require a stage to be at least 18 inches above the floor and at least 6 feet apart from the nearest patron.[122] However, the dancing prohibition and stage requirement would not warrant the separation between entertainers and patrons unless the regulation prohibits any types of physical contacts after the show.

Regarding arcades, the Police Codes simply require "supervision adequate to protect the public against conduct of patrons that is detrimental to the public health, safety, and general welfare."[123] The Codes are silent on the possible misuse of arcades for adult entertainment uses. The Codes do provide some regulations regarding visibility of booths or any enclosed entertainment spaces (including Encounter Studios), mandating that the inner portion of such enclosed entertainment spaces should be visible.[124]

3.2.2. Unregulated Businesses

Upon close examination of these regulations, one notices that none of these regulations pertain to Adult Entertainment businesses per se. In fact, they are all specific to Place of Entertainment, Encounter Studio, Public Photography Studio, and Arcade, as narrowly defined by the Police Codes. For example, the *Place of Entertainment* is defined as a place where food and/or beverages are served,[125] effectually distinguishing Adult Entertainment businesses (i.e. adult bookstores and theaters without food/beverages) as a separate entity, subject to different regulations. To make the distinction even clearer, the provisions prohibiting nude performers in eating/drinking establishments or public photography studios explicitly denote a "theater… or similar establishment which is primarily devoted to theatrical performances" as exceptions.[126]

An evident and significant corollary to this distinction is that a sex business with any or all of the constitutionally unprotected commercial activities can bypass related regulations in San Francisco, as long as food or beverages are not served. As explained in the prior section, such a business is

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[117] Ibid.
[118] Ibid., art. 15.5, sec. 1073.19, added 5 September 1974.
[119] Ibid., art. 15.1, sec. 1060(e), last amended 4 November 2004.
[120] Interview with a police officer, San Francisco, CA, 30 January 2008.
[121] *San Francisco Police Codes*, art. 15.1, sec. 1060.9, added 28 April 1970.
[122] Ibid., art. 15.1, sec. 1060.9.1, added 6 July 1973.
[123] Ibid., art. 15, sec. 1036.32(b), last amended 26 July 2002.
[124] Ibid., art. 15.1, sec. 1060.10, added 28 April 1970.
[125] Ibid., art. 15.1, sec. 1060, last amended 4 November 2004.
[126] Ibid., art. 15.3, sec. 1071.4, added 5 July 1973; art. 15.5, sec. 1073.30, added 5 September 1974. These provisions also exempt "any act authorized or prohibited by any state statute."

exempt from requiring any type of a special permit. The absence of any regulatory mechanism has been confirmed in a series of my unsuccessful attempts to obtain more information on regulations pertaining to unprotected sex-oriented activities, specifically on nude dancing. Notably, when the problems associated with *exotic dancing* (typically including striping and lap dancing) surfaced in San Francisco in 2004, a Deputy City Attorney acknowledged that "there was some ambiguity in how City agencies look at and interpret the codes [regarding the dance clubs]" and "there were no codes for dancers."[127] A staff member of the Entertainment Commission, an agency that ensures a Place of Entertainment's compliance to regulations, affirmed that the Commission does not handle Adult Entertainment cases and that she has not seen any application that mentions nudity.[128] Having observed the proliferation of sex-oriented businesses, a police officer recognizes that these businesses are simply not regulated and describes the absence of a regulatory measure as "not a loophole, but a tunnel."[129]

As a result, although nudity and touching are not allowed under the issuance of a liquor license (and thus the Entertainment permit), they are allowed without any restriction in Adult Entertainment businesses. Moreover, businesses without a liquor license have found ways to get around the rule and serve alcohol. Another loophole in the regulation is that nudity is allowed, even in the Place of Entertainment, as long as the stripping constitutes less than ten percent of the total performance time. The unenforceability of these requirements and consequent violations are further explored in Section 3.6.3.

When asked "which codes were used for the dance clubs" and "how many permits had been issued to the dance clubs" by the Commission on the Status of Women (COSW), the Deputy City Attorney repeatedly referred the Commission to the District Attorney's Office and the Police Department.[130] In fact, just a few months before the meeting, the District Attorney had ordered the formation of an Adult Clubs Working Group to examine issues regarding lap-dancing clubs and enforcement options.[131] However, when I asked about the Group's work, the District Attorney Office referred me to the Department on the Status of Women (DOSW),[132] a department that shares the same mission, and the COSW, the original source of the question. In response to my subsequent inquiry, the DOSW emailed me a copy of the legislation drafted by the DOSW and approved by the COSW, noting that the copy is the only information available for dissemination.[133]

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[127] San Francisco COSW, *Meeting Minutes*, 17 November 2004 <http://www.sfgov.org/site/cosw_page.asp?id=28801> [16 April 2008].

[128] Phone conversation with the Entertainment Commission staff member, San Francisco, CA, 11 February 2008.

[129] Police officer, interview. Interestingly enough, the police officer referred to the City Attorney's Office as a potential resource that would be helpful in my research.

[130] San Francisco COSW, *Meeting Minutes*. When I called the City Attorney's Office, a staff member said that complaints need to be filed via the Entertainment Commission and the Police Department before the City Attorney takes any action and that they wanted to defer to these agencies for any comments on this issue. Phone conversation with a City Attorney, 5 February 2008.

[131] David Steinberg, "Lap Victory: How a DA's Decision to Drop Prostitution Charges against Lap Dancers Will Change the Sexual Culture of S.F–and, Perhaps, the Country," *SF Weekly*, 8 September 2004 <http://www.sfweekly.com/2004-09-08/news/lap-victory> [11 February 2008].

[132] District Attorney Office staff member, e-mail message to author, 14 March 2008.

[133] Department on the Status of Women (DOSW) staff member, e-mail message to author, 20 March 2008. While the background information, including evidences of exotic dancing clubs' negative impacts, is supposed to have been filed in the Office of the Clerk of the Board of Supervisors, the DOSW was not able to get me the file number. This legislation has been taken over by Supervisor Alioto-Pier and is still in progress. I finally did obtain the file number from the Supervisor's legislative aid and a copy of the file from the Clerk of Board of Supervisors, but the file does not

Table 3.1 illustrates some of the loopholes, or tunnels, associated with San Francisco's current regulations on constitutionally unprotected sex-oriented commercial activities. Even in cases where the stated restriction is clear, as in Encounter Studios, one cannot help but wonder what the purpose of Encounter Studios would be without nudity and touching activities.[134] It is even more doubtful that the prohibition on dancing is strictly enforced. Most of the prohibition provisions were added as early as 1973, some in 1970, which casts doubt on the contemporary relevance of these regulations.

Table 3.1. Summary of Restrictions on Sex-Oriented Commercial Activities in San Francisco

Types	*Nude dancing (nudity)*	*Touching*	*Peep shows*
Eating/drinking establishments	Prohibited; only exposure of breasts allowed	Certain distance required for a stage; dancing prohibited	N/A
Encounter Studios	Prohibited	Prohibited	N/A
Public Photography Studios	Prohibited	Not specified	N/A
Arcades	N/A	N/A	Not specified
Adult entertainment businesses without food/beverages	**Not restricted**	**Not restricted**	**Not restricted**

Sources: *SF Police Codes;* interviews with police.

3.3. General Plan

As "the embodiment of the community's vision for the future of San Francisco," the City's General Plan inter-connects such diverse considerations as social, economic, and environmental issues to form the strategic guide to the City's land use changes.[135] This section outlines the General Plan provisions relevant to sex-oriented businesses. The following section will elaborate on specific land use policies, such as zoning. Since the General Plan serves as the primary authority regarding land use, I reviewed the General Plan provisions and examined how consistently other City policies align with the principles laid out in the General Plan.

Surprisingly (or perhaps not so surprisingly), there is only one section in the City's General Plan that directly mentions adult entertainment uses: the "Commerce and Industry – Neighborhood Commerce" (NC) element.[136] Policy 6.1 in the section purports to "ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts." Under its subheading entitled "Entertainment and Adult Entertainment Uses," adult entertainment uses are described as "generally inappropriate" in neighborhood

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contain anything more than memos of introduction. When asked for other files containing testimonies of victims, Stefani referred back to the COSW for further information. Catherine Stefani, e-mail message to author, 7 May 2008.

[134] A police officer recalls how the sex business industry complained about the obscurity of "no nudity" and "no person-to-person contact" regulations in the lawsuit, eventually gaining a blanket allowance for touching activities.

[135] San Francisco Planning Department, "Introduction," *San Francisco General Plan* <http://www.sfgov.org/site/planning_index.asp?id=41423> [13 December 2007].

[136] Ibid., "Plan Element: Commerce and Industry (Part 2)—Neighborhood Commerce," last amended 2 December 2004 <http://www.sfgov.org/site/planning_index.asp?id=42927> [8 December 2007].

commercial districts. The Policy 6.1 section encourages preservation of commercial space in NC Districts for provision of "essential retail goods and services for the surrounding residential communities." Since adult entertainment uses are directed toward a "more specialized clientele," they are presumably better accommodated in other areas of the City. The Policy 6.1 section also expresses a concern over a possible increase in parking congestion, recognizing that adult businesses tend to draw regional customers who drive into neighborhoods.

Notably, the Policy 6.1 section states that adult businesses can have negative impacts in NC districts:

> Neighborhood commercial districts are located near family-oriented residential areas; since adult entertainment uses may attract criminal activity, their proximity to residential areas, parks, schools and churches may introduce criminal activity in such neighborhoods, or may tend to reduce property values …[137]

By connecting adult entertainment uses with increased criminal activities and reduced property values, the City bases its regulation of sex businesses on their negative secondary impacts on the surrounding neighborhoods. As reviewed in the earlier chapter on the constitutionality of regulations based on secondary impacts, this kind of regulation requires a study demonstrating the connection to withstand court trials. Moreover, recent court decisions are demanding concrete, locality-specific, data-driven evidence to support the connection.[138] To date, no such comprehensive study has been conducted in San Francisco.[139]

In an attempt to prevent concentration of the negative impacts of sex businesses, the General Plan requires such businesses to be separated by a minimum distance of 1,000 feet. This dispersal requirement is a typical content-neutral ordinance, and its constitutional validity has been confirmed at various levels of courts.[140]

From what one can construe from the General Plan provisions, the City's guiding principles of adult entertainment uses and the assumptions behind them can be summarized as the following:

- Adult entertainment uses are not compatible with neighborhood-serving commercial uses because:
  - They are prone to attract criminal activity and reduce property values; and
  - Primary customers are not from immediate neighborhoods but tend to drive in from outside areas, possibly increasing parking congestion.
- In particular, their proximity to residential areas, parks, schools and churches is discouraged.
- Areas other than residential and neighborhood-serving commercial areas in the City provide adequate spaces for adult entertainment uses.
- Adult entertainment uses should be dispersed at a minimum distance of 1,000 feet from one another.

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[137] Ibid.

[138] For a discussion on the Secondary Impacts study, see Section 2.4.

[139] Confirmed by Scott Sanchez (to his knowledge), interview by author, San Francisco, CA, 9 January 2008. The COSW conducted a study on practices and negative impacts of exotic dancing clubs, but the information does not seem to be available to the public. See Section 3.2.2.

[140] For the discussion on a "content-neutral" ordinance, see Section 2.3.

According to the General Plan's stated reasons for discouraging adult entertainment uses in NC Districts, only non-residential, regional commercial, and/or industrial areas would be suitable for such businesses. The next section takes a closer look at the City's Planning Codes to discern specific areas where such businesses are permitted, conditionally permitted, or prohibited.

3.4. Planning Codes

3.4.1. General

The Planning Codes, typically called the zoning codes, are one of the major (if not THE major) tools enforcing specific land use regulations. The Planning Codes' overall purpose is to "promote and protect the public health, safety, peace, morals, comfort, convenience, and general welfare" in conformance to the General Plan.[141] The Codes specify *permitted* uses and *conditional* uses requiring authorization by the City Planning Commission for designated areas.[142] Uses not specified as either permitted or conditional use are generally not permitted. There are only a few instances where particular uses are pointed out as *not permitted*.

This section presents a summary of areas where adult entertainment uses are permitted (Table 3.2), conditionally permitted (Table 3.3), or not permitted at all (Table 3.4) and describes each area's characteristics that may be relevant to determining its suitability for sex businesses. Additionally, the "Compatible with GP?" column of the tables indicates whether such characteristics support the City's guiding principles related to adult entertainment uses as outlined in the General Plan.

As briefly noted in Section 3.1, a direct reference to the Police Code definitions of sex-oriented businesses can be found in three places in the Planning Codes:

- Article 2 (*Use District*), Section 221(k) (*Assembly and Entertainment*)
- Article 7 (*Neighborhood Commercial District*), Section 790.36 (*Entertainment, Adult*); and
- Article 8 (*Mixed-Use District*), Section 890.36 (*Entertainment, Adult*).

These sections also specify adult entertainment businesses to be at least 1,000 feet apart from similar businesses, closely following the General Plan's guideline.

3.4.2. Permitted Areas

Sex businesses are permitted uses on the ground story or below a residential upper story in Residential Commercial (RC-1 through 4) Districts, as well as in all Commercial (C-1 through 3) and Industrial (M-1 through 2) areas. Considering the association between sex businesses and their negative impacts, it is surprising to find sex businesses as permitted uses in RC Districts. Even within the Commercial Districts, C-1 is designed primarily to serve the daily needs of immediate neighborhoods, which do not fit the General Plan depiction of sex businesses. Moreover, all of the Downtown Districts (C-3-O, C-3-R, C-3-G, and C-3-S) have some components that may not be supported by the presence of sex businesses, such as "high-quality" office development, pedestrian

[141] *San Francisco Planning Codes*, art. 1, sec. 101.
[142] Ibid., art. 2, sec. 202.

interests, and high-density or unique residential resources. All industrial areas (C-M, M-1, and M-2) seem to be the most appropriate sites for sex businesses, as characteristics of such areas would not cause a conflict with the General Plan principles.

Table 3.2. Permitted Areas for Sex Businesses in the San Francisco Planning Codes

Zoning Category	*Section*	*Description*	*Compatible with GP?*
RC-1, ground or below	206.3 209.8	- Low Density (similar to RM-1)[143] - Suitable for "certain commercial uses of a very limited nature" among those permitted in C-1 - Primarily for walk-in trade to meet the "frequent and recurring needs of nearby residents"	No
RC-2, ground or below	206.3 209.8	- Moderate Density (similar to RM-2 with supporting commercial uses) - Permits commercial uses as in C-2 - Excludes auto-oriented uses	No
RC-3, ground or below	206.3 209.8	- Medium Density (similar to RM-3, with supporting commercial uses) - Permits commercial uses as in C-2 - Excludes auto-oriented uses	No
RC-4, ground or below	206.3 209.8	- High Density (similar to those in RM-4 with supporting commercial uses) - Permits commercial uses as in C-2 - Excludes auto-oriented uses	No
C-1	210.1 221(k)	- Supplies retail goods and personal services to meet the "frequent and recurring needs of nearby residents" - Usually surrounded by low density residential areas - Encourages close concentrations of complementary commercial uses - Discourages interruption by non-retail uses	No
C-2	210.2 221(k)	- Provides convenience goods and services to residential areas; larger scale than C-1 - Also provides comparison shopping goods and services on a general or specialized basis to a greater area - Emphasizes compatible retail uses (like C-1) but includes a wider variety of goods and services - More lax on auto-oriented uses	Maybe

[143] *RM* denotes the mixed-residential (apartments and houses). San Francisco Planning Department, "Summary of the Planning Code Standards for Residential Districts" <http://www.sfgov.org/site/uploadedfiles/planning/projects_reports/Residential%20Standards%20Summary%20Table.pdf> [5 May 2008].

