THE BILL BLACKWOOD

LAW ENFORCEMENT MANAGEMENT INSTITUTE

OF TEXAS

# A CASE HISTORY AND RE-EVALUATION OF THE HARRIS COUNTY SEXUALLY ORIENTED BUSINESS REGULATIONS

A RESEARCH PROJECT PAPER

SUBMITTED IN PARTIAL FULFILLMENT

OF THE REQUIREMENTS FOR

THE LAW ENFORCEMENT MANAGEMENT INSTITUTE

BY
NICHOLAS W. GRIFFIN

HARRIS COUNTY SHERIFF'S DEPARTMENT
HOUSTON, TEXAS
DECEMBER, 1995

**TABLE OF CONTENTS**

## INTRODUCTION

In 1979, Harris County, Texas adopted its first Sexually Oriented Commercial Enterprise Regulation. The purpose of this law was an attempt by local government to monitor and regulate the location of sexually oriented businesses. That original regulation, although effective for its intended purpose, has been found in need of revision. In order to evaluate the existing regulation, it is necessary to review the beginnings of the Vice Division and the reasons for its creation. Other laws which have proven beneficial in combating these establishments have been suggested. A summarization of the current regulation is introduced, followed by a critique of that regulation's strong and weak points. Finally, current moves within Harris County government to restructure and revise the regulation are addressed. A review of regulations from similarly populated areas has been conducted in an attempt to identify legislation which may be found desirable for inclusion in a revised Harris County Regulation. Those areas identified as desirable have been researched for pertinent court rulings. In this manner, certain statutes have been selected which have withstood legal challenge and may best serve the interest of Harris County. Additionally, innovative approaches have been examined in an effort to determine whether they are feasible, and/or beneficial for inclusion in these proposed amendments of the current Harris County Regulations.

## VICE ACTIVITY WITHIN HARRIS COUNTY

During the 1970's, Harris County experienced an overnight explosion of growth in the adult entertainment industry. In excess of forty different prostitution fronts were operating within a short period of time. As the competition increased, violence escalated between the owners, occasionally catching the employees and customers in the middle. According to information obtained from the Harris County Sheriff's Department Vice Division files, five different businesses had been destroyed by fire by November of 1978 (file 600.21, 1979). Those fires were identified as arson. One of the owners, Don Holder, was robbed and murdered. Another owner, David A. Rickey, was held hostage by a hired gunman until he was rescued by police. Although rescued, Rickey's problems were far from over. Harold Casey, one of Rickey's competitors threw snakes into Rickey's club in an effort to scare away the girls. Also, a reputed east coast mobster, Raymond Conti, moved to Houston and opened several prostitution fronts. He was known to recruit the competitor's employees using intimidation and threats. The prostitute would be told she would suffer the consequences should she fail to agree to Conti's offer. Detectives also identified narcotics trafficking and an operating auto theft ring within these places of so called victimless crime (Harris County Sheriff's Department Vice file 600.21, 1979).

In addition to these compounding problems, a discernible movement of Korean aliens was identified and chronicled in a series of correspondence sent to the Immigration Department in Washington D.C., to Senator Lloyd Bentsen, Senator John Tower, and to State Representative Bill Archer (HCSD Vice file 600.22, 1978). In 1977, many automobiles displaying California registrations began to show up at the Massage Parlors and Nude Clubs in Houston and Harris County. Investigators found this sudden influx to be, in part, attributed to newly created legislation in Los Angeles, California, requiring the licensing of Massage establishments as well as the employees. Seemingly overnight, eight Korean massage parlors/modeling studios opened for business in unincorporated Harris County. Detectives identified approximately one hundred Korean aliens working as prostitutes or promoters of the prostitutes. Further investigation revealed the great majority of these individuals originally came from Seoul, Korea, via Los Angeles, California (HCSD Vice file 600.22, 1978).

Investigators and Prosecutors alike encountered problems due to the language barrier. Most of the Korean's spoke little or no English. Efforts to address this problem through Federal Immigration laws proved unrealistic. For successful deportation, it was necessary that an individual have been documented with numerous violations for moral turpitude. This particular group proved to be well schooled in the American Judicial System. After several prostitution arrests, the

individual girl would disappear. They were then free to resume their trade in a new city using a new name.

