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ADULT LIVE PERFORMANCE VENUES STUDY

PREPARED ON:
JUNE 21, 2016

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JUNE 21, 2016

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Adult Live Performance Venues Study

Executive Summary

Introduction

Adult Live Performance Venues have been operating in the French Quarter and specifically on Bourbon Street since the middle of the 20th Century. Under the current regulations, an Adult Live Performance Venue is Conditional in the Light and Heavy Industrial Districts but was permitted by right in the Vieux Carré Entertainment District prior to the adoption of Motion No. M-16-124 in 2016. This motion created the Adult Live Performance Venue Interim Zoning District (IZD) that classified Adult Live Performance Venues in the VCE District as Conditional[1]. Their growth in the Vieux Carré Entertainment District has led to several unsuccessful efforts made throughout the past decades to address associated negative impacts. Recognizing the adverse secondary effects of such establishments, the City Council passed Motion M-16-22 directing the City Planning Commission produced this Adult Live Performance Venues Study. The City Council Motion directed the City Planning Commission to include the following subject matter in the study:

1. Whether the total number of Adult Live Performance Venues permitted by right in the VCE zoning District should be limited;
2. Whether there are best practices that have been developed based on adult live performance venue regulations recently enacted by local governmental entities around the United States, or a set of recommendations to be made by the City Planning Commission based on its study of such recently enacted regulations;
3. Research should include input from industry representatives, as well as other businesses that will be impacted;
4. What are the available and most appropriate land-use mechanisms to limit the total number of Adult Live Performance Venues; and
5. If the current supplemental use standards need to be amended or if any additional supplemental use standards are necessary to further regulate said use.

The study was guided by the following goals and objectives:

- Protect neighborhood character and minimize impacts to residential areas;
- ensure a comfortable atmosphere for all residents and visitors to the Vieux Carré and its entertainment districts;
- enable appropriate entrepreneurial and economic opportunities;
- create a regulatory framework that is based on best practices yet responds to the unique circumstances in New Orleans and the limitations on City government;
- permit adult live entertainment venues in districts where they are least impactful to neighboring properties and where public safety can be effectively provided;
- propose regulations and standards that respond to the secondary impacts of Adult Live Entertainment to minimize nuisances and mitigate the impacts;
- propose enforceable regulations and prioritize their enforcement;
- create clear and consistent Licensing with the actual approved use,

[1] The motion may remain in place for one year, with a possible maximum 1 year extension.

- making licenses and terminology clear to various agencies charged with enforcement of regulation, and
- ensure the safety of residents and visitors traveling to New Orleans.

Key Findings

Based on the review of nationwide practices and the analysis of the situation in New Orleans, the following key findings informed the proposed Adult Live Performance Venues recommendations:

- There are 23 Adult Live Performance Venues in New Orleans, 19 of which are located in the French Quarter, and 14 within the boundaries of the Vieux Carré Entertainment District.
- Currently, all Adult Live Performance Venues located outside of the Vieux Carré Entertainment District are non-conforming uses.
- Adult Live Performance Venues are subject to specific operational standards in the Municipal Code regulations.
- Enforcement is sporadic, not coordinated and not sufficiently visible.
- Most cities have created operational standards in their Business and Licensing Codes comparable to existing regulations found in the City of New Orleans' Municipal Code.
- Many cities have conducted or relied upon planning studies showing evidence of harmful secondary effects of adult businesses to create an array of regulations for adult businesses.
- Most cities limit adult entertainment uses to specific districts, effectively concentrating them in areas of the community less susceptible to greatly suffer from secondary impacts. They also enforce distance requirements in between establishments and between different types of uses within these districts, as a way to avoid over concentration.
- Significant intervention and attention to the concentration of these uses is necessary in order to protect the health, safety, and public welfare of the community.
- Zoning is an essential but inadequate tool to regulate Adult Live Performance Venues.
- Proper licensing is necessary in order to know what has to be enforced.
- The First Amendment of the Constitution protects forms of controversial expression including nude dancing.
- Laws impacting adult entertainment businesses must be content neutral and address their negative secondary effects, not the conduct of nude dancing.
- Both the presence of Adult Live Performance Venues in the VCE District and the proposed adult live performance venue regulations are consistent with the Master Plan.
- The City Planning Commission, Safety and Permits and Revenue Departments need to cooperate with each other to successfully and fairly regulate the adult live performance venue industry.