Zoning Category	*Section*	*Description*	*Compatible with GP?*
C-3-O	210.3 221(k)	- Downtown Office - Serves as a financial, corporate, service, and employment center - Consists primarily of high-quality office development - Office development supported by some related retail and service uses within the area - Inappropriate uses excluded in order to conserve the land supply for future office development	No
C-3-R	210.3 221(k)	- Downtown Retail - Regional center for comparison retailing and direct consumer services - Calls for cumulative customer attraction and compatibility - Emphasizes continuity of retail and consumer service uses - Encourages pedestrian interest and amenities, with minimal conflicts between shoppers and cars - Anticipates merging with adjacent, related districts, partially through mixed-use development	Maybe
C-3-G	210.3 221(k)	- Downtown General Commercial - Covers the western portions of downtown - Includes a variety of uses with a Citywide or regional function: retail, offices, hotels, entertainment, clubs and institutions, and high-density residential - Allows parking as a major land use in some parts	Yes, but not near residential
C-3-S	210.3 221(k)	- Downtown Support - Supports downtown core areas with wholesaling, printing, building services, secondary office space, and parking - Contains unique housing resources - Serves as an expansion area for offices in its eastern portion - Has heavy auto traffic	Yes, but not near residential
C-M	210.4 221(k)	- Provides a limited supply of land for certain heavy commercial uses not permitted in other commercial districts - Emphasizes wholesaling and business services - Imposes standards to enclosure within buildings in recognition of their potentially adverse effects and proximity of these districts to residential and other commercial areas	Yes
M-1	210.5 221(k)	- Suitable for smaller industries dependent upon truck transportation - Permits most industries - Excludes some with particularly noxious characteristics - Imposes certain requirements as to enclosure, screening and minimum distance from Residential Districts	Yes

Zoning Category	*Section*	*Description*	*Compatible with GP?*
M-2	210.6 221(k)	- Suitable for larger industries - Least restrictive - Located at the eastern edge of the City, separated from residential and commercial areas - Permits heavier industries - Imposes fewer requirements as to screening and enclosure than in M-1, but only as conditional uses - Requires a considerable distance from Residential Districts	Yes

Source: *SF Planning Codes.*

3.4.3. Conditionally Permitted Areas

Sex businesses are subject to the City Planning Commission's approval to be located on the ground story in Residential Commercial (RC-1 through 4) Districts. Also, sex businesses are conditionally permitted in three NC Districts, mostly limited to 1st and 2nd stories: Broadway, Castro, and NC-3 (a neighborhood-serving commercial district built on a moderate scale, e.g. Mission Bay). A strong presence of entertainment uses distinguishes the Broadway and Castro NC Districts from other NC Districts where sex businesses are generally not permitted. One notices these NC Districts also have a strong presence of residential uses, which may be in conflict with adult entertainment uses.

Table 3.3. Conditionally Permitted Areas for Sex Businesses in the San Francisco Planning Codes

Zoning Category	*Section*	*Description*	*Compatible with GP?*
RC-1, above the ground story	206.3 209.8	(refer to the previous table)	No
RC-2, above the ground story	206.3 209.8	(refer to the previous table)	No
RC-3, above the ground story	206.3 209.8	(refer to the previous table)	No
RC-4, above the ground story	206.3 209.8	(refer to the previous table)	No
NC-3, 1st and 2nd stories	712.1 712.47	- Encourages a diversified commercial environment - Emphasizes neighborhood-serving businesses - Offers a wide variety of comparison and specialty goods and services to a greater area - Linearly located along heavily trafficked thoroughfares which are also major transit routes - Permits eating and drinking, entertainment, financial service and certain auto uses with limitations - Encourages housing above the second story	No
MB-NC-3, 1st and 2nd stories	910	- Provides a wide range of comparison and specialty goods and services to a wider area in addition to providing convenience goods and services to local residents	Maybe

Zoning Category	*Section*	*Description*	*Compatible with GP?*
Broadway NCD, 1st and 2nd stories	714.1 714.47	- Popular as a Citywide and regional entertainment district with concentration of nightclubs, music halls, adult theaters, bars, and restaurants between Grant Avenue and Montgomery Street - Attract locals and visitors alike, mainly in the evening and late-night hours - Contains many upper-story residential hotels - Encourages compatible and balanced development of entertainment uses, restaurants, and small-scale retail - Strongly encourages neighborhood-serving businesses - Limits new fast-food restaurants and adult entertainment uses in the 1st and 2nd stories "in order to protect the livability of the area" - Prohibits non-retail offices - Prohibits drive-up uses to prevent further congestion; permits most parking garages - Encourages housing above the second story	Yes, but not near residential
Castro NCD, 1st story only	715.1 715.47	- Has many small and active commercial businesses - Provides both convenience goods to its immediate neighborhood and comparison shopping goods and services on a specialized basis to a greater area - Active both in the daytime and in the evening - Includes a number of gay-oriented bars and restaurants, as well as several specialty stores - Supports a number of offices in converted residential buildings - Promotes a balanced mix of neighborhood-serving convenience and specialty commercial uses - Permits most commercial uses - Prohibits additional eating/drinking establishments and permits new late-night uses, adult and other entertainment, and financial service uses with certain limitations "in order to maintain convenience stores and protect adjacent residential livability" - Encourages housing development	Yes, but not near residential

Source: *SF Planning Codes*.

3.4.4. Prohibited Areas

Sex-oriented businesses are generally not permitted in Residential-House (RH), Residential Mixed (RM), and NC Districts, except for certain parts of NC Districts where permission has been explicitly given as illustrated in the previous section. They are also prohibited in all Mixed Use Districts, including South of Market (SOMA), South Park (SPD), Residential / Service (RSD), Service / Light Industrial / Residential (SLR), Service / Light Industrial (SLI), Service / Secondary Office (SSO), and Rincon Hill Downtown Residential (RH DTR) Districts. In addition, three

Special Use Districts do not permit sex-oriented businesses: Van Ness, Candlestick Point, and Jackson Square.

While sex businesses are understandably not appropriate in these Districts due to their residential character and unique combination of uses, it is not easy to guess why other Districts with similar characteristics are designated to permit or conditionally permit adult entertainment uses. For example, RSD, SLR, and SLI are comparable to RC and C-M Districts, yet the former prohibits sex businesses while the latter allows such uses. Description of the Candlestick Point Special Use District also seems to match that of C-2, but sex businesses are permitted only in the latter.

Table 3.4. Prohibited Areas for Sex Businesses in the San Francisco Planning Codes

Zoning Category	*Section*	*Description*	*Compatible with GP?*
All RH	206.1 221(k)	- Characterized by dwellings - Accommodates only limited nonresidential uses	Yes
All RM	206.2 212(k)	- Characterized by a mixture of houses and apartment buildings - Contains supporting nonresidential uses.	Yes
All NCD's, except for NC-3, Broadway and Castro	Various sections in Article 7	(refer to the General Plan section)	Yes
All Mixed Use Districts	Various sections in Article 8	- Implements the General Plan's Residence Element and the Commerce and Industry Element, as well as several area plans - Protects housing and unique mixed-use character	Yes
Van Ness Special Use District	243	- Implements the Van Ness Avenue Plan - Balances residential and commercial uses - Encourages pedestrian environment - Conserves the existing housing stock - Enhances the urban design quality	Yes
Candlestick Point Special Use District	249.19	- Accommodates the development of a stadium and a retail shopping and entertainment center, together with open space and related parking facilities as principal uses, and other uses as conditional uses	Maybe
Jackson Square Special Use District	249.25	- Protects the unique retail (specialty and antique) character - Encourages existing ground floor retail uses and similar new retail establishments - Discourages displacement of such uses	Yes

Source: *SF Planning Codes*.

3.4.5. Applicability of the Dispersal Requirement

Chapter 4 explores how these zoning restrictions are being applied to sex businesses on the actual ground, but applicability of the 1,000 foot distance requirement merits a quick discussion here. Apparently, the dispersal requirement is not universally applied to all businesses in San Francisco but

only to a certain type of businesses that may negatively impact the surroundings when concentrated. For such a requirement to have any meaning, the regulatory agency needs to maintain a running list of the opening and closing of sex businesses with their exact locations. Currently, no San Francisco agency keeps such a database. The Planning Department puts the burden of honest disclosure on the applicant and may (or may not) follow up with site visits after the application has been submitted. The Planning Department also relies on an informal consultation mechanism with the police.[144] Ironically, the Police Department expects the Planning Department to be the responsible lead agency in enforcing the distance restriction on sex businesses.[145] As a result, the process of obtaining a definitive list of sex businesses' locations throughout the City has not been possible and will be described in the next chapter in greater detail.

3.4.6. Summary

Although sex businesses are not permitted in either primarily residential areas or most neighborhood commercial districts in San Francisco, they can actually be located in a variety of areas that do include high residential and pedestrian components. The Planning Codes do not clearly explain why sex businesses are permitted in certain mixed-use areas with residential and commercial components but prohibited in other areas with similar characteristics. Notably, the Codes allow sex businesses at the ground level in Residential-Commercial (RC) Districts of all densities, placing residences on top of sex businesses in effect. Such a juxtaposition of incompatible uses endorsed by the Codes has created a problem particularly in a high-density neighborhood like the Tenderloin. This contradiction will be further explored in Chapter 4.

3.5. Other Land Use Policies

Aside from the Planning Codes, City land use policies addressing adult entertainment uses are only found under the Administrative Codes and within the background description of the San Francisco Redevelopment Agency.

3.5.1. Administrative Codes

Other than the Planning and Police Codes, the Administrative Codes are the only City ordinance that discusses adult entertainment uses. In the section on regulating the waterfront land use, the Codes mention adult entertainment as one of the *Unacceptable Non-Maritime Land Uses.*[146]

3.5.2. Redevelopment Agency

The San Francisco Redevelopment Agency plays an important role in the City's land use decisions. In its background description, the Agency rhetorically confirms the General Plan's negative sentiment on sex businesses but does not give specific directives. The stated aim of the Redevelopment Agency is to "improve the environment of the City and create better urban living

[144] Sanchez, interview by author, 22 April 2008.
[145] Police officer, interview.
[146] *San Francisco Administrative Codes*, ch. 61, sec. 61.5.

conditions through the removal of blight."[147] As an example of economic blight, the Agency lists "high incidences of criminal activity."[148] Significantly, the Agency acknowledges the frequency of criminal activities is "sometimes equated with an over concentration of bars, liquor stores or adult stores," thereby reiterating the General Plan's link between criminal activities and sex businesses.[149] However, despite its own description of redevelopment areas as neighborhoods where "adult stores" are likely to be present, the Agency does not impose a specific control on sex businesses within its jurisdiction.

3.6. Operational Regulations of Sex Businesses

Other than the land use laws, most of the regulations regarding the operation of sex businesses in San Francisco are designed and executed by the Police Department. This section explains some of the Police regulations that are relevant to land use issues and may have significant impacts on the livability of the surrounding neighborhoods.

3.6.1. Signage and Visibility

Signage seems to play a major role in raising ire among neighbors. For example, Hilliard says she rarely hears complaints about illegal massage parlors from neighbors because these establishments are so discrete.[150] In fact, a Place of Entertainment, where food or beverages are served, is prohibited from showing any depiction of the Specified Sexual Activities and Specified Anatomical Areas to the public.[151] Words like nude, bottomless, or naked cannot be used on signs; only words like adult entertainment, adult show, or topless entertainment are allowed.[152]

Regarding the police-defined Adult Entertainment businesses, where food and/or beverages are not allowed (i.e. adult bookstores, video stores, and theaters), the Police Codes have stricter prohibitions on what may appear on the signage. The prohibitions include sex-oriented scenes, such as bestiality, oral copulation, or flagellation.[153] Additionally, no entertainment or merchandises depicting the Specified Activities or Areas can be visible at any time from the street.[154]

Encounter Studios are required to display signs in a "conspicuous place, one inside and one outside," denoting 1) all patrons must sign a daily register with a real name; 2) engaging in any type of "sexual conduct" is not permitted; and 3) removal of clothes, exposure of breasts or genital areas, or touching between an entertainer and a patron is not permitted.[155] In addition, such signs must be

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[147] San Francisco Redevelopment Agency, "Agency Background," 9 May 2008 <http://www.sfgov.org/site/sfra_index.asp?id=21444> [9 May 2008].

[148] Ibid., "Understanding Redevelopment," 16 May 2008 <http://www.sfgov.org/site/sfra_index.asp?id=21365> [16 May 2008].

[149] Ibid.

[150] Hilliard, interview.

[151] *San Francisco Police Codes*, art. 15.1, sec. 1060.14, added 23 February 1973. Perhaps because these sections had been added earlier than the definitions of the Specified Sexual Activities and Anatomical Areas, exact terms deviate a little bit.

[152] Ibid., sec. 1060.15. Interestingly, signs for Encounter Studios cannot have the word "topless." Ibid., art. 15.4, sec. 1072.30, added 17 June 1977.

[153] Ibid., art. 11.2, sec. 791.1.

[154] Ibid., art. 11.2, sec. 791.2; art. 15.1, sec. 1060.18.

[155] Ibid., art. 15.4, sec. 1072.32, added 17 June 1977.

printed in upper case block letters larger than specified sizes and contain English, Spanish, Chinese, and Japanese translations. Encounter Studios are also not allowed to distribute any advertising materials containing scenes or words that would not have been allowed to be put on outdoor signs.[156] Given that no Encounter Studios officially exist in the City, one cannot help but wonder what the utility of these specific regulations is.

3.6.2. Permits

Operation of any Place of Entertainment requires a permit from the Entertainment Commission and conformance to ordinances of other City departments, such as the health, safety, zoning, and fire departments.[157] The Police Codes give authority to the Entertainment Commission to review permit applications and determine their eligibility.[158] As emphasized in previous sections, currently no special permit is required for sex businesses that do not fall under the Place of Entertainment category, and even varying Police Code definitions of these businesses seem obsolete.

As mentioned in Section 3.1, permits are required for Encounter Studios and are reportedly processed by the Chief of Police.[159] Adding to the irony that currently no such permits exist, the Chief of Police is ordered *not* to issue a permit if operation of the proposed Encounter Studio would *not* "result in a density of more than one Encounter Studios, Massage Establishments, Adult Theaters or Adult Bookstores within an area of 500 square feet" of the proposed location.[160] In other words, the Chief of Police may issue a permit only if the new business would result in a concentration of sex businesses within 500 square feet. Such a concentration requirement plainly contradicts the directives in the General Plan.

3.6.3. Applicability of Operational Regulations

According to the operational regulations in the Police Codes, the Entertainment Commission is endowed with the authority to issue permits to a Place of Entertainment that, by definition, serves food and/or beverages. An Entertainment Commission staff member confirmed that the Commission does not deal at all with adult entertainment businesses that do not belong to the Place of Entertainment category.[161] The staff member was certain that businesses with the Place of Entertainment permit would not violate any regulations, including the clauses prohibiting nude dancing and touching, because they paid a high price for the Entertainment permit and the liquor license and would not want to have them revoked.

However, it is unclear, even doubtful, how the Commission can ensure compliance. My observation of posters advertising "Fabulous Naked Men," visibly placed on the windows of an establishment that is categorized as a "strip bar" in a consumer-review Internet site, confirms the doubt.[162]

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[156] Ibid., sec. 1072.34, added 17 June 1077.
[157] Ibid., art. 15.1, sec. 1060.1.
[158] Ibid., art. 15.1, sec. 1060.3(e).
[159] Ibid., art. 15.4, sec. 1072.13.
[160] Ibid.
[161] Entertainment Commission Staff member, phone conversation.
[162] Author's observation, San Francisco, CA, 30 January 2008; *Yelp* <http://www.yelp.com > [10 March 2008].

Hilliard testifies that liquor licenses are very hard to revoke because they are issued by the state and also because of the liquor industry holds a political power.[163]

A police officer interviewed for this study astutely pointed out the unenforceability of operational regulations regarding sex-oriented commercial activities. Noting that an adult theater is defined as an establishment that devotes "more than ten percent of its presentation time (measured on an annual basis)" with an emphasis on sex-oriented scenes,[164] the officer explains that there is no way for enforcement staff to sit in and measure the "presentation time."[165] Theater owners are not required to record or report what they show on an annual basis, and even if they do, it would still be impossible to ensure their compliance without a regular mechanism for inspection.[166]

Besides, Adult Entertainment businesses know ways to get around the "no food or beverages" rule. For example, though they are not allowed to sell liquor, clients can bring alcoholic beverages in. Consequently, there are almost always liquor stores next to strip clubs.[167] On-line reviews of these businesses also reveal that there is usually a snack bar or a pressure for selling drinks. A police officer confirms that some of these businesses have soda machines, which are not allowed in a strict sense, but such a "petty" violation is not taken seriously by the City Attorney or District Attorney.[168]

Regulations on Encounter Studios seem to be stricter, but as emphasized repeatedly, their relevance and/or enforceability is doubtful. Most likely, private booths inside sex businesses have replaced Encounter Studios. Conversely, most regulations pertaining to Encounter Studios are not applied to private booths, with the exception of the visibility requirement.[169] In any case, it is noteworthy that the Police Codes direct Encounter Studios to be located in a close proximity to other sex-oriented businesses, whereas, paradoxically, the General Plan and Planning Codes require them to be dispersed.