In March of 1977, a nationwide teletype was sent from Harris County to all Law Enforcement agencies in the United States. This teletype requested information on Korean prostitutes in their area. Replies from the inquiry were received from agencies from across the nation. It was quickly apparent this problem was not unique to Harris County. Large concentrations of these women were found located near military bases across the nation.

The Seattle Police Department shared intelligence received from a confidential source concerning one such military base. The source reported that a Korean organization hired American servicemen from Ft. Lewis Army base to marry Korean women and bring them to the United States. Upon arrival to the States, the couple was divorced and the woman put to work in the massage parlors and modeling studios. These women found themselves in an indentured servant type environment. Promised their freedom when the debt to the organization was worked off, that debt continued to grow. Charges for food, clothing, and shelter, provided by the organization, were all added to the outstanding debt. Information collected and analyzed from these agencies pointed strongly to an organized criminal effort exploiting Korean women. Other criminal endeavors included the reported smuggling of gold, furs, and jewelry by the prostitutes from Seoul, South Korea to the United

States (HCSD Vice file 600.22, 1978).

## ADDRESSING THE PROBLEM

In the late 1970's, a substantial number of church groups, civic groups, and individuals began to lobby the County Commissioner's Court to address the rapidly growing adult entertainment industry in the unincorporated areas of Harris County. A number of concerns reported the lack of zoning in Harris County which enabled a proprietor of such enterprise to conduct business without regard to the surrounding environment (Hurlbut 1995).

A preliminary investigation by the Sheriff's Department Detective Bureau identified in excess of forty different fronts for prostitution operating within unincorporated Harris County. Those included nude modeling studios, massage parlors, mini movie theaters, private photography studios, totally nude clubs and several houses of prostitution boldly operating without disguise. These establishments were found operating in high visibility locations along the freeways as well as in residential subdivisions near homes, schools, and churches (HCSD Vice file 600.21, 1979). In response to the citizens' outcry, Commissioners' Court authorized the creation of a Sheriff's Department Vice Division suppling personnel, equipment, and support as deemed necessary to address the problem.

This new division was headed by Sheriff's Sergeant Bill Kesseler. Kesseler had spearheaded earlier vice investigations from his assignment at the Organized Crime Unit, and was rapidly developing an expertise in vice related crimes. Sergeant Kesseler's group wasted little time tackling the problem. Beginning in January of 1978, there were thirty-one massage parlors and four nude clubs operating in Harris County. During this time period these sex-for-sale businesses might best be described as sleazy, filthy, and dangerous. Typically, they were operated by greedy profit driven individuals who invested in only bare essentials necessary to operate. Used and stained couches or bedding commonly served the privacy booths. Officers claimed the poor lighting prevented the customers from seeing the open sores and track marks often found on their hostess (prostitute). One investigator working in an undercover capacity was found unconscious outside behind the business after he was drugged and robbed (Kesseler, 1995).

On May 31, 1978, new state legislated Massage Parlor Statutes went into effect. Following an unsuccessful court challenge of those statutes, all thirty-one massage parlors ceased to operate as such. Not surprisingly, thirty-one businesses soon re-opened operating under the guise of nude modeling studio's. The majority, using the same name, management, and buildings as the former massage parlors. By mid year, the Vice Division had made one hundred three arrests for prostitution, promotion of prostitution, operating a massage parlor without a license, and operating as a massager

without a license (HCSD Vice file 600.21, 1978). Although the proprietors quickly learned how to avoid being charged with criminal offenses, the arrest of the prostitutes themselves began to negatively impact upon their businesses. Due to the intense pressure by Sergeant Kesseler's unit, many of the prostitutes and business owners choose to relocate to areas of less exposure.

By 1981, fewer than ten Sexually Oriented Businesses remained in operation in unincorporated Harris County. As the number of these enterprises decreased, investigators were left with a greater amount of time to devote to the remaining businesses.

Of particular value was the use of civil remedies via the Public/Common Nuisance Injunction. Investigators teamed together with the District Attorney's office, and the County Attorney's office to bring suit against those businesses operating outside the law (Kesseler 1995).