Recommendations

Land Use and Zoning

City Planning recommends there be a cap on the number of Adult Live Performance Venues in the Vieux Carré Entertainment District based on the 7 blocks long defined geographic area. City Planning also recommends to let the number of current venues go down to 7 through natural attrition through a spacing limit and an overall cap.

Permitting, Licensing, & Enforcement

To ensure that Adult Live Performance Venues are properly licensed and operate in a responsible manner, the following regulations should be put into place:

- Create a new section on the business license, so that adult live performances venues are not simply categorized as "amusement place", but specifically as "adult entertainment".
- The use name should be updated in both the Licensing Code and the Alcoholic Beverage Code from" Cabarets" and "Night Clubs" to "Adult Live Performance Venues" in order to match the Comprehensive Zoning Ordinance use category.
- An operational standard should be added to specifically forbid unintended viewing of the dancing areas from the public right of way.

A. Existing Conditions

1. Adult Live Performance Venue Study Background

Adult Live Performance Venues are establishments that feature dancers, go-go dancers, exotic dancers, or similar entertainers or live entertainment, where persons regularly appear in a state of nudity, or where live performances are characterized by the exposure of specified anatomical areas or by specified sexual activities. These establishments have been operating in the French Quarter and specifically on Bourbon Street since the middle of the 20th Century. Their growth has led to several unsuccessful efforts made throughout the past decades to address associated negative impacts. The purpose of this Adult Live Performance Venues Study is to use nationwide best practices and local insights to propose a new system that will reduce adverse secondary effects of such establishments in New Orleans.

Council Motion M-16-22

The scope of the Adult Live Performance Venues Study is outlined in the motion that directs the City Planning Commission to conduct the study. The City Council requests the City Planning Commission study the regulation of Adult Live Performance Venues in the new Comprehensive Zoning Ordinance (CZO) from a land-use perspective, in light of municipal regulatory schemes recently enacted by local government entities around the United States. The City Council plans to adopt amendments to the City Code to implement a permitting and enforcement scheme in conjunction with the land-use regulations in the CZO.

The City Council desires comprehensive regulation of Adult Live Performance Venues in the City Code and CZO, consistency between the two, and recommendations from the City Planning Commission as to what provisions should be included in or omitted from the CZO rather than the City Code. City Council Motion M-16-22 directs the City Planning Commission to include the following subject matter in the study:

1. Whether the total number of Adult Live Performance Venues permitted by right in the VCE zoning District should be limited;
2. Whether there are best practices that have been developed based on adult live performance venue regulations recently enacted by local governmental entities around the United States, or a set of recommendations to be made by the City Planning Commission based on its study of such recently enacted regulations;
3. Research should include input from industry representatives, as well as other businesses that will be impacted;
4. What are the available and most appropriate land-use mechanisms to limit the total number of Adult Live Performance Venues; and
5. If the current supplemental use standards need to be amended or if any additional supplemental use standards are necessary to further regulate said use.

City Council Motion M-16-22 grants the City Planning Commission and its staff the flexibility to expand the scope of the study to make any and all legal and appropriate recommendations deemed necessary in light of the study, review, and public testimony resulting from the motion.

Scope of Work

The City Planning Commission used City Council Motion M-16-22 as a guide for the study, but expanded the scope to look at all aspects of Adult Live Performance regulations. The scope of Motion M-16-22 focuses on land use and zoning regulations of Adult Live Entertainment Venues and consistency with City Code. The City Planning Commission has taken a more expansive view with this study because the zoning regulations would not work without a permitting structure, City Code provisions to regulate the use, and an enforcement structure.

The report is broken down into the following sections. This first section of the study lays out the background on Adult Live Performance Venues, the legislative history that led to the current regulations, and the location of existing establishment throughout the city. The second section outlines the current regulations applying to Adult Live Performance Venues in the Comprehensive Zoning Ordinance, City Code, Business and Licensing code, as well as in the State regulations. It also addresses current constitutional issues and present case law peculiar to that type of use. The third section addresses the benefits and issues associated with Adult Live Entertainment, as well as issues with the current permitting and enforcement system. Next the study summarizes the public comments and reviews how other cities regulate Adult Live Performance Venues. That is followed by an analysis on regulating the impacts of Adult Live Performance Venues. The final sections provide recommendations for Adult Live Performance Venues regulations in the Comprehensive Zoning Ordinance and City Code and issues that need further study or are outside of the City's immediate control.