3.7. Conclusion

Attaching regulations to sex businesses is obviously not a popular subject in the City ordinances, as demonstrated by the scarcity of its discussion. Sex businesses in San Francisco, or what the City ordinances term Adult Entertainment uses, are primarily regulated by the Police Codes and Planning Codes. The Planning Codes rely on the Police Code definitions of Adult Entertainment, which are not only outdated but actually exempt sex-oriented businesses from a rigorous permit process that any other Place of Entertainment goes through, as long as they do not serve food and/or beverages. Even the President of the Entertainment Commission acknowledged the confusion caused by the unclear definition of adult entertainment and called for a clearer definition in 2004.[170] Nevertheless,

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[163] Hilliard, interview. She knows of only one instance where the liquor license was revoked in the Tenderloin, which took thirteen years of lawsuits by the City against the store that sold alcohol to minors and stolen items. The store still operates but as a convenience store. Another liquor store is being investigated, but she thinks the store would probably be pardoned as the owner has accommodated many of neighbors' complaints.

[164] *San Francisco Police Codes*, art. 11.2, sec. 791(b), last amended in 25 February 1985.

[165] Police officer, interview.

[166] Ibid.

[167] Hilliard, interview.

[168] Police officer, interview.

[169] *San Francisco Police Codes*, art. 15.1, sec. 1060.10, added 28 April 1970.

[170] San Francisco Planning Commission, *Meeting Minutes*, 10 June 2004.

I could not find any documented efforts to refine the definition in a comprehensive way.[171] Moreover, most of the operational regulations in the Police Codes seem to be even more outdated, irrelevant, and impracticable that their enforceability is questionable.

Currently, the narrow Police Code definition of Adult Entertainment leaves land use regulation as the only special restriction governing the opening of a sex business that does not serve food/beverages (Table 3.5). However, the land use regulations are not consistent. The General Plan, supposedly the guiding document for all land use regulation, discourages sex businesses from locating in or near residential or neighborhood commercial areas. On the other hand, the Planning Codes permit adult entertainment uses in many areas that have strong residential and neighborhood commercial components without really explaining why. Even the General Plan does not give substantial reasons or evidences to explain its principles and assumptions regarding adult entertainment uses. Other agencies are mostly silent on the issue of sex businesses.

Table 3.5. Agencies Regulating Sex Businesses in San Francisco at the Time of Opening

	Police – Vice	*Police – District*	*Planning*	*Public Health*	*Entertainment Commission*
Place of Entertainment (with food/beverages)		X	X	X	X
Adult Bookstore (retail)			**X**		
Adult Theater (no food/beverages)			**X**		
Nude model (public photography studio; not theater)	X	X	X		
Arcade (mechanical amusement device)		X	X		X
Encounter Studios	X	X	X	X	
Escort Services	X	X	X		
Massage parlors	X	X	X	X	

Sources: *SF Planning and Police Codes.*

If the City takes seriously the real or potential linkage between sex businesses and their negative secondary impacts on neighborhoods, the sex business-related regulations need to be updated to ensure that all the regulations work together to minimize such negative impacts. The fact is that, in San Francisco, we can observe many sex-oriented uses concentrated in close proximity to one another, in or near residential areas, with signage that may be legal yet does not serve the intention of the regulations. How prevalent are the actual violations? What facilitates the violations: regulations' obsoleteness, ineffectiveness, or unenforceability? In an attempt to answer these questions, the next chapter takes a closer look at the discrepancy between the regulations and realities.

[171] The fragmented efforts on redefining *Live Adult Entertainment* businesses will be discussed in Section 5.3.1.

4. The Location of Sex Businesses in San Francisco

Proliferation of sex businesses is not a secret in San Francisco. Tour guides point to neon-signed adult entertainments; newspaper ads with barely dressed women are routine. San Francisco is quoted as a national leader in matters of "sex, sex work, and sexual openness."[172] However, if one attempts to compile a comprehensive list of these businesses' physical locations that no one actually keeps track of, the businesses become shadows, not accountable in an inventory.

As discussed in the previous chapter, San Francisco has two primary methods of regulating these businesses: zoning and distance requirements. Despite the existence of these regulations, violations of these regulations appear to be prevalent. Even a quick glance at the areas where sex businesses are known to exist shows a concentration of these businesses, not the dispersion as prescribed by both the General Plan and Planning Codes.[173] Each of the city staff members I interviewed, including those from the Police Department, Planning Department, and Department of Public Health, had no difficulty identifying the areas of concentration to be mostly in the Tenderloin and the North Beach areas and some in the South of Market area.[174]

This obvious discrepancy highlights the need to obtain a complete citywide database of the locations of sex businesses in order to identify to what extent the current regulations are failing to achieve their objectives. Thus, this chapter fulfills two purposes: 1) to demonstrate how difficult, if not impossible, it is to obtain such a database; and 2) to document empirical examples of the prevalent violations in the City. First, I will describe my attempts to obtain such a database from city agencies, only to verify its absence. I will also describe my independent efforts to collect sex businesses' addresses, only to concede the impossibility of the task. I then explain my alternative strategy to limit the focus of the location search to certain areas in the City and describe the characteristics of the selected areas as well as sex businesses within them. In particular, I report on the current status of the businesses' non-compliance with the zoning and dispersal requirements. I conclude with a summary of violations and their impacts on the surrounding neighborhoods.

4.1. Location Search

4.1.1. Location Search among City Agencies

This section takes the reader on the journey of trying to find the locations of sex businesses in San Francisco. I began my research on the regulatory bodies for sex businesses in San Francisco: the Planning Department, the Police Department, and the Entertainment Commission. These three agencies are the primary candidates as the record keepers of the sex businesses' basic information (e.g. an address, opening date, and possession of license).

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[172] Steinberg, "Lap Victory."

[173] One easy way to see the concentration of sex businesses is to do a business search on the internet map. For example, finding "adult business" in San Francisco in the Google Map shows most of the red pins (indicating the business locations) cover the northeastern part of the City.

[174] Sanchez, interview; Edward Walsh, interview by author, 19 February 2008; interviews with police officers.

The Planning Department has required sex businesses to be at least 1,000 feet apart from similar businesses since 1979.[175] Naturally, one might expect the Department to maintain a working database of sex businesses' addresses. However, a city planner, as well as the Planning Department's GIS analyst, confirmed that the Department has not compiled this information.[176]

The Police Department is mandated to regulate signs and the visibility of stock of all "Adult Entertainment" businesses, as well as permits and more detailed operational regulations for Encounter Studios. Of course, the Police Department serves as the enforcement arm of all city agencies, including the Planning Department and the Entertainment Commission. However, when I called the Police Department's general inquiry number, I was transferred to a permit unit officer, who then deferred to the Entertainment Commission for any information and inventory of entertainment businesses, including the sex-oriented ones.

The Entertainment Commission currently holds the final say in permitting a Place of Entertainment per the Police Codes and is required to deny a permit if the "building … or location of the proposed place of entertainment does not comply with or fails to meet all of the health, zoning, fire and safety requirements …"[177] By definition, a Place of Entertainment is distinguished from an Adult Entertainment enterprise; consequently, the Adult Entertainment business is not under the purview of the Entertainment Commission, as I explained in Chapter 3. However, this exclusion does not exempt the Commission from ensuring that a Place of Entertainment indeed operates without the adult entertainment component. The Commission is still responsible for ensuring entertainment businesses' compliance to the Planning and Police Codes at the time of application, including the absence of the adult entertainment component. In fact, the Commission's Place of Entertainment Application Questionnaire probes an applicant's adult entertainment nature.[178]

Nonetheless, the Entertainment Commission staff member I interviewed declared that the Commission simply does not permit Adult Entertainment businesses (as defined by the Police Codes) and does not deal with them, period.[179] Therefore, the staff member asserted, there is no reason for the Commission to keep track of Adult Entertainment businesses or to file a complaint to the City Attorney. As explained in Section 3.6.1, the staff member insisted that none of the entertainment businesses permitted by the Commission would offer adult entertainment because the business owners do not want to risk revocation of a liquor license and a Place of Entertainment permit, for which they paid the high price. The Entertainment Commissioner, Terrance Alan, stated with confidence that all of the businesses with the Entertainment permit, including "those with an emphasis on adult fantasy," are compliant with all of the pertaining regulations.[180]

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[175] *San Francisco Planning Codes*, art. 2, sec. 221(k); art. 7, sec. 790.36; art. 8, sec. 890.36; *San Francisco Ordinance File No. 3-79*, approved in 5 January 1979.

[176] Sanchez, e-mail message to author, 10 January 2008. The Department's GIS Analyst spot-checked some businesses that he knows of adult entertainment nature in the Dun & Bradstreet data, which the Department uses; the result showed these businesses as a theatre and drinking places (e-mail message to Sanchez, 10 January 2008). The Planning Department does keep a list of massage parlors, to which the dispersal requirement is also applied.

[177] *San Francisco Police Codes,* art.15, sec. 1060.1.

[178] San Francisco Entertainment Commission, *Place of Entertainment/Extended-Hours Application Questionnaire* <http://www.sfgov.org/site/uploadedfiles/entertainment/documents/POEorEH-ApplicationQuestionnaire.pdf> [22 February 2008]. Questions include: "Is adult entertainment to be offered? Yes/No. If yes, describe the entertainment." "Is there another adult entertainment business within 1,000 feet from your premises? If yes, list the business(es)."

[179] Entertainment Commission staff member, phone conversation.

[180] Terrance Alan, interview by author, 18 April 2008. Currently, there are three permitted Places of Entertainment with an emphasis on sex in San Francisco.

Having confirmed the absence of any sex business-related database among the key City agencies, I queried these agencies' staff members and others to gather information on other prospective candidate agencies. A police officer and staff members from resource agencies, such as the City Customer Service (311) and the Mayor's Neighborhood Liaison, directed me to the Tax Collector's Office and the Assessor-Recorder's Office as possible keepers of sex businesses' address information. A policeman cautioned, though, that the Tax Collector's record would include only those businesses that have chosen to report their tax status. The Entertainment Commission staff member referred me to the Department of Public Health and the Mayor's Commission on the Status of Women. Findings from the discussions with the agencies to which I was directed are summarized as follows.

- *The Tax Collector's Office* does not track business information under a sub-category of adult entertainment. However, the Office can find the opening date of a specific business, if given the business name and/or address.

- *The Assessor-Recorder's Office* does not have business information under a sub-category of adult entertainment, either.[181]

- *Mayor's Neighborhood Services Liaison* to District 8 (where I live) confirmed that the Mayor's Office does not keep such information and suggested calling 311 or the Assessor-Recorder's Office.[182]

- In response to my inquiry on a business's opening date information, *The City Customer Service (311)* referred me to the Office of the County Clerk's Fictitious Name Search. However, the Fictitious Name Search does not produce results for businesses without a fictitious name.

- *The Office of the County Clerk* suggested, in addition to the Fictitious Name Search, the Secretary of State's business portal site, but this site only gives information on corporations.

- *The Department of Public Health* keeps a record of massage parlors only.

- *The Commission on the Status of Women* never responded to my call or email.[183]

In sum, none the City agencies I contacted tracks locational information pertaining to sex businesses. These City agencies include: the Planning Department, the Police Department, the Entertainment Commission, the Tax Collector's Office, the Assessor-Recorder's Office, the County Clerk's Office, the Mayor's Neighborhood Liaison Office, the City's Customer Service, the Department of Public Health, and the Department on the Status of Women.

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[181] The Business Property Statement form lists only four categories to check under the Business Description: Retail, Wholesale, Manufacturer, and Service/Prof. San Francisco Assessor-Recorder's Office, *Business Property Statement Form 571-L*, last modified 1 January 2008.

[182] Mayor's Office of Neighborhood Services Liaison to District 8, e-mail message to author, 8 February 2008.

[183] I also contacted the DOSW to inquire about their study on exotic dancing clubs and the legislation that had been proposed as a result of the study, and a staff member sent me a copy of the proposed legislation as the only information "available for dissemination," as explained in Section 3.2.2.

4.1.2. Location Search through Media

After confirming no City agency could provide a list of sex businesses operating in the City, I turned to other, less official venues where one might find such information. The following list gives a description of my attempts and failures.

- *Yellow Pages*: A Planning Department staff member suggested looking up sex businesses in the Yellow Pages, but this method does not give a complete picture. Even though the *Valley Yellow Pages* do have the Adult Entertainment category, not all sex businesses choose to advertise under that category.[184] For example, few of the sex businesses I identified in the study areas (which will be introduced later in the chapter) appear in the Adult Entertainment category. Moreover, most of the businesses under the Adult Entertainment category do not give their address information, listing only a phone number.

  Several bookstores with "Adult Superstore" in their name, including those included in my case studies, are listed under the general Bookstore category. Similarly, self-identified adult theaters appear under the general Theater category. I would not have noticed an adult store under the general categories unless the store includes a word that expresses the sex-oriented nature in its name.

  I also conducted a Google search for yellow pages.[185] Some of the internet yellow pages have an adult entertainment category (such as yellowpages.com), but again, many of the ads list only a phone number.

- *Business search*: I tried InfoUSA, an online search engine that, for a fee, provides business information products and database marketing services. This one seemed particularly useful because the database is searchable by cities, using the SIC Code for Adult Entertainment. However, the search produced only nine leads, which obviously do not represent a majority of adult entertainment businesses in San Francisco.[186]

- *General web search*: Neither Google nor Yahoo Directories have an "adult" category under the Arts and Entertainment in San Francisco.[187] A Google search of "adult entertainment san francisco" yields some internet review pages, but again, not all listings reveal an address.[188]

- *Local newspapers*: Internet ads posted at the websites of the *Examiner* and *San Francisco Chronicle* do not have an "adult" category.[189] *SF Weekly* and *Guardian* have a category specific to "adult

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[184] *Valley Yellow Pages: San Francisco 2007-2008* (Fresno: AGI Publishing, Inc.), 7.

[185] Results of search on term "yellow page adult entertainment san francisco" in Google <http://www.google.com> [22 January 2008].

[186] Results of search in InfoUSA <www.infousa.com> [January 2008].

[187] Google Directory <http://directory.google.com/Top/Regional/North_America/United_States/California/Localities/S/San_Francisco/Arts_and_Entertainment> [22 January 2008]; Yahoo Directory <http://dir.yahoo.com/Regional/U_S__States/California/Cities/San_Francisco/Entertainment_and_Arts> [22 January 2008].

[188] Results of search on term "adult entertainment san francisco" in Google <http://www.google.com> [22 January 2008].

[189] *Examiner* < http://www.examiner.com/classified/index.cfm?setCity=San_Francisco>; *San Francisco Chronicle* <http://marketplace.sfgate.com> [22 January 2008].

entertainment," but most ads under the category are related to sex-oriented massage and escort services.[190] Paper versions of these two periodicals yielded similar results.

4.1.3. Location Search of Sex Businesses within the Selected Study Areas

Since the task of compiling a comprehensive citywide inventory of sex business locations proved to be impossible, I decided to select study areas where violations of city zoning codes by sex businesses are observable and to document the types of violations. This subsection describes the process of selecting the study areas and collecting the necessary data.

The three neighborhoods selected for study are commonly known as Broadway, the Tenderloin, and South of Market (SOMA). Broadway and the Tenderloin are (in)famous for the abundance of sex businesses, as confirmed by several City staff members. As for the SOMA neighborhood, I had previously observed numerous sex businesses so suspected it would be a good case study area to examine.