## THE PUBLIC/COMMON NUISANCE INJUNCTION

Places habitually used for prostitution or the exhibition of live dances or other acts depicting real or simulated sexual intercourse are deemed to be a public nuisance under Vernon's Texas Codes Annotated, Civil Practice and Remedies Code, Section 125. Additionally, "any district, county , or city attorney, the attorney general, or a

citizen of the state may sue to enjoin the use of a place for the purposes constituting a nuisance" (Vernon's Sec. 125.022, 605). Should a person be found by a court to have maintained a place at which a public nuisance has existed, that person will be required to execute a bond of not less than five thousand dollars nor more than ten thousand dollars. A condition of the bond is the person not allow the public nuisance to exist. If the court finds the public nuisance continues, a political subdivision may discontinue or prohibit the furnishing of utility services to the place at which the nuisance exists. They may revoke the certificate of occupancy, and prohibit the use of city streets, alleys, and other public ways for access to the place. Finally, the use of other legal remedies under the law is allowed (Vernon's Sec. 125.045, 168). In Harris County, those other legal remedies were commonly an order of the court, issued to the Sheriff, and directing him to chain and padlock the premise for a period of one year.

The Texas Alcoholic Beverage Code, (Section 101.70) allows for a county or district attorney, or the attorney general to sue in the name of the state, any person who maintains or assists in maintaining a common nuisance as defined by that code. A common nuisance as defined by the T.A.B.C. is any place where alcoholic beverages are sold, manufactured, stored, or consumed in violation of this code. The beverages and all property kept or used by the place are defined as a common nuisance.

Another avenue of relief from a public nuisance may be found in the Health and Safety Code, (Sanitation and Environmental Quality, Section 343.011) which states, "a person may not cause, permit, or allow a public nuisance under this section on any premise." A public Nuisance is defined here as "maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard." Violators of this statute may be assessed a criminal penalty if the nuisance remains unabated for thirty days after notification to abate the nuisance. An offense under this section is a misdemeanor punishable by a fine of fifty to two hundred dollars. If the defendant has a previous conviction under this section, he is punishable by a fine of two hundred to one thousand dollars and confinement in jail for up to six months. Each day a violation occurs is a separate offense (Sec. 343.012).

As can readily be seen, prior to seeking injunctive relief, the statutes must be reviewed. In this manner one may determine which statute best addresses the undesirable conduct and the consequences thereof.

## REVIEW OF THE 1979 HARRIS COUNTY SEXUALLY ORIENTED COMMERCIAL ENTERPRISE REGULATION

While in session, the 65th Legislature of the State of Texas enacted House Bill Number 654. That legislation authorized the commissioner's court of any county to adopt regulations applicable to the location of Certain Sexually Oriented Commercial Enterprises in the unincorporated county. That bill was signed into law by then Governor W. P. Clements on May 17, 1979. Shortly thereafter, the Harris County Attorney's Office received authorization to draft regulations addressing sexually oriented businesses located within the unincorporated areas of Harris County. Those regulations were drafted with the intention of protecting defined areas within Harris County from the influence of those sexually oriented businesses. Although the regulations contain definitions, a severability clause, and other adoptions necessary to insure legal integrity, only those portions of the regulations that have a direct bearing on the issuance of a permit, the enforcement of the same, or areas identified as in need of revision, will be reviewed. On September 6, 1979, the Harris County Commissioner's Court passed an Order Adopting Regulations Concerning Certain Sexually Oriented Businesses. The effective date of the order was October 15, 1979. The Sheriff was designated by the court to be the administrator of the regulations. The duties to be preformed by the Sheriff or his deputy included the inspection and issuance of permits pursuant to the above authority. Any peace officer certified by the State of Texas is authorized to enforce these regulations. The regulations specifically excluded any bookstore, movie theater, or business licensed to sell

alcoholic beverages. Legitimate practices which may have been encompassed by the regulations had to be identified and excluded from the regulation. Those included businesses employing licensed psychologists, physical therapists, athletic trainers, cosmetologists, or barbers who perform functions authorized by a license. Physicians, chiropractors or those "engaged in practicing the healing arts" were also excluded (HCCC S.O.B. Regulations, Sec. 5).