Study Goals

The City Planning Commission staff developed the following goals and objectives to guide the Adult Live Entertainment Study and its recommendations:

- Protect neighborhood character and minimize impacts to residential areas;
- Ensure a comfortable atmosphere for all residents and visitors to the Vieux Carré and its entertainment districts;
- Enable appropriate entrepreneurial and economic opportunities;
- Create a regulatory framework that is based on best practices yet responds to the unique circumstances in New Orleans and the limitations on City government;
- Permit adult live entertainment venues in districts where they are least impactful to neighboring properties and where public safety can be effectively provided;
- Propose regulations and standards that respond to the secondary impacts of Adult Live Entertainment to minimize nuisances and mitigate the impacts;
- Propose enforceable regulations and prioritize their enforcement;
- Create clear and consistent Licensing with the actual approved use. Licenses and terminology should be clear to various agencies charged with enforcement of regulation, and
- Ensure the safety of residents and visitors traveling to New Orleans.

2. History of the Adult Live Performance Venues

In 1997, the City of New Orleans' CZO defined live adult entertainment to include any live entertainment with nudity. Before 2015, the City of New Orleans' CZO had not defined the adult live performance venue[2] (an adult use[3]). Prior to 1997, live adult entertainment was allowed, by inference, in establishments where live entertainment was permitted, unless adult entertainment was explicitly prohibited.

The terms live adult entertainment or Adult Live Performance Venue are not mentioned in State Law or City Code. However, State Law does address live entertainment and prohibits sexual acts or displaying certain body areas during live entertainment.[4,5] It is therefore inferred that State Law allows live adult entertainment where live entertainment is permitted by local zoning considering the prohibitions previous mentioned. The City Code provides regulations pertaining to live entertainment (cabarets and night club).[6,7,8] State Law and the City Code are silent on regulations limiting establishments that provide live entertainment or live adult entertainment.

An Adult Live Performance Venue is Conditional in the Light and Heavy Industrial Districts but was permitted by right in the VCE District prior to the adoption of Motion No. M-16-124 in 2016. This motion created the Adult Live Performance Venue Interim Zoning District (IZD) that classified Adult Live Performance Venues in the VCE District as Conditional. The motion may remain in place for one year, with a possible maximum 1 year extension.

The VCE District is located on Bourbon Street between its 200 and 700 blocks (see Figure 1). The current CZO does not regulate the number of permitted adult live entertainment venues in the VCE District, but does attempt to regulate the number of adult live entertainment venues in the LI and HI Districts using a distance restriction. However, Adult Live Performance Venues9 allowed as a Conditional Use in the LI and HI Districts (see Figure 2) are prohibited within one thousand (1,000) feet of any residential district, place of worship, educational facility, and park or playground. This regulation does not apply to adult live performances venues in the VCE District.

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[2] **Article 26, Section 26.6** *Definition*. "*B. Adult Live Performance Venue. An* establishment that features dancers, go-go dancers, exotic dancers, or similar entertainers or live entertainment, where persons regularly appear in a state of nudity, or where live performances are characterized by the exposure of specified anatomical areas or by specified sexual activities as defined below. Such establishments specifically exclude minors, or minors are specifically prohibited by statute or ordinance, regardless of whether or not any such business is licensed to sell alcoholic beverages.", Current Comprehensive Zoning Ordinance.

[3] **Article 26, Section 26.6** *Adult Use*. "Any premises that sells or disseminates explicit sexual material as defined in the City Code…", Current Comprehensive Zoning Ordinance.