I first confirmed the general perception with my own informal observation of the City's different neighborhoods. I then conducted more focused field surveys to obtain addresses of sex businesses in each neighborhood. Specifically, for the Broadway area, an interview with a police officer and a walk-through of the area substantiated evidence of zoning code violations. As a starting point for the Tenderloin area, I used the result of a 2002 field survey, which had been conducted by San Francisco State University students and presented to the Tenderloin Neighborhood Development Corporation.[191] I updated the data with the results of my own field survey, which was assisted by Hilliard, the neighborhood's knowledgeable community organizer.[192] I also conducted a field survey in a portion of the SOMA area where I was aware of the presence of sex businesses. Inputting all of the preliminary information in a GIS database clearly showed the area of concentration within each neighborhood.[193] I call this area of concentration the *study area*, which is a subset of the broader neighborhood.

Additionally, I conducted a Google map business search, entering "adult entertainment" in the "What" box and "San Francisco" in the "Where" box, the results of which I added to the study areas in the GIS database. I also added the adult entertainment businesses whose address in the *Valley Yellow pages* falls within the study areas. It should be noted that not all of the sex business locations have been confirmed first hand.[194] In such cases, I paid careful attention to ensure that the businesses are currently in operation by checking their ads and/or general review sites.

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[190] *SF Weekly* <http://www.sfweekly.com/classifieds>; *San Francisco Bay Guardian* <http://classifieds.sfbg.com> [22 January 2008].

[191] Matt Popieluch, Amy Million, and Keith Lydon, *Tenderloin Market Study* (PowerPoint presented to the Tenderloin Neighborhood Development Corporation, San Francisco, CA, 2002) <bss.sfsu.edu/pamuk/classes/tndcproject.ppt> [4 September 2007], slide 18.

[192] Hilliard, interview.

[193] All of the San Francisco GIS data is from the *SF GIS Catalog* <http://www.sfgov.org/site/gis_index.asp?id=372>. In cases where exact addresses were not found in the GIS database, the nearest address was used.

[194] During the field survey in the SOMA area by myself, I experienced a discomfort in peeking inside a sex business, taking pictures, and jotting down notes in front of the business. Such a discomfort deterred me from conducting a more extensive field survey unless accompanied by another person, but scheduling a walk-through with an informed and willing company was not always possible. Implication of the difficulty in obtaining the first-hand verification is noted in the Conclusion section of this chapter.

Finally, I inquired at the Tax Collector's Office to obtain the opening dates of the selected businesses. The opening date information is valuable because its absence is an indicator that a business is not officially registered with the Office. Not being registered means that the business is in violation of the San Francisco Business and Tax Regulation Codes.[195]

One problem with the opening date search is the issue of legal non-conforming uses. A sex business that is located within 1,000 feet of another sex business could be a legal use—even if it has the registered opening date after 1979 (when the 1,000 foot dispersal requirement was enacted)—as long as the previous business was also the same type of business.[196] Because the Tax Collector's Office does not require a business to specify its adult entertainment component, it is hard to construe whether the previous business had been a sex business or not. A staff member at the Office tried his best to track back the historical data of a business, based on a name that suggests an adult entertainment service. In addition, I compared the data with the accounts of the knowledgeable local police and community members.

Admittedly, the list of sex businesses in the study areas is not comprehensive, since my search process, as described above, would not have detected all sex businesses in the areas, especially those that do not explicitly promote themselves as adult entertainment businesses. However, the information gathered is sufficient to show the prevalent violations in the City.

The following sections analyze the location of the sex businesses in the study areas with respect to: 1) the types of neighborhoods where the Planning Codes allow sex businesses; 2) the proximity of sex businesses in relation to similar businesses, which is prohibited in the General Plan and the Planning Codes; and 3) the proximity of sex businesses in relation to schools and parks, which is discouraged in the General Plan. The opening dates of the sex businesses are discussed to distinguish the pre-1979 businesses from the recent ones. However, the discussion on the opening dates should be interpreted with caution because of the Codes which do allow legal non-conforming uses. In a conservative approach, the distance between a school/park and a nearby sex business is noted only if the business is currently not registered.

4.2. Broadway

4.2.1. Zoning Type and Neighborhood Characteristics

My location search of sex businesses in the Broadway neighborhood shows a concentration along Columbus Avenue, Broadway Avenue, and Kearny Street, as marked within the black circle (Figure 4.1). The concentration of sex businesses in this study area reflects the City's Planning Codes, which attribute "Broadway's fame and popularity as a Citywide and regional entertainment district" to a "concentration of nightclubs, music halls, adult theaters, bars, and restaurants between Grant Avenue and Montgomery Street" in the Broadway Neighborhood Commercial District (NCD).[197] The Broadway NCD is marked as yellow on the map, denoting the area where adult entertainment

[195] *San Francisco Business and Tax Regulations Codes*, art. 6, sec. 6.2 - 12.

[196] Typically, a legal non-conforming use may continue to exist until the "end of its natural life" or until it is changed to a conforming use, abandoned, or discontinued for a certain time period. *San Francisco Planning Code*s, sec. 178 – 187; summarized by Sanchez, e-mail message to author, 9 May 2008.

[197] *San Francisco Planning Codes*, section 714.1.

businesses are conditionally permitted (in the 1st and 2nd stories of the buildings). As discussed in the previous chapter, the NCD is also characterized by the abundance of upper-story residential hotels and its proximity to residential and community business districts, where sex businesses are prohibited (marked in orange on the map). Consequently, the Broadway NCD has the precarious combination of adult entertainment and residential uses.

4.2.2. Dispersal Requirement

Not taking the opening dates into account, all businesses appear to be in violation of the 1,000 foot distance requirement (Figure 4.1).[198] Among the businesses within the conditional use zone, the farthest distance between two sex businesses is less than 800 feet. Some of the businesses are located right next to each other or even in the same building.

The opening date information for five out of the sixteen sex-oriented businesses[199] within the circle is not recorded in the database of the Tax Collector's Office, which indicates their non-registered status. With respect to the remainder of the businesses, only two of the businesses have opening dates registered prior to 1979, the year when the 1,000 foot distance requirement was enacted. A police officer familiar with the area's sex businesses estimates about five to six businesses began operating before the dispersal ordinance, pointing out that the presence of the few earlier businesses should have stopped all the later others from opening.[200] Notably, at least two of the businesses the police officer identified as having opened before 1979 are not currently registered with the Tax Collector's Office. This information gap demonstrates that a field observation alone is inadequate to determine the legitimacy of a sex business.

4.2.3. Proximity to Schools and Parks

At least one school and one park are found within 1,000 feet of one or more of the sex businesses not registered with the City (Table 4.1). In particular, John Yehall Chin Elementary School, the school observed to the farthest right on the map, is less than a block away from an unregistered sex business.

Table 4.1. Schools and Parks near Sex Businesses in the Broadway Study Area

Name of Facilities	*Distance to the Nearest Non-Registered Sex Business (feet)*
Schools	
John Yehall Chin Elementary School	200
Parks	
Portsmouth Square	970

Sources: school and park location from *SF GIS Catalog*; distances as measured in the GIS-generated maps; school opening date from the San Francisco Unified School District (SFUSD) website; park opening date from *Wikipedia.org*.

[198] A couple of businesses are registered with different street numbers in the Tax Collector's Office but not to the extent of causing a significant change in distance.

[199] Five businesses with addresses adjoining other businesses do not appear separately in the map, so the map shows only eleven businesses although sixteen businesses have been inputted in the GIS database.

[200] Police officer, interview.

Figure 4.1. Sex Businesses in the Broadway Study Area

Source: *SF GIS Catalog*; design by author.

4.3. Tenderloin

4.3.1. Zoning Type and Neighborhood Characteristics

The Tenderloin neighborhood dramatically shows the contradictions in the City's zoning policy that permits adult entertainment businesses in certain high-density residential areas. Often described in tourist guides as an area to avoid in San Francisco, the Tenderloin neighborhood is notorious for the highest concentrations of homelessness, filthy conditions, crime, liquor stores, strip clubs and prostitution.[201] As indicated by the number of green areas in Figure 4.2, adult entertainment businesses are legally permitted in most of the Tenderloin, which is zoned as RC-4 (a high-density, Residential-Commercial district).[202] What has been long overlooked, however, is that this neighborhood also boasts the City's highest population density (Figure 4.3).

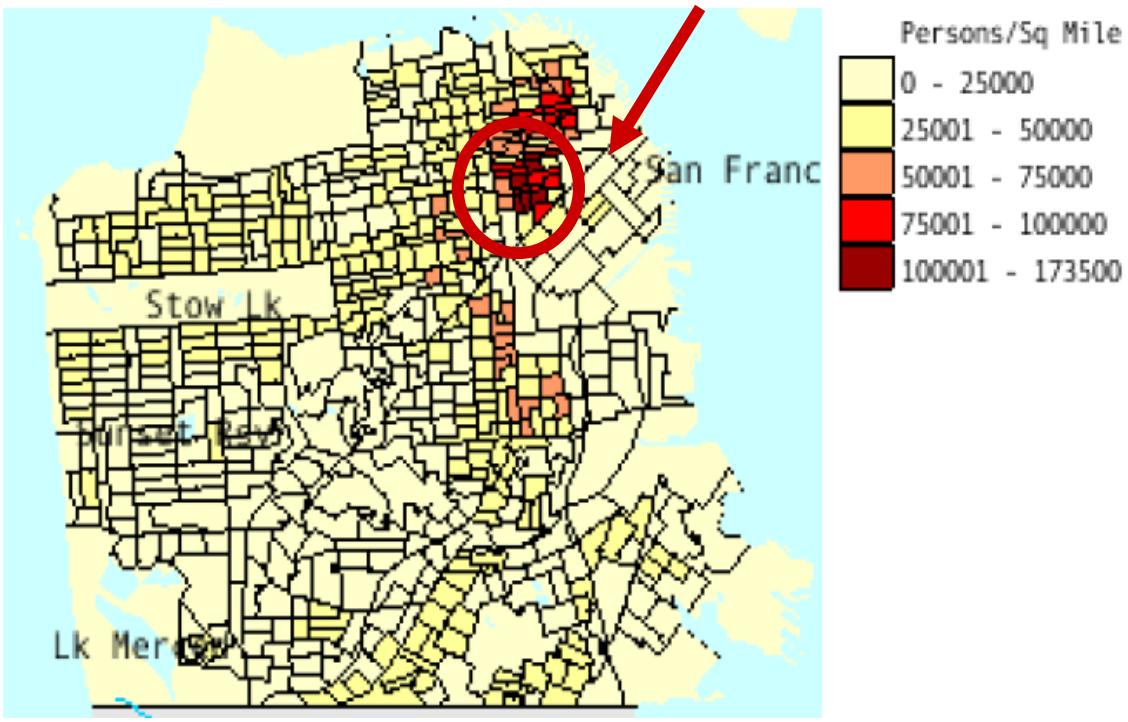
Figure 4.2. Sex Businesses in the Tenderloin Study Area

Source: *SF GIS Catalog*; design by author.

[201] Beth Lisick, "The Tenderloin," *San Francisco Neighborhood Guide*, last updated by Jasmine Jopling on May 2001 <http://www.sfgate.com/traveler/guide/sf/neighborhoods/tenderloin.shtml> [27 February 2008].

[202] For more detailed descriptions of the zoning districts, see Chapter 3.

Figure 4.3. Population Density in the Tenderloin



Source: U.S. Census Bureau, Census 2000 Summary File 1, Matrix P1; modified by author.

Note: The population density data is not publicly available in the GIS format from the SF GIS website. It directs a user to contact 311 for any additional data, but I could not obtain the population density data though the City Customer Service. In fact, one of the operators even did not know what the GIS is. Although the SF GIS website is highly functional, I suggest the City take one more step and provide a way for a public user to obtain the GIS data that is not currently listed on the web.

The Tenderloin is a predominantly low-income area containing working families with children, as well as a high number of elderly, disabled, and immigrant residents.[203] Strikingly, over 3,500 children reside in the Tenderloin, making the Tenderloin one of the areas in the City with the highest concentration of children.[204] The presence of children and families, however, is overshadowed by the number of Single-Residency Occupancy (SRO) residents, who make up a large portion of the neighborhood. Elizabeth Orlin, the Chief Operating Officer of the Tenderloin Neighborhood Development Corporation, attributes the high percentage of SRO residents as a reason why she has not heard many complaints from parents about the prevalence of the sex businesses in the neighborhood.[205] Besides, families with a history of addictions and/or an illegal status may be afraid to voice out their complaints. Orlin also speculates that the large number of renters in the Tenderloin would not be as concerned with property values as owners and, seemingly, not as concerned with the presence of sex businesses.

The General Plan, the document that is supposed to provide "the blueprint for development throughout the community,"[206] discourages adult entertainment uses in, or near, residential areas and public areas accessible to children. In an area with a higher residential density, it is reasonable to anticipate a greater number of residents to be affected by the negative impacts of neighboring sex businesses. Therefore, the Planning Codes that permit sex businesses in a high-density residential district undermines the intention of the General Plan. The tragic result of this contradiction is evident in an RC-4 District such as the Tenderloin, where a sex business is permitted in a high-density residential building. A local on-line newspaper, *BeyondChron*, describes the residences located above sex businesses to be "with the worse conditions," observing "these businesses frequently have drug dealers doing business outside, and take no action to remove them."[207] This undesirable co-existence is apparent in Figure 4.4. While the prevalent land use is housing, as indicated in yellow in the top figure, retail uses on the ground floor become more ubiquitous, as evidenced in pink in the bottom figure.

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[203] Wikipedia, "Tenderloin, San Francisco, California," last modified on 25 February 2008 <http://en.wikipedia.org/wiki/Tenderloin,_San_Francisco,_California> [27 February 2008].

[204] Jennifer Byrd, "Growing Up in The Tenderloin: 3,500 Kids Must Learn to Navigate and Survive District's Rugged Streets," *San Francisco Chronicle*, 24 July 2005 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/07/24/INGEKD7T7427.DTL> [21 April 2008]. According to the *Tenderloin Market Study*, as many as 5,000 children live in the area (Popieluch, Million, and Lydon, slide 7).

[205] Elizabeth Orlin, interview by author, San Francisco, CA, 15 April 2008.

[206] Daniel J. Curtin, Jr. and Cecily T. Talbert, *Curtin's California Land Use and Planning Law* (Point Arena, CA: Solano Press Books, 2005), 7.

[207] Shaw, "Tenderloin Breakthrough."

Figure 4.4. Comparison of Land Use and Ground Floor Uses in the Tenderloin

Source: Urban Solutions, *Tenderloin Neighborhood Profile* (San Francisco: Urban Solutions, 2004), 35-36.

4.3.2. Dispersal Requirement

A predominant characteristic of the Tenderloin sex businesses is their long history. Apart from the two businesses that do not appear in the Tax Collector's database, all of the registered businesses began business in or before 1979, predating the enactment of the dispersal ordinance. Three businesses are presently operating under the original ownership. One business has a 2001 opening date, but it has been operating for a much longer time as an adult entertainment business under different owners and managers.[208] Oddly, this business is registered with a name that is different from the current use. The history of this business will be further discussed in Section 4.3.3.

4.3.3. Proximity to Schools and Parks

Three schools and one park are located within 1,000 feet of at least one non-registered sex business. (Table 4.2).

Table 4.2. Schools and Parks near Sex Businesses in the Tenderloin Study Area

Name of Facilities	*Distance to the Nearest Non-Registered Sex Business (feet)*
Schools	
San Francisco Christian Academy (on Eddy)	700
San Francisco Christian Academy (on Jones)	470
De Marillac Academy	980
Parks	
Father Alfred E. Boeddeker Park	420

Sources: school and park location from *SF GIS Catalog*; distances as measured in the GIS-generated maps; school opening dates from a school website and interview with Hilliard; park opening date from the San Francisco Recreation & Parks Department (SFRPD).

Apparently, there is a sex business located next to a school (Figure 4.2). This particular business has been operating as a legal business with a non-conforming use, and the management has changed multiple times.[209] Prior to the current management, the following incidents happened in front of the business and next to the school: 1) strippers soliciting customers; 2) strippers soliciting middle school students for jobs in the sex business (e.g. "Do you want a job here?" "You've got a nice body; you could make a lot of money working here."); 3) employees buying and doing drugs; and 4) signs flashing the words like "Sex Toys," "XXX," and "All Nude Girls Show." Teachers, students, and parents who protested were taunted by club employees. The concerned community members brought a lawsuit against the owner, but nothing could stop him from operating the business. Even though the school principal's subsequent hunger strike finally got the City's attention, the legitimacy of the sex business next door to a school was never questioned.[210]

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[208] Alan, interview; Hilliard, interview.