All businesses operating as a Sexually Oriented Commercial Enterprise, as defined by the regulation, are required to obtain a Sexually Oriented Business (S.O.B.) permit. What came to be the heart of the regulation was the requirement which prohibited any sexually oriented business from being located within 1500 feet of certain identified areas. Those areas, identified by the regulations were: any child care facility, church, dwelling, hospital, public building, public park, school or building in which alcoholic beverages were sold. Harris County Commissioner's Court found the areas to be "inconsistent with the operation of a restricted establishment." The regulation further directs the 1500 foot measurement is to be made in a straight line, without regard to any structure or object, from the nearest portion of the proposed Sexually Oriented Business, to the nearest portion of any facility identified above (S.O.B. Sec. 6). Should a proposed Sexually Oriented Business fall within 1500 feet of any of the restricted areas, that business does not qualify for a S.O.B. permit, and operation of such business is prohibited.

Upon original adoption of the regulations in 1979, places where alcoholic beverages were sold were protected by state law. Senate Bill No. 106, Chapter 15, page 42, 69th Legislature Regular Session, Section 1, amended Article 2372w to provide that a business is not exempt from regulation because it holds a license or permit under the Alcoholic Beverage Code. On June 25, 1985, Harris County Commissioner's Court passed an order amending the county's regulations. Removed from exemption was any business licensed to sell alcoholic beverages (HCCC S.O.B. Regulations Sec. 6.5). Naturally, since places where alcoholic beverages were sold could now be required to obtain a S.O.B. permit, those liquor license establishments which fall into the S.O.B. category must comply with the 1500 foot distance requirements. Places where alcoholic beverages were sold were removed from the restricted areas list.

Sexually Oriented Business permits issued are valid only for the location specified. They are not transferable, assignable, or divisible. Any business operating under such permit is required to display the permit in an open and conspicuous place. A fee of one hundred dollars is required upon the submission of the permit application. These monies are to help defray the cost of processing the application. No portion of these monies will be returned after a permit has been issued or denied. Identified by these regulations as unlawful are: the obtaining of a permit by fraud; the fraudulent use of a permit issued to another; or the counterfeiting, changing, or defacing a permit. Any

violation of these regulations is a class B misdemeanor. The operation of any Sexually Oriented Commercial Enterprise without a Sexually Oriented Commercial Enterprise Permit has been declared by the Harris County Commissioner's Court to be a public nuisance (Sec. 19).

## CRITIQUE OF THE EXISTING REGULATIONS OF HARRIS COUNTY, TEXAS FOR CERTAIN SEXUALLY ORIENTED COMMERCIAL ENTERPRISES

Legal challenges to Harris County's regulations were filed almost immediately. On October 10, 1979, Jessie Stansberry d/b/a Universal Studio et al., filed suit challenging the regulation (Stansberry v. Holmes, 631 F2d. 1285 [5th Cir. 1980]). They charged that the regulation constituted the taking of property without due process or compensation. Further, the plaintiffs claimed the regulation was unconstitutional, and that it violated the First Amendment and the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Southern District of Texas, permanently enjoined enforcement of county regulations dealing with zoning of certain sexually oriented commercial enterprises. On appeal by Harris County, the Fifth Circuit Court of Appeals "held that the regulations were not invalid as violative of constitutional rights of free speech nor were the regulations

objectionable as being unconstitutionally vague and overbroad." The court found that since the regulations did not address theaters or bookstores, no First Amendment issues were at stake and that the regulations were to be analyzed by the "arbitrary and capricious" standard. Also, the court found the regulations were not unconstitutionally vague because they gave "a person of ordinary intelligence fair notice." The judgement was reversed and the case remanded.

In 1988, the Court of Appeals of Texas set aside an earlier ruling by the 295th State District Court, Harris County, which had declared Harris County's regulations governing the location of sexually oriented enterprises unconstitutional. In *Lindsay v. Papageorgiou,* 751 S.W.2d 544 (Tex.App.- Houston [1st Dist.] 1988, writ den.), the Court of Appeals "held that: (1) regulations did not exceed legislative authority of enabling statute; (2) regulations did not violate guarantees of free speech and freedom of expression; and (3) regulations did not amount to taking of operator's property." The Appeals Court determined that the trial court "erroneously issued the permanent injunction by misconstruction of the law," and the injunction order was voided. The judgement of the trial court was reversed.