[4] **Title 26, Stare Law -** *Liquors-alcoholic beverages of Louisiana State Law*

[5] **Title 15 State Law-** *Criminal Procedure of Louisiana State Law*

[6] **Chapter 10, Articles I, II, and II, of the City Code**

[7] **Chapter 54, Article V, Division 2, of the City Code**

[8] **Chapter 30, Article III of the City Code**

[9] **Article 20, Section 20.3.B,** *Adult Use*

Figure 1. Vieux Carre Entertainment District

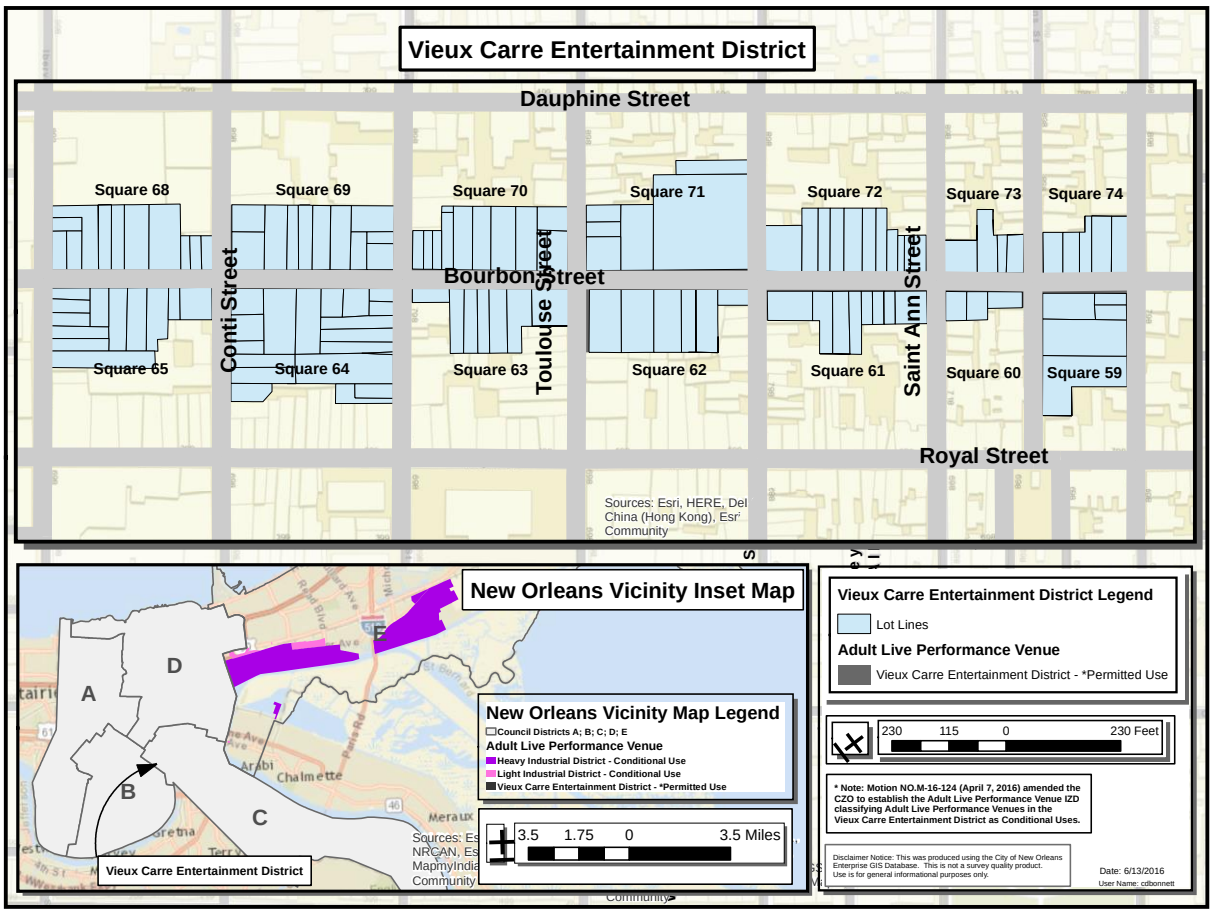
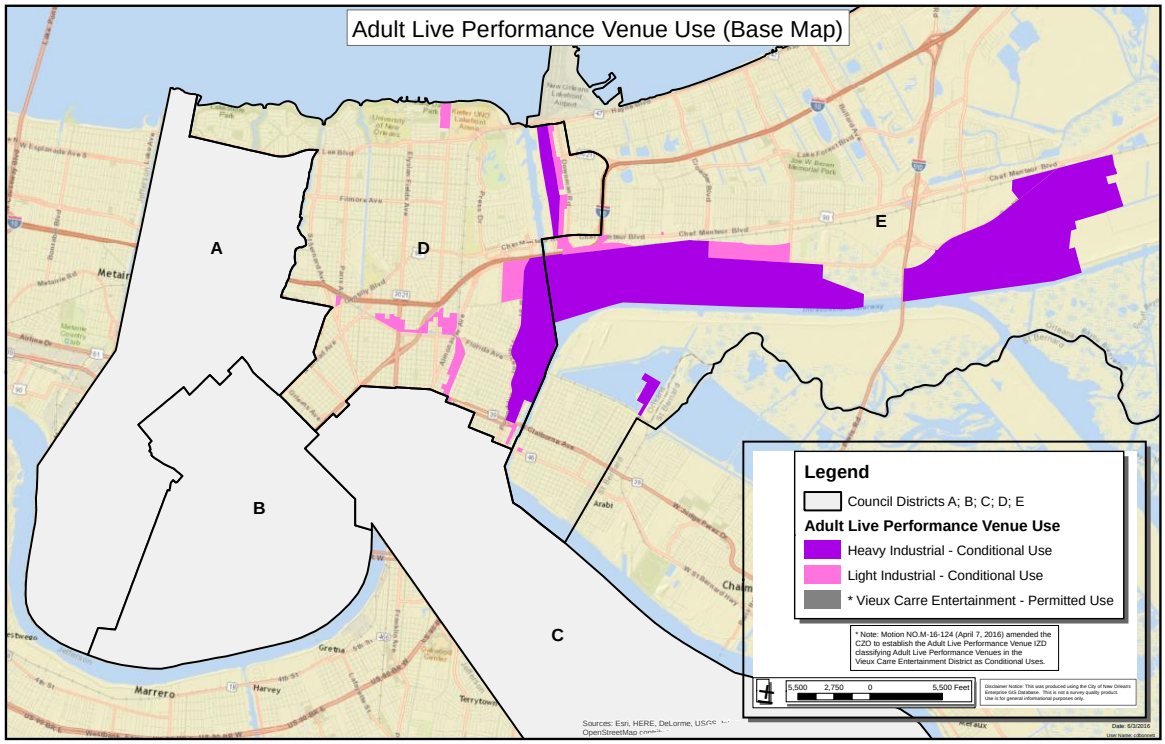