[209] Ibid. Hilliard shared the details of the relationship in an interview.

[210] Hilliard, e-mail message to author, 9 May 2008; Katia Hetter, "Pastor Ends Hunger Strike: He Cites Progress on Tenderloin Vice, Grime and Crime," *San Francisco Chronicle*, 7 May 2004 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/05/07/BAGOA6HDIV1.DTL> [15 May 2008].

Upon investigation, the Tax Collector's Office database revealed the business had a different name, or the same name as the previous business. In other words, the Office could not find the name of the current business in its database, indicating that the owner had neither reported the name change nor registered the additional "Do Business As" designation, each of which is required by the Office.[211] As the school opened before the latest ownership transfer of the business in question, the implication and consequences of the outdated and non-reported business name needs to be further investigated.

The most recent management has reacted to the neighbors' pleas more positively, putting a dress code in place and not displaying flashy signs. However, it is still a big concern for the neighborhood because of the recent outbreaks of violence, including five shootings from patrons in the past six months, resulting in at least one fatality. Hilliard describes the protest experience as "disheartening," saying "It was hard to convince people that the Tenderloin has children and families, not just drug addicts in the neighborhood."[212]

[211] Any entity using a Do Business Name should notify the Tax Collector's Office, as well as register that name with the County Clerk's Office. Tax Collector's Office staff member, e-mail message to author, 22 April 2008.

[212] Hilliard, interview.

4.4. SOMA

4.4.1. Zoning

The study portion of the South of Market (SOMA) neighborhood (Figure 4.5) has a complex mix of zoning districts: the South of Market Residential Enclave District, Residential-Service District (RSD), Service-Light Industrial-Residential District, and Public District.[213] Most of these areas belong to the Mixed Use District category, which purports to protect housing and unique mixed-use character and thus prohibits sex businesses (indicated by the predominant orange in Figure 4.5). At least four sex businesses are shown to be concentrated in the RSD, one of the mixed-use areas prohibiting sex businesses. It should be noted, though, that all of the registered businesses within the black circle began operating in or before 1990, the year when the RSD was added to the Planning Codes.

Figure 4.5. Sex Businesses in the South of Market (SOMA) Study Area

Source: *SF GIS Catalog*; design by author.

[213] San Francisco Planning Department, *East SoMa Area Plan—Draft for Citizen Review*, December 2007 <http://www.sfgov.org/site/uploadedfiles/planning/Citywide/pdf/East_SoMa_Area_Plan_2007.PDF>, 13.

4.4.2. Dispersal Requirement

As is characteristic of the other study areas, sex businesses in the SOMA area are located across the street from one another. One business, in the cluster to the top of Figure 4.5, did open before 1979, when the 1,000 foot dispersal requirement was enacted; however, the other business does not have a registered opening date. The opening date of only one business at the bottom cluster in the Figure was tracked to predate 1979, so this business should have stopped the nearby one from opening.

4.4.3. Proximity to Schools and Parks

Two parks are located within 1,000 feet of a non-registered sex business (Table 4.3). In addition, as evidenced in Figure 4.5, another park (Victoria Manalo Draves Park) is located less than 1,000 feet away from at least two registered sex businesses, one of which opened most likely after 1979.

Table 4.3. Park near Sex Businesses in the SOMA Study Area

Name of Facilities	*Distance to the Nearest Non-Registered Sex Business (feet)*
South of Market Park	800

Sources: park location from *SF GIS Catalog*; distance as measured in the GIS-generated maps; park opening date from phone conversation with a SFRPD planning staff member.

4.5. Locations and Impacts of Massage Parlors

The concentrated presence of illegal massage parlors in the study areas and the recent investigation efforts merit special attention. While categorized differently in zoning codes, massage parlors are similar to many on-site adult entertainment establishments because they offer touching services that may lead to sex. It is a known secret that many massage parlors across the U.S. engage in illegal practices of sex-oriented touching business and prostitution, and San Francisco is not an exception.[214] In fact, a police officer equates "massage parlors" (*vis-à-vis* certified therapeutic massage establishments) in San Francisco to places of prostitution.[215] Another commonality these two types of businesses share is their association with human trafficking.[216] In words of San Francisco Mayor Newsom: "Girls are being forced to come to this country, their families back home are threatened, and they are being raped repeatedly, over and over."[217]

The typical journey of a trafficked woman starts with a false advertisement offering a safe and temporary job in the U.S. These advertisements are usually posted on the internet or in the local papers in her home country, mostly in Southeast Asia, the former Soviet Union, or

[214] MSNBC; May, "Sex Trafficking."

[215] Police officer, interview.

[216] For example, according to a Department of Public Health (DPH) staff member, a woman who had been trafficked to work in a massage parlor is now working in one of the gentlemen's clubs—a business with the Place of Entertainment permit (Interview with a DPH staff member, 19 February 2008).

[217] May, "Sex Trafficking."

South America.[218] What actually awaits the unsuspecting woman are threats of or actual violence from the traffickers and sex business operators who force her to perform sensual massages or dances for clients, acts usually ending in sex. The violence includes verbal and physical abuse, amounting to rape. Threats of harm to the victims and their families, as well as a tight surveillance system, make an escape nearly impossible.

This horror story of sex slavery in the twenty-first century was revealed in San Francisco through Operation Gilded Cage. In June 2005, the FBI and local police raided eleven massage parlors in connection with money laundering, human trafficking conspiracy, and/or alien harborage, arresting over one hundred and sixty people and confiscating two million dollars in cash.[219] According to local police, this bust did not even make a dent in the wide scope of sex trafficking in San Francisco.[220] Consequently, Mayor Newsom ordered the creation of a Task Force, comprised of staff from the Departments of Building Inspection, City Attorney, Fire, Planning, Police, and Public Health (a lead agency) to inspect all massage parlors within a year—about one hundred and twenty parlors with permits and twenty to thirty without them. The Task Force identified sixty massage parlors engaging in illegal activities and issued over a hundred and twenty citations, collecting about seventy thousand dollars in fines.

The City's unique and collaborative undercover investigations have revealed valuable information on underground businesses operating in our backyards, about which neighbors should be aware. Many of these businesses generating their revenues from illegal sex transactions actually had City permits issued for legitimate use. One detectable difference between a legitimate business and an illegal one is the presence of an unusually high security system, including guards, video cameras, television monitors, and double-locked iron gates. Not surprising is the fact these illegal massage parlors were found most concentrated in the same neighborhoods where adult entertainment businesses are concentrated. For example, all of the massage parlors caught for illegal sex trade in Operation Gilded Cage were located in the Tenderloin and SOMA with the exception of two; one of the two businesses was in Broadway.[221]

The undercover investigation program made definite progress in raising awareness of the gravity of the illegal sex trade in San Francisco. At the same time, the program made it clear how difficult it is to impose a proper level of prosecution, let alone stop the criminal ring.[222] For example, as a direct result of the Operation Gilded Cage, only four out of the eleven

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[218] The stories from MSNBC, *San Francisco Chronicle*, police, and DPH staff all coincide with one another to resemble this typical scenario.

[219] The details are based on May's *San Francisco Chronicle* articles and author's interview with Walsh.

[220] May, "Sex Trafficking." May approximates that at least seven hundred sex masseuses are working in San Francisco, just based on the number of illegal parlors listed on sex websites and police interviews. In addition to these advertised parlors, trafficked women end up working as "escorts, outcall girls, erotic dancers and street prostitutes," as well as in secret apartment massage parlors.

[221] Walsh, interview.

[222] May demonstrates in her article that most massage parlors end up receiving minor administrative citations because the police needs to see "money change hands" to enforce a criminal charge. The victims' fear of retaliation also adds the difficulty of prosecuting violators. A DPH staff member attributes the difficulty of prosecution partly to the defenses made by expensive, high-level attorneys on behalf of these businesses.

places were shut down.[223] The owner of one of the closed businesses was recently sentenced to one year in prison, in addition to forfeiting one million dollars for money laundering, but not sex trafficking.[224] Punishments for other owners were limited to twenty-five hundred dollars in fines and a warning to suspend permits if more violations are brought up in the future.

In addition to the difficulty of proper prosecution, the inspection program costs a lot of government money, so it is hard to ascertain how long the program can continue, especially given the lack of a political will. Therefore, it is imperative to institute a responsive permitting program that weeds out illegal practices from the onset. This point will be further elaborated in Section 5.3.

4.6. Conclusion

Although land use regulations currently impose requirements where adult entertainment businesses can locate in San Francisco, the Planning Department does not have a system to track where these businesses are, making the regulations almost impossible to enforce. None of other City agencies that could (or should) be directly involved in regulating sex businesses, such as the Police Department and Entertainment Commission, keeps track of these businesses' physical locations. City agencies that collect business information for other purposes, such as the Tax Collector's Office or the Assessor-Recorder's Office, do not have a business category specific to adult entertainment businesses, so they cannot produce an inventory of sex businesses that could be used by the Police and Planning Departments to enforce relevant regulations. In short, the zoning regulations have no teeth, since the City lacks the necessary data to enforce them.

My own efforts to compile the location data of sex businesses in San Francisco by using commercially available services (e.g. the Yellow Pages, internet advertisements, and Yahoo and Google local business listings) proved futile, demonstrating that City staff would be constrained by lack of transparent information to gather the needed data from commercial sources. Advertisement sources, such as phone books, local newspapers, and internet sites, do not have a consistent way of categorizing adult entertainments, so a sex business may choose to covertly advertise itself as a plain bookstore or theater. Even if a business identifies its sex-oriented nature, it may choose not to publish its address.

As I can attest from personal experience, it is not easy to survey the locations of all sex businesses in person. People generally hold negative perceptions of sex businesses and want

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[223] DPH staff member, interview. According to May's article, the City was able to close only one business. The DPH took other creative approaches to eventually close down four more businesses, such as blocking sale of illegal businesses and notifying landlords of their tenant's illegal activities. Their strategy will be further discussed in Section 5.1.4.

[224] U.S. Department of Justice, "San Francisco Brothel Owner Sentenced to One Year in Prison for Money Laundering," 7 March 2007 <http://sanfrancisco.fbi.gov/dojpressrel/2007/sf030707a.htm> [12 May 2008]. May writes in her "Sex Trafficking" article: "Sex traffickers who get caught are rarely convicted of sex trafficking—and they know it. It's a frustrating cat-and-mouse game for federal investigators and prosecutors, who spend a year or more keeping a sex slavery network under surveillance, and then none of the women held in captivity is willing to testify."

to avoid any association with them if possible. Many sex businesses are located in areas deemed to be less safe, and it is likely that a sex business with a connection to criminal circles could overreact to someone it perceives as suspicious of tracking information. For example, when the Department of Public Health was appointed the leadership role in conducting undercover investigations of sex-oriented massage parlors, its staff member recalls it was hard to recruit people because of the fearful rumors surrounding gangs and organized crimes associated with sex businesses.[225] The staff member confesses that he is concerned with his security when conducting investigations alone and finds it much easier to do investigations in teams, especially accompanied by police.

Searching for the opening date for a sex business is not an easy task. To obtain the opening date information, one needs to submit a listing of specific businesses with names and/or addresses to the Tax Collector's Office. Depending on the number of requested businesses and the Office's workload, it may take a while to get the results.[226] In any case, a business that has not registered with the City would not appear in the Office of the Tax Collector's database at all.

Therefore, the snapshot of sex businesses presented in this chapter is not a complete picture. The City's categorization of sex businesses further complicates the picture. A sex business may self-identify as adult entertainment but be registered as a Place of Entertainment, not an Adult Entertainment, as defined by the Police Codes. This report includes such businesses in its analysis, since the distinction between the categorization does not preclude the fact that sex businesses in either category inflict similar negative impacts on neighborhoods.

The weight of the negative impacts becomes heavier for the neighborhoods where sex businesses are concentrated near family-oriented facilities or residences including children. Even the rough survey of sex businesses presented here shows that the General Plan's recommendation for sex businesses to locate away from schools and parks is not followed. The survey also shows that many sex businesses are in violation of the Business and Tax Codes, as well as zoning requirements to locate certain distances away from similar businesses. Eight of the twenty-six sex businesses identified within the selected study areas are not registered with the Tax Collector's Office. Out of eighteen businesses with the registered opening dates, only six businesses have been operating without an ownership transfer since 1979 (the year when the dispersal requirement was instituted). Out of twelve businesses whose opening dates are currently registered as post-1979, a staff member at the Tax Collector's Office could identify only one business, based on a name, to have operated as a sex business prior to 1979.[227] Taking all these violations and assumptions into account, presumably nineteen businesses could have been prevented from operating at their current locations—that is, almost seventy-five percent of the total number of businesses in the study areas. The historical records of businesses at these locations need to be further examined to clearly distinguish the legal non-conforming uses from the illegal ones.

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[225] DPH staff member, interview.

[226] In general, the staff member at the Tax Collector's Office has done an excellent job in supplying the information in a timely manner.

[227] Tax Collector's Office staff member, e-mail messages and an excel attachment to author, 16 and 20 May 2008.

If the survey were to include illegal massage parlors and escort services, which get the largest coverage of the adult ads section in local newspapers, the number of sex businesses present in these neighborhoods would substantially multiply. Obviously, the biggest problem is the current non-existence of consistent regulations that can effectively deter illegal operation or control the proliferation of sex businesses in San Francisco. The next chapter will tackle the question of how to change the current state of non-regulation to the assured state of regulations that are fair, effective, and enforceable.

5. Recommendations

Previous discussions on the current regulations, as well as existing violations, pertaining to sex businesses in San Francisco can be summarized in a police officer's statement: "[They] have become pretty much moot in San Francisco."[228] Adult Entertainment businesses do not need a special permit unless they serve food/beverages. Although an Entertainment permit limits the extent of sex-oriented materials that can be offered in a Place of Entertainment, which serves food/beverages, assuring compliance is unfeasible under the current enforcement mechanism. The only regulation specific to Adult Entertainment businesses is the Planning Code requirement to separate them by no less than 1,000 feet; however, without a reliable database of sex business locations, there is no way to verify compliance to the Code. Conversely, non-compliance has been confirmed by the presence of numerous adult entertainment businesses next to each other. Operational regulations, such as signage and visibility controls, are not only outdated but given less priority on the Police Department's list to enforce.

In the meantime, sex businesses continue to thrive in high-density neighborhoods containing many residences. Should San Franciscans continue to accept the presence of sex businesses without further discussion and/or regulation? One side of the issue argues regulations will not only add bureaucratic layers but thwart freedom of choice because the regulations are based on a subjective morality and not on facts. Alan, an Entertainment Commissioner and former owner of an adult-oriented dancing club, currently leases his building to a similar type of club. Alan interprets the additional regulations that have so far been suggested as unnecessary when there have not been reported problems or complaints against adult entertainment businesses.[229] Other interviewees acknowledge legal loopholes allow predatory practices of sex businesses but doubt regulations can be tightened for the following reasons: 1) the City officials and prosecutors have historically overlooked the issues of prostitution, drug use, and sex trafficking, which form the crux of the most serious problems involved with sex businesses; 2) sex businesses have the money and power to fight further regulation; and 3) it is almost impossible to get victims to testify.[230]

There are several reasons why staying with the *status quo* is not the answer. As mentioned in Chapter 2, one should not overlook the harmful effects of pornographic materials, which are the major, if not only, services and merchandises featured in these businesses. While both sides of the issue have been long argued and presented with supporting proof, evidence of the harm is so strong that even the potential of such harm merits a deeper investigation of the issue.[231] People have repeatedly expressed their concern over businesses that explicitly portray sex-oriented goods and services, especially when such businesses are in their

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[228] Police officer, interview.

[229] Alan, interview.

[230] Ken Garcia, "Strip Club Workers Tell City Hall 'Let Us Remain Private Dancers,'" *Examiner*, 22 August 2006 <http://www.examiner.com/a-234612~Strip_club_workers_tell_City_Hall__let_us_remain_private_dancers_.html> [22 April 2008]; ibid., "Will San Francisco Pull Back the Veil on Its Strip Clubs?" *Examiner*, 27 June 2006 <http://www.examiner.com/a-161013~Will_San_Francisco_pull_back_the_veil_on_its_strip_clubs_.html> [22 April 2008]; interviews with police officers, DPH staff member, and Hilliard.