Clearly the strengths of the current regulation are those areas which have been addressed by the courts. To reiterate, these include:

1. no first amendment issues were at stake because the regulations did not violate guarantees of free speech and freedom of expression;

2. the regulations were content-neutral as they were not directed at content or suppression of free expression;
3. the regulations serve substantial government interest of preserving quality of urban life, and allow reasonable avenues of communication;
4. the regulations are to be analyzed by standards for zoning regulations, which is the "arbitrary and capricious" standard; and
5. the regulation was not unconstitutionally vague.

Finally, a major strength of the regulation is the lack of discretion allowed the Sheriff. While seemingly a contradiction, this lack of discretion in fact frees the Sheriff and his office from outside pressures either in favor of, or against the issuance of such permit.

## RECOMMENDATIONS TO IMPROVE THE EXISTING REGULATION

Due to the changing face of sexually oriented businesses being operated in Harris County today, it has become necessary to closely examine the current regulations. Where once sleazy purveyors of the flesh ran filthy little clubs, today corporations invest million's of dollars in Las Vegas styled topless clubs. As a result of aggressive enforcement of the criminal and civil violations, small businessmen have found the

sexually oriented businesses to be more lucrative elsewhere. Big business topless clubs now monopolize the S.O.B. trade in Harris County. Recalling that the regulations were originally drafted to exclude places where alcoholic beverages were served, this regulation has become dated and no longer adequately meets the county's need.

In the early 1990's, representatives from the County Attorney's Office, the Vice Division, and some community leaders quietly began to lobby Commissioner's Court to update the regulation. In 1995, County Judge Robert Eckels appointed a committee to address this need. To date, suggestions for serious consideration include:

1. **Application fee** - the cost to investigate and process an application for a sexually oriented business far exceed the one hundred dollars authorized by law.
2. **Provisions to revoke, suspend, or renew a permit** - currently, once a permit has been issued, that permit remains valid indefinitely. By regulation, there is no authority for Harris County to revoke, suspend, or renew a valid permit.
3. **Duty to make known** - requirement that any applicant for a sexually oriented business must notify the community in which the business is to be located of the pending application.
4. **Right of Hearing** - the community in which the sexually oriented

business is to be located shall have limited input and certain guarantees prior to a permit being issued.

5. **Right to deny permit** - Harris County would have the right to deny a permit based upon the applicant's past criminal record, or the applicant's previous involvement in the management or ownership of a sexually oriented business which had a history of criminal/civil violations.
6. **Prohibition of certain conduct** - conduct determined to be inappropriate would be banned. Totally nude dancing, the practice of the customer placing money inside a dancers G-string, or table dances are some of the conduct being discussed for prohibition.
7. **Separation requirements** - would require a certain distance be maintained between the customer and the dancer/entertainer.
8. **Equipment specifications** - would set forth requirements and/or limitations concerning lighting, equipment, and furnishings.
9. **Supervision requirements** - the number of management employees on duty at any given time would be based on the number of dancers/entertainers on duty at the time. Structural design may necessitate additional management.
10. **Requirements to license S.O.B. employees** - all persons desiring employment with any business operating under a S.O.B. permit, would

be required to have an employees S.O.B. license. Those persons with criminal convictions may be temporarily or permanently disqualified from obtaining a license, depending on the nature of the offense for which they were convicted.

11. **Placing responsibility** - sexually oriented business permit holders would be held accountable for any incidents occurring on the permitted premise, or occurring as a result of conduct which occurred on the permitted premise. Those persons issued a employees license would be accountable for their conduct.

## THE PROCESS OF REVISING HARRIS COUNTY'S SEXUALLY ORIENTED BUSINESS REGULATION

To date, the committee appointed by Judge Eckels continues its task in an effort to suggest the best possible regulations for Harris County concerning sexually oriented businesses. Early in the project the committee agreed that a primary concern was the providing of recommendations that would be least likely to provoke litigation. The committee, however, recognizes that the regulations necessary to accomplish their intention would surely be contested in the courts. Assistant Harris County Attorneys Ann Burton and Rock Owens, who have been the catalyst behind these

revisions, serve the committee as the legal representatives.

A draft of regulations pertaining to sexually oriented businesses has been submitted for the committee's benefit. That draft, prepared by Mrs. Burton was structured around those portions of the existing Harris County regulations previously upheld by the courts. New additions to the regulations relied heavily on Denton County's Sexually Oriented Business Regulations.