[231] A similar argument can be made on regulations regarding cigarettes, liquor, and marijuana.

backyards, as demonstrated in Chapter 2 and 3. Even the Supreme Court has declared some types of sex-oriented commercial activities as unprotected under the First Amendment.

On a larger scale, the relatively recent raids on illegal massage parlors that were closely connected with international sex-trafficking rings revealed the magnitude of sex-related crimes in San Francisco. Although the raids focused on massage parlors, the wide spectrum of adult entertainment businesses is not immune from the criminal network.[232] Moreover, sex-related crimes involving children are increasing.[233] The grave issue of the kidnapping and abuse of sex workers presents a compelling contrast to individuals who demand their rights to work in sex businesses.

Responsible citizens and civil servants should recognize that the complexity and interrelatedness of these serious issues are not reasons to avoid or delay the discussion. Rather, they add even more weight and urgency to determining a direction on how to regulate sex businesses. Sex businesses cannot, and should not, exist merely as a tourist attraction, a symbol of freedom of choice, or a Pandora's Box, which everyone is curious about but no one is willing to open up. The actual and potential problems a sex business brings to neighborhoods, and the City as a whole, need to be openly discussed. Also, what constitutes sensible and enforceable limits that can be placed on the opening and operation of a sex business needs to be explored. This chapter proposes ideas on incorporating such limits into various City codes, with a focus on planning regulations.

5.1. Reinforce Zoning

As previously emphasized, the Planning Department's 1,000 foot dispersal requirement between Adult Entertainment businesses is the only existing regulatory tool specific to sex businesses (Table 3.5). The Department needs to take the lead responsibility to regulate this industry with the given tool. Proper implementation of the Planning Department's existing regulations, even without any new regulations, would have prevented the historic intensification of sex businesses. It is recommended the effective enforcement of zoning regulations begin with the compilation of a comprehensive database of existing sex businesses' information.

5.1.1. Compile a Database

The Planning Department needs to have a system that promptly and accurately updates the address of every new and existing sex business, the opening and closing dates,[234] the business type, its size, complaints, and violations. The Department could consider integrating this information with the City's existing GIS databases so that the public or other City staff members can easily access the information. The Department has been using the GIS for

[232] MSNBC; interviews with police officers and a DPH staff member.

[233] San Francisco District Attorney's Office, "Police Battling Underage Sex Trade: Authorities Note Tenfold Increase in Trafficking, Launch Awareness Campaign" by Momo Chang, *Press Releases* <http://www.sfdistrictattorney.org/News.asp?id=276> [5 March 2008].

[234] The closing date is needed to track the period of discontinuance for a legal non-conforming business, which may trigger the termination of the legal status.

tracking massage parlors, as well as marijuana dispensaries, and clearly comprehends the benefit of utilizing it for sex businesses.[235]

Currently, the City maintains three general GIS databases (SF Parcel, SF Viewer, and SF Find) in addition to two specialized databases (SF Prospector and SFPD CrimeMaps).

- *SF Parcel* provides basic information of each parcel in the City, such as zoning and lot area, and is searchable by a block/lot number or by address/intersection.[236]
- *SF Viewer* shows the basic parcel information, the elected officials who represent each neighborhood, the street information, and nearby public facilities.[237]
- *SF Find*, the Planning Information GIS Database, gives more detailed zoning and parcel information, including height and bulk limits as well as property characteristics.[238] It also shows a history of reported complaints about the building in addition to electrical and building permit information. Three different departments are involved in keeping each type of information current: the Planning Department for the zoning information, the Assessor-Recorder Office for the parcel information, and the Department of Building Inspection for the building permit information. Importantly, the building permit information includes instances of complaints and inspections.
- *SF Enterprise* has a search function customized to help a prospective business owner find an available retail space.[239]
- *SFPD CrimeMaps* shows on maps the incidents of crimes from police reports.[240]

The City and its citizenry would benefit greatly from a central depository with all information pertaining to each parcel.[241] A database wherein the parcel-specific information is consolidated and accessible by City staff would facilitate inspection and enforcement efforts at all levels. The information particularly relevant to regulating sex businesses includes an address, opening date, complaints, and crimes, all of which pertain to other types of work of the involved agencies, including (but not limited to) the Police Department, Planning Department, Department of Building Inspection, Fire Department, and Department of Public Health. One agency's information may prove to be surprisingly useful to other agencies. For example, the Entertainment Commission began collecting information on "problem" entertainment venues,[242] and such information would be a valuable addition to the consolidated database. The business information maintained by the Tax Collector's Office is particularly useful in identifying unregistered sex businesses.

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[235] Sanchez, interview.

[236] San Francisco Department of Technology and Information System, "SF Parcel," *SF GIS* <http://gispub02.sfgov.org/website/sfparcel/INDEX.htm> [31 March 2008].

[237] Ibid., "SF Viewer," *SF GIS* <http://gispub02.sfgov.org/website/sfviewer/INDEX.htm> [31 March 2008].

[238] Ibid., "SF Find," *SF GIS* <http://gispub02.sfgov.org/website/nuviewer/planningmap.asp> [31 March 2008].

[239] Ibid., "SF Enterprise," *SF GIS* <http://gispub02.sfgov.org/website/sfprospector/ed.asp> [31 March 2008].

[240] San Francisco Police Department, *SFPD CrimeMaps* <www.sfgov.org/crimemaps> [14 May 2008].

[241] Police officer, interview.

[242] San Francisco Entertainment Commission, *Meeting Minutes*, 4 March 2008 <http://www.sfgov.org/site/entertainment_page.asp?id=78552> [23 April 2008].

Deploring the absence of such a simple database (despite the City's proximity to the Silicon Valley, the high-tech Mecca), a police officer listed reasons inhibiting the creation of a common database: 1) City agencies' usual resistance to change, 2) a "can't do" mentality prevalent among city staff, and 3) costs.[243] The first two reasons simply require a change in attitude. The third excuse is compelling but may not be substantive. The consolidation and refinement of a database containing business information is critical for facilitating coordination and minimizing duplication of tasks among different agencies. In actuality, the database would be saving costs over time. For example, the Planning Department's database for tracking illegally operated massage parlors is different from the Department of Public Health's.[244] While the level of their cooperation has significantly increased since the creation of a task force that regularly performs undercover inspections of massage parlors,[245] an easily accessible database of sex businesses that could be shared among different agencies would minimize unnecessary conflicts and workloads. Such a database would provide a solid basis for the City to explore and enforce policies and would prove to be invaluable in a long run.

5.1.2. Enforce the Planning Codes

Once all the pertinent information is gathered, the shared database could be utilized to enable a thorough investigation of existing businesses and a proper enforcement of the law. If the Planning Department takes the current dispersal requirement seriously and ensures that a new sex business stays at least 1,000 feet apart from the existing ones, no new sex businesses would be added to the already concentrated areas. However, a careful review of future applications is not enough. Even a pilot database collection of existing sex businesses has revealed zoning violations and tax-registration violations are rampant in San Francisco. As demonstrated in Chapter 4, most likely only seven out of twenty six sex-oriented businesses in the study areas would be able to withstand strict municipal scrutiny.[246]

The significance of actual enforcement of existing zoning regulations cannot be emphasized enough. Without effective enforcement, adding more regulations will merely construct a larger "paper tiger." As a Department of Public Health staff member states, "Paperwork without field work isn't effective. If you check them, you can keep them honest … If you just add a layer of paperwork, they get around it because they have a lot of money at stake!"[247] This does not mean regulations should not be added, but that planning staff should be mindful of how the regulations can be integrated into an easily enforceable system.

A related example is the Planning Codes' allowance of *accessory massage* establishments (limited in the number and size of massage rooms) located within 1,000 feet of each other. With no one designated to check the number and square footage of the rooms, the allowance is doomed to be abused.[248] In addition, to ensure a massage parlor does not get transformed to a sex business, massage parlor applicants are now required to submit an affidavit of employees. According to an experienced Public Health staff member, the

[243] Police officer, interview.
[244] DPH staff member, interview.
[245] Ibid.
[246] See Sections 4.1.3 and 4.6 for assumptions made on potentially legal non-conforming businesses.
[247] DPH staff member, interview.
[248] Ibid.

composition of employees in massage parlors usually changes completely after six months. Effective enforcement would translate into a status check at least every six months.[249]

5.1.3. Realign the Planning Codes

As demonstrated in Chapters 3 and 4, the current Planning Codes do not support the direction of the General Plan. The City's General Plan discourages adult entertainment uses from operating in or near residential and neighborhood commercial districts, as well as family-oriented facilities. Therefore, the Planning Department needs to modify the Planning Codes to implement the spirit of the General Plan. For example, the Planning Department should consider prohibiting sex businesses in dense residential areas, such as the RC-4 District in the Tenderloin area. This change would support the Tenderloin Neighborhood Development Corporation's policy that discourages the leasing of properties to adult entertainment businesses to make the neighborhood a "better place to live."[250]

The Planning Department should also adopt a distance requirement of sex businesses from schools (including day care centers), family-oriented facilities (parks and playgrounds), places that serve as a focal point of a neighborhood (such as gateways), and religious institutions.[251] Such separation is partially noted only in the General Plan and needs to be codified and enforceable. Draft legislation that would have required a 1,000 foot separation between schools (including child care facilities and playgrounds) and adult entertainment businesses passed the Planning Commission and the Land Use Committee in 2004, but it was dropped in 2005 for no apparent reasons.[252] The Planning Commission recommended adding a reverse requirement—that new schools, childcare facilities, and parks not be located within 1,000 feet of adult entertainment businesses.[253] However, such reverse requirement would not make sense unless the City first verifies the legitimacy of existing sex businesses. This need reiterates the importance of having a comprehensive, accurate, and up-to-date database.

In addition, the Planning Department should consider customizing land-use classifications to different types of sex businesses, depending on the extent of their impacts. Kelly and Cooper emphasize the importance of understanding sex businesses and the inter-relatedness of regulations: "If there is one principal lesson that we believe everyone who reads the [APA] report should remember, it is that the sex business is many businesses—and zoning should treat it accordingly. Different uses should be subject to different regulations, placed

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[249] Ibid.

[250] Tenderloin Neighborhood Development Corporation, "Tenderloin Neighborhood Development Corporation Commercial Tenant Selection Criteria," *Commercial Leasing Policy and Procedures*, 8 March 2007, 1-2; Orlin, interview. However, exceptions can be made. Orlin notes that the TNDC decided to renew a lease to a long-time gay adult entertainment business because it has not generated any noticeable negative impacts and rather viewed as part of and a cultural asset to the neighborhood.

[251] Kelly and Cooper discuss some uses commonly protected through the distance requirement in 136-7.

[252] Clerk's Office of the Board of Supervisors, *Master Report* (File No. 040324), 18 February 2005.

[253] San Francisco Planning Commission, *Case No. 2004.0302T*, 10 June 04. The legislation was initially proposed by Supervisor Tony Hall on March 16, 2004 and later transferred to Supervisor Sean R. Elsbernd, who stopped pursuing it on February 18, 2005 (San Francisco Clerk of the Board of Supervisors, *Ordinance File No. 040324*, last amended in 26 July 2004). Supervisor Elsbernd's staff member did not return my phone inquiry on the reason for dropping the proposal.

in different zoning districts, and subject to different separation standards."[254] This distinction is particularly relevant considering how the public reacts to different types of sex businesses. For example, Hilliard sees adult bookstores as mostly harmless but holds a more negative view of a live adult entertainment business because of the history of violence against women and workers and the fact it brings more strangers into the neighborhood.[255] Therefore, Hilliard and her neighbors will protest only against the latter type of sex businesses, should a new one to come to her neighborhood. Kelly and Cooper's research affirms Hilliard's observation that on-site adult entertainment businesses introduce more adverse impacts to neighborhoods.[256] Accordingly, the Planning Department should closely monitor the City's current efforts to update the definition, standards, and permitting system regarding live adult entertainment businesses (to be discussed in Section 5.3).

Initiating such zoning amendments should be accompanied by adequate planning for the City's characteristically complex and slow zoning amendment process requiring public outreach and impact studies. The importance of having a Secondary Impact study to support the soundness of sex-business regulations has already been emphasized throughout this report.[257] Until the influence of sex businesses in San Francisco is fully assessed, the City should firmly enforce the current zoning regulations and consider placing a moratorium on new sex businesses, as it has recently done on shops that sell smoking paraphernalia.[258]

5.1.4. Change the Uses

Identification of problem uses, enforcement of existing regulations, and a proper realignment of the Planning Codes would reveal the businesses either in violation of or non-conforming to city laws. The prospect of such scrutiny would provide the motivation, if not a legal obligation, for illegal sex businesses to relocate or to change their use permit. Hilliard, the community organizer of the Tenderloin area, offers a bright insight to terminating unwanted sex businesses in a neighborhood: buy them off. After a grueling and ultimately unsuccessful protest against a sex business next to an elementary school, she later found out the owner had been trying to sell the building, which taught her a valuable lesson: "Had we been more strategic, we could have bought the building and prevented the club from operating."[259] This is an especially promising approach in the Tenderloin, where more and more sex businesses are either relocating or going out of business.[260] One positive example is the planned transformation of the site of former pornography shops to an art gallery and a children's theater.[261]

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[254] Kelly and Cooper, 132. Cooper, Kelly, and Edmondson lay out the latest recommendations in their power point presentation, slides 56-68.

[255] Hilliard, interview.

[256] Kelly and Cooper, 158.

[257] [Section 5.2 suggests players and strategies to be considered in conducting an impact study.]

[258] Robert Selna, "S.F. OKs Plan for 6,000 Housing Units," *San Francisco Chronicle*, 9 April 2008 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/04/09/BAE81024TC.DTL&hw=liquor+store+moratorium&sn=001&sc=1000> [5 May 2008].

[259] Hilliard, interview.

[260] At least seven such businesses have closed since the *Tenderloin Market Study* was conducted in 2002, and another one is also planned to be closed (author's field survey; Hilliard, interview).

[261] Shaw, "Tenderloin Breakthrough;" Hilliard, interview.

The Department of Public Health has taken creative approaches to stop a massage parlor from continuing its illegal use. For example, the Department successfully blocked a sex-oriented massage parlor from being sold to a masseuse with a record of illegal operations.[262] To stop the transaction, the Department used evidence of bad business practices that had been gathered from their undercover operations. Consequently, the original owner could not sell the business and eventually closed down the parlor. Also, the Department sent out letters, written by Mayor Newsom, to landlords to notify them of their tenant's illegal practices and the possibility that they themselves may need to pay the fee to close down the illegal businesses.[263] As a result, most landlords chose not to renew the lease, effectively terminating the presence of illegal businesses in their buildings. The City and community development organizations should proactively take these opportunities to lease or buy these spaces and fill them with more desirable uses.

In addition, the City should explore legitimate ways to encourage a non-conforming sex business to changing their use to a conforming business. For example, the City may consider imposing a time limit to a sex business's legal non-conforming status or limiting it to the current ownership.[264] Out of the twenty-six sex businesses found in the study areas (Chapter 4), only seven businesses would have remained as sex-oriented had the legal non-conforming status been limited to the originally registered ownership. In order to plan a strategic use of a sex business whose legal status is soon to expire, the Planning Department should make the non-conforming timeline of a business easily traceable in a comprehensive database (as recommended in Section 5.1.1). The database will be a useful resource in identifying problematic businesses that can be bought off strategically to benefit the neighborhood. Kelly and Cooper also recommend cities to seriously consider negotiating the purchase of and/or using eminent domain to acquire some of these businesses.[265]

Downplaying the value of strategizing non-conforming uses, the Planning Commission recommended exempting the existing adult entertainment businesses from the non-conforming restrictions when Supervisor Tony Hall proposed the 1000 feet distance requirement between adult entertainment uses and children's facilities.[266] The exemption would have allowed expansion of sex businesses that were located within 1,000 foot of children's facilities at the time. Such allowance trivializes negative impacts of sex businesses and defies the intention of the General Plan. The next section recaptures the importance of understanding the impacts and involving all the stakeholders in the process.

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[262] Walsh, interview. Walsh notes that transactions initiated by those with a record of illegal practices do not always prompt such an active intervention by the Department of Public Health; in particular, he believes that those who turn away from their bad practices should be given another chance.

[263] Ibid.

[264] Notably, New York City adopted this time-limit or "amortization" strategy in 1995; however, each city should carefully consider its applicability or legitimacy to avoid conflict with state laws (Kelly and Cooper, 85, 163).

[265] Kelly and Cooper, 163.

[266] San Francisco Planning Commission, *Case No. 2004.0302T*.

5.2. Reassess Impacts

Collecting the information on the characteristics and impacts of the existing sex businesses is a critical piece of the broader regulatory update process and should be done as soon as possible. As the Planning Department gathers information on sex businesses, the Department could then utilize the database to conduct a Secondary Impact Study. The Planning Department is an appropriate agency to lead this particular effort, since the Department is primarily responsible for tracking the physical locations of businesses, understanding their impacts, and adjusting related regulations accordingly. It is also in the Department's interest to conduct the study before the validity of the General Plan and Planning Codes are actually challenged. Considering their limited resources, the Planning Department could start by conducting a focused study on neighborhoods where sex businesses are prevalent in or near residences, such as the Broadway, Tenderloin, and SOMA study areas featured in Chapter 4.

It is imperative the impact assessment process covers all of the types of sex businesses, including massage parlors. Although illegal massage parlors are distinguished from "legal" adult entertainment businesses, the sex-oriented nature of their services is similar, especially when the legal sex business entails touching activities. Therefore, while the unique characteristics of each type of business need to be taken into account, one can presume that their impacts share common characteristics.

Kelly and Cooper devote a chapter on how to prepare such a study and recommend involving a wide range of stakeholders in the process, including: elected officials, planning commissioners, planning and legal staff, licensing officials, building and health inspectors, the police, neighborhood and other activist groups, outside experts, and last but not least, owners and operators of sex businesses.[267] The following subsections discuss how some of the City agencies, especially those that have played a relatively minor role in regulating adult entertainment businesses, can contribute to the study. Also considered is the importance of involving experts and members of the public, as well as victims of the sex-oriented commerce.

5.2.1. Involve the Entertainment Commission

The Entertainment Commission should be involved in the process regulating sex businesses. If the Commission's goal is to "have a system of coordinated planning and permitting for cultural, entertainment, athletic and similar events and establishments throughout the City to promote such establishments and events for the economic and cultural enrichment of San Franciscans and visitors to San Francisco,"[268] the Commission cannot continue to ignore the issue of sex businesses just because they do not fall into the Police Department's definition as a Place of Entertainment.

One should take a cautionary approach to the Entertainment Commission's role. The Commission has been criticized as taking a "rubber-stamping" approach to issuing

[267] Kelly and Cooper, 122-3.

[268] *San Francisco Administrative Codes*, Ch. 90, 26 July 2002 <http://www.sfgov.org/site/entertainment_page.asp?id=18156> [14 March 2008].

Entertainment permits, resulting in an abundance of crime-related problems.[269] In fact, Hilliard testifies how difficult it has been to convince the City about the negative impacts of sex businesses and the need for a tighter regulation, considering that one of the Entertainment Commissioners has been a sex business owner as well as a personal friend and contributor to the area's representative on the Board of Supervisor.[270] Moreover, the Entertainment Commission has not been involved in the City's efforts to investigate sex-oriented massage parlors, thereby lacking the experience and connections. This point signifies the need for collaborative teamwork involving other governmental agencies to address issues that the Entertainment Commission may not be willing to acknowledge.

5.2.2. Involve the Commission on Human Rights and on the Status of Women

Other agencies that should be actively engaged in the impact assessment process include the Mayor's Commission on Human Rights and on the Status of Women. Sex businesses do not exist in isolation but as part of a cycle that demands people (mostly women but also men and transsexuals) to become sexual objects in exchange for monetary compensation. High money is willingly paid by those in search of a legitimate outlet where their sexual desires can be satisfied on their terms. Such objectification clearly has negative ramifications against human rights, including cases of emotional and physical abuse. While the discussion of the human rights aspect of sex-oriented materials is beyond the scope of this report, considering the magnitude of the negative impacts on human beings, it should be one of the anchoring points in the Secondary Impact assessment process.[271]

On a slightly different angle, the Department on the Status of Women led a two-year study on exotic dancing clubs, which revealed coercive working conditions, including forced prostitution. As a result, a legislative proposal banning private booths was produced. It is recommended the Planning Department use the existing data and testimonies from the study to ensure the human rights aspect is properly addressed in the impact assessment process. In order for the valuable data and testimonies to be fully utilized, the Department and/or Commission on the Status of Women should have the information organized and accessible to other City agencies as well as to the public, which is currently not the case.[272]

5.2.3. Involve the Department of Public Health

The Department of Public Health has extensive experience dealing with particular types of sex businesses, such as illegal massage parlors. The Department's health inspectors, primarily Principal Health Inspector Johnson Ojo and Senior Health Inspector Edward Walsh, have been actively collaborating with other City departments, as well as non-profits, to inspect illegal massage parlors and to catch violations. Their efforts were featured in a national television program as part of the City's unique efforts to tackle prostitution and sex

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[269] Garcia, "Will San Francisco Pull Back the Veil on Its Strip Clubs?"

[270] Hilliard, interview.

[271] See Section 2.5 for various cities' efforts to tackle pornography from the civil rights perspective.

[272] As previously explained, the only information the Department on the Status of Women had available to the public was a copy of the draft legislation (Section 3.2.2), and the Commission on the Status of Women never responded to my call or email (Section 4.1.1). In my subsequent inquiry on the supporting data and testimonies, Supervisor Alioto-Pier's legislative aide referred me back to the Commission on the Status of Women (Stefani, interview).

slavery.[273] These inspectors' and other involved staff members' first-hand accounts of the impacts of sex business operations would offer a wealth of knowledge and insights.

5.2.4. Involve the Public

The process should give a significant weight to how neighbors perceive and experience the impacts of sex businesses in San Francisco neighborhoods. Although San Francisco is known for its "liberal attitude toward sex,"[274] a recent heated public hearing on the location of an internet sado-masochistic film studio in the Mission District demonstrates the liberal sentiment is not as one-sided as might be assumed.[275] Even some of the advocates endorsing the internet film studio emphasized the fact that it would be a discrete business, not distinguishable from the outside. Residents expressed outrage over the fact that most sex businesses are concentrated in predominantly low-income neighborhoods. Hilliard stresses that such a concentration of undesirable uses creates a "containment" zone: "I don't feel the city shares the 'burden' of sex shops, drug dealers, and criminal activity. It seems the Tenderloin is a place where this illicit activity is allowed more than it would be in other districts … The number of adult stores in the Tenderloin would never be allowed in Hayes Valley or other affluent neighborhoods."[276] In a community meeting for planning the Eastern Neighborhoods, people explicitly mentioned their desire to exclude adult entertainment businesses from permitted uses.[277] These community voices need to be taken seriously in the planning process.

The purpose of the public outreach is to gather community input and also to inform the community of the various issues involving sex businesses. The sex-oriented commercial activities that have been declared by courts as having no or very limited constitutional protection, such as nude dancing and touching businesses, should be explained and considered on those terms. Even though nudity and physical contact are often accepted as a norm, or even desired by patrons, the standards for a liquor license allow neither. And of course, prostitution and the street solicitation of prostitution are unlawful in the State of California.

As City planner Scott Sanchez comments, most San Franciscans are horrified by the international trafficking of sex slaves, but they often do not connect it to the local operation of sex-oriented businesses.[278] Norma Hotaling agrees about the disconnect in consciousness: "The men who seek out prostitutes don't like to think they're part of exploiting someone … They like to believe it's a victimless crime."[279] Hotaling is a founder

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[273] MSNBC; San Francisco Department of Public Health, *Director's Report for Health Commission Meeting*, 18 December 2007 <http://www.sfdph.org/dph/files/dirrptsdocs/2007DR/DR12182007.pdf> [9 May 2008].

[274] May, "Sex Trafficking.".

[275] San Francisco Planning Commission, *Special Meeting Minutes*, 7 March 2007 <http://www.sfgov.org/site/planning_page.asp?id=61157> [7 December 2007]; ibid., *Special Public Hearing*, SFGTV video recording, 8 March 2007 <http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=20&clip_id=3256> [9 May 2008].

[276] Hilliard, interview.

[277] San Francisco Planning Department, "Community Input," *Eastern Neighborhoods Community Planning*, 27 April 2002 <http://www.sfgov.org/site/planning_index.asp?id=25331> [20 August 2007].

[278] Sanchez, interview.

[279] Justin Berton, "John School Takes a Bite out of Prostitution," *San Francisco Chronicle*, 14 April 2008 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/04/14/MNGE102OK5.DTL> [18 April 2008].

of Standing Against Global Exploitation (SAGE) and a co-founder of the City's acclaimed First Offender Prostitution Program, or a "John's School." Offering presentations from experts as well as the victims of sex trafficking, the Program has successfully helped violators see their role in a global exploitation network.

Citizen participation is critical in San Francisco because many political and legislative actions are driven by citizen initiatives. As a police officer admits, due to the Police Department's limited resources, most of the investigations are initiated by citizen complaints.[280] Hilliard agrees that tips from community members drive most police actions in the Tenderloin, and she believes that the most successful enforcement of laws on sex businesses come from citizen complaints.[281]

The problem is that residents may not care as long as the illegal activities do not interfere with their daily lives. Neighbors' usual complaints involve noise and heavy pedestrian or vehicular traffic in front of their properties.[282] Hilliard's view is that neighbors may not care much about what is going on inside a sex business when they have other crimes, such as drug dealing, affecting their lives more directly.[283] "[F]or some people, it's good enough that street prostitution is out of their faces and behind closed doors … where the entire community doesn't have to deal with it," contends Shively, a criminologist and the primary author of a two-year study commissioned by the National Institute of Justice that confirmed the effectiveness of an educational program like the First Offender Prostitution Program.[284]

The current City permitting system—or, rather, its absence—needs to be explicitly explained to the public so that they can make an informed decision on where to focus their limited resources. For example, people reasonably expect the City to require a special permit for a sex business and may be surprised to learn no permit is required for a sex business that does not officially serve food or beverages.[285] In fact, even the Planning Department staff members seem to be unsure about the requirement.[286]

5.2.5. Involve the Victims

Ultimately, the Secondary Impact study will need to address the complete supply-and-demand cycle of the commercial sex industry. As explained in the previous sections, international trafficking of sex workers is a significant secondary impact of sex businesses. The human trafficking businesses can only exist in response to the demand for sex

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[280] Police officer, interview.

[281] Hilliard, interview.

[282] Police officer, interview.

[283] Hilliard, interview. Most complaints she has heard about sex businesses are from mothers and religious groups on pornographic materials bought or stolen from sex shops and then sold on street, to which their children are easily exposed.

[284] Berton.

[285] Hilliard assumed that a strip club is required to obtain an entertainment license, subject to the number of people allowed (e.g. fifty or more).

[286] The Executive Summary for a Planning Commission hearing in 2004 specifies that a permit for adult entertainment uses is issued by the Police Department (San Francisco Planning Commission, *Case No. 2004.0302T*). However, the Police Codes on adult entertainment uses, which was last amended in 1985, does not mention such requirement (*San Francisco Police Codes*, art. 11.2). A current city planner also had to confirm with local police on this matter.

businesses. The vicious cycle is promulgated by the fact that consumers themselves are impacted by the sex-oriented materials and services to demand even more. Although this issue has not been brought up in other cities' Secondary Impact studies, San Francisco, as one of the top three sex-trafficking cities in the U.S., should aggressively investigate the connection. Although the possibility for collaboration exists, this issue may be beyond the scope of the Planning Department and should be spearheaded by the Police Department and/or the Department of Public Health.

Moreover, it is recommended a Primary Impact Study of sexually explicit goods and services be conducted in tandem with a Secondary Impact Study. Public hearings in several cities give testimony to the negative impacts by sexual depictions of women in words or pictures.[287] Comprehensive research could build upon the previous studies on pornography's short-term and long-term impacts. The experiences of victims of pornography and sex trafficking, as well as those of sex workers, need to be publicly heard.

As previously mentioned, it may not be easy to mobilize victims to speak out in public, but a "survivor-centric" organization like SAGE may empower them to take a stand.[288] Hotaling, a survivor of commercial sex exploitation herself, testifies around the world about her experiences and empowers people in similar situations. The Department of Public Health is familiar with many of the illegal sex workers and, if a sex workers's privacy and safety was guaranteed, would be able to ask for contributing stories. Out of respect for the sensitive nature of the topic, one strategy is to hold private interviews, which can be used to complement public testimonies on an anonymous basis.

5.2.6. Involve the Business Owners

Alan emphasizes that a sound public policy should include input from all stakeholders, pointing out that the Commission on the Status of Women did not include current employees and business operators of adult entertainment businesses in their legislative efforts.[289] It is those employees and business operators who would be most impacted by the passage of the proposed regulatory legislation. Although the Commission does have evidence from current and former employees of clubs regarding the threat and abuses they faced, it appears the Commission did not actively include owners and operators of the clubs in the public process. This omission led to protests and the eventual failure to garner sufficient support for the Commission's proposed legislation.

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[287] MacKinnon and Dworkin, eds.

[288] SAGE (Standing Against Global Exploitation). "Welcome to the SAGE's CSE Information Center," *The SAGE Project* <http://www.sagesf.org> [9 May 2008].

[289] Alan, interview. Some current employees of sex businesses did join the business owners and operators in expressing their opposition, but a journalist reveals that "[he has] it on good authority that the club owners gave dancers monetary incentives to testify against the legislation." Garcia, "Strip Club Workers Tell City Hall 'Let Us Remain Private Dancers."

5.3. Reactivate Permitting

As Kelly and Cooper have concluded, "Zoning is an essential but inadequate tool to regulate sexually oriented businesses."[290] This viewpoint holds true for all businesses that have a potential to generate additional consequences. Such is one of the reasons why an entertainment business is required to obtain a Place of Entertainment permit. It is nonsensical that an amusement park or "Ball or Ring Throwing Games" must have a permit while a strip club does not.[291] A sensible permit process needs to be reconstituted to ensure that sex businesses in the City operate in an orderly manner with the negative impacts minimized. This need is highlighted and affirmed in the latest draft of the legislation proposing a permit requirement for live adult entertainment businesses:

> Licensing and other police power regulations are legitimate, reasonable means of accountability to help protect exotic dancers from operating and working conditions controlled by operators of Live Adult Entertainment Businesses that coerce prostitution and encourage assaults on exotic dancers and sexual and economic exploitation of exotic dancers.[292]

As mentioned in Chapter 3, this draft legislation has a convoluted history. Exotic dancers in San Francisco, or those who perform at live adult entertainment businesses, have sued their employers and protested with the City's Labor Commission for unfair labor practices and conditions that coerced dancers into prostitution or other unwanted sexual acts.[293] They also filed complaints to the Commission on the Status of Women, which, in turn, conducted hearings and researched on the policies, practices, and working conditions in live sex-oriented businesses in San Francisco. Concluding that the current situation promotes "coerced prostitution, physical and sexual assault, including rape, as well as illegal and unsafe sexual activity on the premises of the business, to the detriment of the exotic dancers at the general public," the Commission urged the Board of Supervisors to prohibit the business owners from operating private booths and demanding fees from dancers.[294] In the proposed legislation, the Commission called for reactivation of an adult entertainment permit, designating the Entertainment Commission as the responsible agency.[295]

However, at the Entertainment Commission hearings on the proposed legislation, some of the exotic dancers spoke against the prohibitions, arguing that private booths actually provide safe places and ensure profitable businesses for them.[296] After the exchange of conflicting opinions, Supervisor Alioto-Pier took over the proposal and is working on improving the draft. The latest draft contains most of the originally proposed provisions but

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[290] Kelly and Cooper, 162.

[291] San Francisco Entertainment Commission, "Permit Fees" <http://www.sfgov.org/site/entertainment_page.asp?id=19577> [6 May 2008].