A brief summary of the sections recommended for inclusion into the revised sexually oriented business regulation follow (Burton 1995).

| | |
|---|---|
| Section I | Authority |
| | Statutory authority for the regulations |
| Section II | Administration |
| | designates the Sheriff as the administrator of the regulations and the procedures to be followed |
| Section III | Area Covered by Regulations |
| | defines the geographical jurisdiction of the regulations |
| Section IV | Definitions |
| | terms used in the regulations |
| Section V | Sexually Oriented Business Permit Required |

| | |
|---|---|
| | makes unlawful the operation of a sexually oriented business without a permit |
| Section VI | Display of Permit<br>Requires the display of the SOB permit |
| Section VII | Injunction<br>authorizes the County Attorney to sue businesses in violation of these regulations |
| Section VIII | Sexually Oriented Business Permit Application<br>requirements for obtaining a SOB permit |
| Section IX | Public Hearing<br>procedures to allow a hearing related to health and safety conditions |
| Section X | Issuance or Denial<br>standards and proceedures used to issue or deny a permit |
| Section XI | Revocation or Suspension of SOB Permit<br>basis and procedure for the revocation or suspension of a permit |
| Section XII | Requirement for Individual Employee Permit<br>employment in sexually oriented businesses would be |

unlawful without an individual employee permit

Section XIII Sexually Oriented Employement Permit Application

application procedures and requirements for obtaining employment permits to work in a SOB

Section XIV Revocation or Suspension of an Sexually Oriented Employment Permit

terms and effect of revocation or suspension

Section XV Notice

requirements for notice of action by the Sheriff

Section XVI Temporary Permit Provisions

procedure which allows a business or employee to function should the issuance of the permit be delayed, and the person or business is in compliance with the regulations

Section XVII Permit Renewals

requires annual renewal of the permit

Section XVIII Investigation

Sheriff has the authority to investigate the

information submitted in the application

Section XIX Inspections

provides the Sheriff with the authority to inspect businesses covered by this regulation

Section XX Transfer Prohibited

permits are issued only to the applicant and are not transferable under any circumstances

Section XXI Obtaining Permits by Fraud

unlawful to conceal or misstate material facts in an application for sexually oriented business or sexually oriented employment permit

Section XXII Changing or Defacing Permit

unlawful to alter permit

Section XXIII Operating Instructions for Sexually Oriented Business

requirements pertaining to employee permits, age restrictions, physical contact, and live performances

Section XXIV Attire and Conduct

specifically prohibited behaviors

Section XXV Additional Regulations for Adult Motels

presumptions and prohibitions which apply to Adult Motels

Section XXVI Regulations pertaining to Exhibition of Sexually Explicit Films or Videos

requirements which apply to businesses other than Adult Motels, which show sexually explicit films or videos

Section XXVII Prohibits Entry of Persons Younger than Nineteen

makes unlawful for anyone under the age of nineteen to be on the premise of a sexually oriented business during operational hours

Section XXVIII Operative Date

effective date of the regulations

Section XXXI Severability

allows severability of any invalid provision

## CONCLUSION

Vice Division personnel and the County Attorney's Office have long had a close working relationship. Several years ago, after it became apparent

that Harris County's S.O.B. regulations were inadequate, we began to discuss our needs. Both groups agreed, a new or vastly altered regulation was called for. Additional meetings resulted in a consensus of revisions we believe are necessary for an effective sexually oriented business regulation. Ann Burton then prepared a draft of those desired revisions and together we met with Commissioner's aides trying to generate interest in the project. One of the aides pointed out that few Sexually Oriented Businesses were located in his precinct. Another expressed concern over personnel increases a new regulation would necessitate. Although the meetings proved less than encouraging, we continued to promote the ideal at every opportunity.

In early 1995, the application and issuance of a Sexually Oriented Business Permit by the City of Houston caused a great outcry from the local community. Residents of an affluent neighborhood in unincorporated Harris County were outraged to learn of the soon to be constructed topless club so near their homes. Local businessmen and home owners organized an effort to block the clubs operation . That endeavor, named "Operation Outrage," was unsuccessful in hindering the targeted club's progress. Though the organizers of Operation Outrage found no immediate satisfaction in their efforts, they did succeed in calling attention to the

County's regulation. Once the significance of those dated regulations were realized, so too was the potential vulnerability to the communities. The appointment of the committee to make suggestions concerning the S.O.B. regulations was then accomplished.

Revised sexually oriented business regulations for Harris County are nearing completion. Included for the readers benefit are Appendix A, Cases Analyzed, and Appendix B, State Statutes and Municipal and County Regulations Examined. Final stages of the process are internal reviews by the County Attorney's Office. The members of Commissioner's Court each retain a representative appointed to the committee, and through those representatives, support remains strong for the project.

## BIBLIOGRAPHY

### CASES

Lindsay v. Papageorgiou, 751 S.W. 2d 544 (Tex. App.-Houston [1st Dist] 1988, *writ den.* )

Stansberry v. Holmes, 631 F2d. 1285 (5th Cir. 1980)

### OTHER

Burton, Ann, Asst. Harris County Attorney, TX. Interview by author, August 1995.

Harris County, TX, Regulations of Harris County, Texas, for the Location of Certain Sexually Oriented Commercial Enterprises , Sec. 5, 6, 19, (6 Sept. 1979, as amended 25 June 1985).

Harris County, TX, Sheriff's Department Vice Records, Case File 600.21, 30 April 1979.

-----. Case File 600.22, 7 Dec. 1978.

-----. Case File 600.21, 31 May 1978.

Herbert, Dan, Past President of Airline Civic Association, TX. Interview by author, 15 July 1995.

Kesseler, Bill, Sergeant, Harris County Sheriff's Department, TX. Interview by author, 25 August 1995.

Texas Alcoholic Beverage Code, General Criminal Provisions. Sec. 101.70.

Texas Health and Safety Code, Sanitation and Environmental Quality . Title 5, Sec. 343.001, 343.012 (1991).

Texas Loc. Gov't Code Annotated, Civil Practice and Remedies Code . Vol. 3. (Vernon 1994 & Supp. 1995).

-----. VACS Sec. 125.021 (1994).

-----. VACS Sec. 125.011 (1994).

-----. VACS Sec. 125.045 (1995).

Tex. H.B. 654, 65th Leg. R.S., 1979.

Tex. S.B. 106, 69th Leg. R.S., 1985.

Appendix A

CASES ANALYZED

1. Barnes v. Glen Theatre, Inc., ____U.S.____, 111 S.Ct. 2456 (1991)
   Suit brought to enjoin enforcement of Indiana public indecency statute requiring dancers to wear pasties, asserting First Amendment protection. The Court found that nude dancing was expressive conduct "marginally" within the outer perimeters of the 1st Amendment. That conduct can be regulated: 1. if it furthers an important or substantial government interest; if that interest is unrelated to suppression of free speech; and, 3. the incidental restriction on expression is not greater than is essential to furtherance of that interest. **The Court also stated that protecting societal order and morality was a substantial governmental interest.**

2. FW/PBS, Inc. v. Dallas, 493 U.S. 215, 110 S.Ct. 596 (1990)
   Various Dallas sexually oriented businesses challenged the Dallas ordinance regulating their operation. The Court comprehensively analyzed the ordinance. (The Harris County regulations rely heaviliy on the structure of the Dallas Ordinance but we have addressed the constitutional problems identified by this court, such as setting deadlines for issuance of the permit).

3. Dallas v. Stanglin, 490 U.S. 19, 109 S.Ct. 1591 (1989)
   A dance Hall/roller rink operator in Dallas challenged an ordinance placing an age restriction on certain types of dance halls. The Court found that coming together for recreational dancing was not an activity protected by the first amendment; 1. the age restrictions did not affect a "suspect class"; and, 2. nor did it impinge on a constitutionally protected right. The Dallas ordinance did not infringe on any constitutionally protected right of association, and a rational relationship existed between the age restriction for the affected dance halls and the cities interest in promoting the welfare of teenagers. In dicta the Court pointed out that the particular environment was significant in looking at the rational basis for the regulation.

4. City of Renton v. Playtime Theatres, Inc. , 475 U.S. 41, 106 S. Ct. 925 (1986)
   City ordinance prohibiting adult motion picture theatres from within 1,000 feet of any residence, home, single or multiple dwelling, church, park or school was found to be valid as a proper time place and manner regulation. The ordinance was not aimed at the content of the films, but the secondary effects of the

theaters to the surrounding community. The ordinance was "content-neutral" because: 1. it was designed to serve a substantial government interest; and, 2. It did not unreasonably limit alternative avenues for communication.