[292] *Draft Legislation*, 7.

[293] Bob Egelko, "Mitchell Club Dancers' Nightly Cash Quotas Illegal, Judge Rules," *San Francisco Chronicle*, 9 August 2007.

[294] San Francisco DOSW, *Regulation of Live Adult Entertainment Businesses—Draft for Discussion Purposes Only*, 23 June 2006, 5.

[295] Ibid., 11.

[296] Garcia, "Strip Club Workers Tell City Hall 'Let Us Remain Private Dancers;" Charlie Goodyear, "Adult Club Private Rooms Debated: Dancers Object to Proposed Closing of Rooms They Call Safe," *San Francisco Chronicle*, 5 August 2006 <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/08/05/BAGQEKBSMH1.DTL> [11 February 2008].

changes the responsible agency from the Entertainment Commission to the Department of Public Health.[297] Catherine Stefani, the Supervisor's legislative aide in charge of the proposed legislation, said that they are in the process of outreaching to club owners, as well as current and former dancers, to introduce rational and sensible legislation by this summer.[298]

The historical background of the City's attempts to reinstitute a permitting system for live adult entertainment businesses gives a glimpse of the complexity of the process, the stakeholders involved, and the potential of harm associated with the businesses. While specifics of the desirable permit requirements could be a subject of another intensive study, considering how closely related the zoning and permit regulations are, City planners need to be aware and be involved in the process. This process would require extensive public outreach and better be coordinated with the Planning Department's Secondary Impact study process to maximize the effectiveness and avoid an overlap.

The following subsections focus on making recommendations to the latest legislative proposal. Specifically, the permitting system should employ applicable definitions and clear standards that encompass the breadth of sex businesses and avoid the risk of raising freedom of speech issues. The permitting system should also employ operating restrictions that are enforceable and reasonable for current and future owners and employees, as well as to neighbors.

5.3.1. Redefine Sex Businesses

As reviewed in Chapter 3, the Police Code definition of adult entertainment businesses is so outdated that it was declared illegitimate and irrelevant by the court. As a result, the permit process for adult entertainment businesses has been eliminated. Before these non-regulated businesses get further out of hand, they should be redefined to be subject to sensible and enforceable regulation. At a minimum, the police definition should not be limited to adult bookstores and theaters but be updated to encompass the full scope of sex businesses in San Francisco. During the process of updating, the nature and impacts of potentially sex-oriented businesses that appear in other sections of the Police Codes, such as Encounter Studios and Nude Photography, should also be re-examined.

The draft legislation proposes to define *Live Adult Entertainment* businesses as:

> (A) nightclub, exotic dance club, strip club, gentleman's club, topless club, go-go club, adult cabaret, adult entertainment club, lingerie modeling studio, restaurant, or other business establishment, which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; or (2) which regularly features persons of either sex who appear nude or semi-nude and whose presence is distinguished or characterized by an emphasis upon specified sexual activities or specified anatomical areas."

This definition is more comprehensive than the definition of Adult Theaters in the current Police Codes, but it still leaves out some businesses, such as percentage shops, sex shops,

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[297] *Draft Legislation*, 11.

[298] Stefani, interview by author, San Francisco, 21 April 2008. She adds that, after the legislation gets introduced, it will have to go through a committee hearing and a vote at the Board of Supervisors' meeting.

and video-viewing booths, that do not belong to either the Live Adult Entertainment or the Adult Bookstore categories.[299]

The draft also proposes a change in the definition of the Specified Sexual Activities to include "Excretory functions as part of or in connection with" the Specified Sexual Activities as presently defined. According to the Department of Justice, materials depicting excretory activities connected with sexual acts have been prosecuted as obscene and should be excluded from the list of performable activities.[300] Other obscene and thus illegitimate sexual acts and abuses, such as bestiality, rape, and torture, should be clearly delineated from legitimate exotic dancing so that the former category may not be tolerated under the cover of the latter.

Until City agencies agree on a sensible definition of a sex business, the Planning Department should be careful not to blindly and overly rely on the Police Code definition.[301]

5.3.2. Designate the Permitting Agency

Currently, the Police Codes designate the operation requirements pertaining to sex businesses. As previously noted, these guidelines are not only archaic but obviously ignored. When updating these requirements, it is necessary to reconsider whether the Police Department is the most appropriate department for implementing these requirements. A police officer keenly points out, "[the Police is] in an enforcing business, not in a licensing business," comparing the division of roles to the citation-issuing California Highway Patrol and the license-issuing Department of Motor Vehicle.[302] Similarly, massage parlor licensing has been transferred to the Department of Public Health, and approvals for the Place of Entertainment licensing are now the Entertainment Commission's responsibility.[303]

The draft legislation proposes Live Adult Entertainment Businesses be regulated under the Health Codes rather than the Police Codes. The revised definition would include (but not be limited to) Adult Theaters and Encounter Studios. The draft legislation designates the Director of the Department of Public Health as the final authority in issuing permits for the Live Adult Entertainment Businesses. Considering that one of the main purposes for taking the legislative action is "to reduce the possibility for the occurrence of coerced prostitution and unsafe sex acts at Live Adult Entertainment Businesses due to the public health risks of

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[299] Kelly and Cooper recommend an extensive list of definitions for use in zoning and licensing ordinances (Kelly and Cooper, 129-132). Percentage shops are defined in Section 1.1.1.

[300] Concerned Women for America.

[301] For instance, the Planning Commission's recommendation to "modify the existing Planning Code definitions of 'adult entertainment' uses to be consistent with the definitions used by the San Francisco Entertainment Commission, the San Francisco Police Code and the Alcoholic Beverage Control" would have deepened, not lessened, the problems caused by the unclear definition (San Francisco Planning Commission, *Case No. 2004.0302T*).

[302] Police officer, interview.

[303] According to a police officer's first-hand account, the Chiefs of Police supported the transfer, but some of the District Stations did not embrace it well because they saw it as their "power" being taken away. However, as the police officer recognizes, it is not the matter of taking away the power but redistributing power to maximize the synergy. The police capacity is already stretched thin in San Francisco, especially in areas where sex businesses abound, such as the Tenderloin. Their precious resources should be redirected to focus on the enforcement function.

AIDS, Hepatitis B, and other sexually transmitted diseases associated with sexual assault and rape," the Department of Public Health is a logical choice as a regulator. The Department of Public Health is well-equipped with expertise and staff with extensive experience dealing with illegal massage parlors, which are *de facto* sex businesses.

Consequently, the Police Codes would be amended to include only Adult Bookstores in their Adult Entertainment Business category, but the outdated regulations regarding Adult Bookstores would remain unchanged. Moreover, as mentioned in the previous subsection, this simplification would leave out many sex businesses that may not strictly belong to either category. The amendment should explicitly establish the conditions when Adult Bookstores and other types of businesses will need permits and additional regulations; and, if so, who will be responsible.

5.3.3. Specify Standards on Application, Operation, and Penalties

The draft legislation proposes the application contain the physical address and the presence of any sex businesses within 1,000 feet of the applicant (subject to the City's verification).[304] The draft legislation also specifies prohibited activities, limits on public display and illumination, exclusion of enclosed booths, hygienic standards, requirement for security guards, and a comprehensive schedule of compensation payable to performers.[305] However, the standard does not prohibit activities that have been concluded to insinuate most serious impacts, such as nudity and one-on-one interaction between entertainers and customers. Therefore, the draft legislation will not alleviate the harmful repercussions of the touching businesses. In addition, signage restrictions are currently missing and should be added to the operating standards. Neighbors have noticed and complained about flashing signs, so a restriction on the signage should be enforced.[306]

The sex business permitting system should have a mechanism that automatically revokes a permit following a certain number of violations, described by Kelly and Cooper as a *point system*.[307] The Department of Public Health is currently pursuing a similar system for massage parlor permits.[308] This mechanism would not only make the permitting system more effective and self-enforcing but also lessen the burden on the police, who can then pursue repeat or more egregious violations. The draft legislation establishes the circumstances wherein the permit can be suspended or revoked.[309] The City's ability to revoke the permit is particularly important because violators always find ways to get around disciplinary actions if the permit is merely suspended.[310] The section that explicitly prohibits

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[304] *Draft Legislation*, 13. As emphasized throughout the report, the City should not depend solely on the applicant's observation but be able to verify the presence of nearby sex businesses independently and accurately.

[305] Ibid., 20-23

[306] Kelly and Cooper confirm the constitutionality of the signage restriction and give examples in 140.

[307] Kelly and Cooper, 162.

[308] Walsh, interview. Walsh explains how hard it is to close down sex-oriented massage parlors, especially if they have health permits, due to the current Health Codes that protect the owner. This year, the DPH is trying to adopt a protocol to revoke a license after three instances of violation.

[309] *Draft Legislation*, 17-19.

[310] Fred Crisp, interview by author, 14 May 2008. Crisp explains that such is the case with the Place of Entertainment permit.

transferability of ownership and/or permit is also essential because violators may get around the rule by transferring their permit to a family member.

Furthermore, the updated regulations of sex businesses should be carefully drafted in a way that the victims of bad business practices can take a legal action against the violators. A Department of Public Health staff member contends that one of the most important aspects of the regulations should be the protection of the trafficked and abused employees and that the updated regulations should provide ways for victims to find a legal recourse.[311]

The proposed legislation effectively deals with the existing businesses by giving them a grace period of 180 days and requires them to get the permit and comply with the updated regulations.[312] Otherwise, they will be deemed to be in violation and subject to penalties for operating a live adult entertainment business without a permit.

With respect to the massage parlors, Cooper asserts that nothing should hinder a city from instituting proper licensing and filtering out the illegal businesses.[313] A problem with San Francisco's current permitting system is that the City issues a trainee permit and allows the trainee to work in a massage parlor before receiving official certification.[314] Walsh has observed trainees, many of whom are victims of a trafficking scheme, would sign up for at a massage school, work for three months, and eventually fail the proficiency test. Walsh's opinion is that practically all trainees working in massage parlors have been trafficked and strongly recommends elimination of the trainee permit system. In an effort to stem illegal practices, the Department of Public Health is trying to increase practice hours required for the trainee permit. A police officer agrees that most sex workers in massage parlors are immigrant women with the trainee permit.[315] Elimination of the trainee permit would not interfere with the legitimate massage practices because professional masseuses do not want to be associated with the illegal trainees. Walsh believes that a statewide permit system with intensified requirements, similar to the one for doctors and nurses, would help reduce the illegal activities persisting in massage parlors and eventually decrease the high level of sex trafficking.[316]

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No City agency appears to eagerly and seriously pursue enacting the adult entertainment permitting system; however, many dancers who were abused and forced to offer sex-oriented performances and services in sex businesses would want otherwise. A Department of Public Health staff member points out that, while he supports the idea of strengthening

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[311] DPH staff member, interview.

[312] *Draft Legislation*, 30.

[313] Cooper gave the comment during the "Regulating Sex in the County" presentation.

[314] The trainee permit can be obtained by being enrolled in a massage school, passing a background check, and having an authorization letter from a massage parlor owner. To get an official massage practitioner permit, a trainee needs to graduate from the massage school, have a massage experience of at least 100 hours, and pass a proficiency test as well as another background check. San Francisco DPH, "Massage Licensing Program Forms," *Environmental Health* <http://www.sfdph.org/dph/files/EHSdocs/ehsForms/FormsMassage/MassObtainPermit080807.pdf> [14 May 2008].

[315] Police officer, interview.

[316] Walsh, interview.

regulations on sex businesses, the complexity of the permitting and enforcement mechanism would cause a headache to the City.[317] In a police officer's view, the City Attorney, Police Department, and District Attorney all want the legislation that establishes the permitting system.[318] He believes that having a codified regulation, with a determined direction, would assist police officers working in the field, too. Nonetheless, he is skeptical that the City would spend resources on instituting regulations on sex businesses because a cohesive political will is not evident. Such skepticism is prevalent in newspaper articles[319] and echoed by a city planner.[320] The reality is that, even four years after the sex business victims filed official complaints to the City, no changes have been made in the laws involving sex businesses.

5.4. Who Will Lead?

As repeatedly emphasized, regulation of sex businesses cannot be done solely by the Planning Department. Effective regulation would require close coordination among different agencies, the restructuring of the lead agency, and the updating of all cross-agency related codes. This is not a simple process. While this report presents an overview of the challenges involved in better regulating sex businesses in the City, these are preliminary recommendations. Actual implementation of these recommendations would require a lot of legwork, research, and collaboration.

First, the process of restructuring responsible agencies and updating codes needs to be carefully investigated and strategized. Because a certain segment of sex businesses draw in a lot of money and engage in international criminal activities, the process needs to ensure support of the legal department. At the same time, businesses that abide by the law and do not harm their neighbors should be protected. Also, because the restructuring process involves updating the codes across agencies, the process should be consolidated and/or streamlined to make the community outreach most effective and resource-efficient. The process should include all stakeholders who would be impacted by the update.

Due to the complexity and sensitivity of the issue, the question of which agency should lead this endeavor needs to be carefully thought out. The Entertainment Commission may arise as a natural candidate, but a question remains whether the Commission is capable of neutrally handling the complexity and sensitivity of issues entangled in sex businesses, such as human rights and international crimes. The Mayor's Commission on Human Rights may have more expertise in human rights issues, but its leadership capacity is also questionable, considering its silence on issues related to sex businesses. Regrettably, the Department on the Status of Women has failed to build the trust of and relationship with key players in the industry in its past legislative endeavors.

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[317] DPH staff member, interview.

[318] Police officer, interview.

[319] Garcia; John Hiscock, "Solidarity under Red Lights as Lap-Dancers Throw Off Their Chains," *The Independent* (London), 21 December 2004; Steinberg.

[320] Sanchez, interview.

The scope of the Planning Department and of Department of Public Health has been traditionally limited to their respective domains. However, beyond the limitation is the advantage of each department's expertise and neutrality. Admittedly, the Planning Department currently holds the authority and responsibility to stop concentration of sex businesses and commands the power to involve the public in determining any adverse land-use impact of these businesses. As mentioned earlier, Supervisor Alioto-Pier has already specified the Department of Public Health to be the lead agency in her latest draft legislation proposing the Live Adult Entertainment permit system. Importantly, these two departments have a record of close collaboration with the Police Department and other key agencies on tackling one segment of sex businesses (i.e. illegal massage parlors).[321] The critical question is: are these City departments willing to take the next step to lay hands on the virtually uncontrolled sex businesses at large?

5.5. Conclusion

If adult entertainment businesses are constitutionally protected and bring no problems to a neighborhood, then it would be unreasonable to institute a further regulating mechanism.[322] However, numerous studies and testimonies across the nation, as well as in San Francisco, present evidence to the contrary. The negative impacts of sex businesses range from solicitation of minors to international human trafficking for sex-oriented commercial activities, some of which are not even protected under the First Amendment.

When asked about the status of regulations on sex businesses in San Francisco, a police officer rhetorically asks and answers himself, "What regulation? No regulation." [323] He contends, "No one cares about it [what is going on in sex businesses], knows about it, does anything about it…" Another police officer who was passing by adds, "That's why it is called a 'victimless crime.'"[324]

San Francisco is known for its acceptance of diverse cultures, but such acceptance does not have to translate into a *laissez-faire* attitude toward the mental and physical abuse suffered by the sex business employees, especially those who were forced into the profession, or the neighbors living near a sex business. Such a laid-back stance is particularly disturbing given that the organized crime associated with sex businesses in San Francisco has already been substantiated by undercover investigations.

It is time for the spectrum of City departments to act together and with neighbors to institute sensible and enforceable regulations on sex businesses that have been operating without oversight for so long. Many of the recommendations suggested in this report cannot be realized by any one city agency alone. However, only when the City acknowledges

[321] According to Walsh, the Task Force on massage parlors has formed an excellent communication channel among the Department of Public Health, Planning Department, and Police Department. They have learned from each other through regular meetings and investigations, and they have a lot of cross contacts, making it much easier to do the job.

[322] Alan, interview.

[323] Police officer, interview.

[324] Comment by a police officer, 30 January 2008.

the seriousness and urgency of the issue and takes a concrete step—building upon the demonstrated teamwork, assisted by concerned citizens and non-profit organizations that help victims of the sex industry—only then would the City be able to genuinely claim its livability.

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