5. Schad v. Mt. Ephraim, 452 U.S. 61, 101 S.Ct. 2176 (1981)
Court overturned adult bookstore operators' conviction of violating a zoning ordinance prohibiting live performances. The zoning ordinances ban on live entertainment could not be justified as a reasonable time, place and manner restriction because the borough did not identify the interests making it reasonable to exclude all commercial live entertainment and there was no showing that live entertainment was incompatible with permitted uses. To be a reasonable time place and manner restriction on First Amendment activities, the ordinance must serve a significant state interest and leave open adequate alternative channels of communication.

6. Woodall v. El Paso, 950 F2d 255 (5th Cir. 1992)
"Reasonable alternative avenues of communication" were required of an ordinance restricting locaiton of sexually orineted businesses. The court found that this meant that the city ordinance could not have the effect of suppressing speech. Alternative sites with physical or legal characteristics which make them impossible for adult businesses to relocate there were effectively "unavailable" as "Reasonable alternative avenues of communication."

7. SDJ Inc. v. Houston, 837 F2d 1268 (5th Cir. 1988) *reh'g en banc denied* 841 F2d 107 (5th Cir. 1988)
Topless bar owners challenged Houston's ordinance imposing licensing and zoning restrictions on sexually oriented businesses. The 5th Curcuit found that the Harris County Ordinance 1. did not violate the First Amendment, 2. the ordinance did not violate equal protection or due process and 3. the city had not exceeded its authority from the enabling statute.

8. Basiardanes v. Galveston, 682 F2d 1203 (5th Cir. 1982)
Fifth Circuit overturned a Galveston ordinance which restricted the locaiton of adult theaters and bookstores on the three pronged *Schad* test 1. the ordinance was too broad in that it defined adult theaters on the state test for obscenity for minors, 2. that the city failed to present evidence of adverse secondard effects of adult theaters to the city council before they passes the ordinance (it possible could have been solved at trial, but was not). and, 3. the ordinance had the effect of banning the businesses because there were not reasonable commercially viable alternative locaitons.

9. Stansberry v. Holmes, 613 F2d 1285 (5th Cir. 1980)
Harris County regulations restricting the location of sexually oriented businesses was analogous to zoning, and as the regulations did not address theaters or bookstores, no First amendment issues were at stake and the regulations were to be analyzed by standards for zoning regulations. That standard is the "arbitrary and capricious" standard. The court also found that the regulation was not unconstitutionally vague as they gave "a person of ordinary intelligence fair notice."

10. BSA Inc. v. King County, 804 F2d 1104 (9th Cir. 1986)
Although some provisions of a city ordinance addressing nude dancing were enjoined by the 9th Circuit, they upheld the provision which required that all nude entertainment be performed a certain distance from the nearest patron was a valid place or manner restriction. distance requirement burdened protected expression, but it furthered significant state interest in curtailing public sexual contact and illegal touching between performers and patrons.

11. SDJ Inc. v. Houston, 636 F.Supp. 1359 (S.D. Tex. 1986), aff'd 837 F2d 1268 (5th Cir. 1988)
Houston city ordinance regulating sexually oriented businesses is a valid "content neutral" regulation.

12. Lindsay v. Papageorgiou, 751 S.W.2d 544 (Tex. App.--Houston [1st Dist.] 1988, *writ den.* )
Harris County regulations restricting location of sexually oriented businesses did not violate guarantees of free speech and freedom of expresssion. The regulations were content-neutral as they were not directed at content or suppression of free expression, they serve substantial government interest of preserving quality or urban life, and allow reasonable avenues of communication.

APPENDIX B

State Statutes and Municipal and County Regulations Examined

1. Tex.Loc.Gov't.Code Ann., Chap 243 (Vernon, 1988 & Supp. 1991)

2. Dallas, TX, Ordinance 19196, (June 18, 1986)

3. Harris County, TX, *Regulations of Harris County, Texas for the Location of Certain Sexually Oriented Commercial Enterprises* (Sept. 6, 1979, as amended June 25, 1985)

4. Houston, TX, *Houston Code*, 28-81 through 28-134 (1991) 1

5. San Diego, CA, *San Diego Municipal Code* , 33.3601-3620, 33.0401, 52.9001-9005 (1989)