Figure 2. Adult Live Performance Venue Use through the City of New Orleans.



Currently, there are 23 Adult Live Performance Venues (see Table 1) in the city of New Orleans. Fourteen (14) are within the VCE District while another five (5) are within 600 feet of the VCE District's boundary, which all are non-conforming uses based on the zoning district in which they exist (see Table 1). In addition, there are four (4) outside of the French Quarter, which all are also non-conforming uses based on the zoning district in which they exist (see Table 1). The City Council's Motion No. M-16-22 specifically directs the City Planning Commission to address: (1) whether the total number of adult live performances venues permitted by right in the VCE District should be limited; (2) the most appropriate land use mechanisms are available to limit this number; and (3) whether additional supplemental use standards may be necessary to further regulate said use. In addition, the motion requests the recommendation of best practice regulations and research including input from industry representatives who may be impacted.

Table 1. Adult Live Performance Venues

	Venues	Address	Zoning District
1	**Babe's Cabaret**	433 Bourbon	VCE
2	**Rick's Cabaret**	315 Bourbon	VCE
3	**Rick's Sporting Saloon**	522 Bourbon	VCE
4	**Déjà vu Showgirls**	226-228 Bourbon	VCE
5	**Hustler Barely Legal**	423 Bourbon	VCE
6	**The Penthouse Club**	727 Iberville	VCE
7	**Big Daddy's**	508 Bourbon	VCE
8	**V Live Club New Orleans**	735 Bourbon	VCE
9	**Hustler Larry Flint**	225 Bourbon	VCE
10	**Stilettos**	325 Bourbon	VCE

	Venues	Address	Zoning District
11	**Temptations**	327 Bourbon	VCE
12	**Scores**	416 Bourbon	VCE
13	**Lipstixx (Platinum Bourbon)**	420 Bourbon	VCE
14	**Badboys**	632 Bourbon	VCE
15	**Corner Pocket**	940 Saint Louis	VCR-1
16	**Bourbon Pub & Parade Disco**	801 Bourbon	VCR-1
17	**Oz**	800 Bourbon	VCR-2
18	**Dixie Diva's**	606 Iberville	CBD-2
19	**Chez Joey**	608 Iberville	CBD-2
20	**Showcase Bar & Lounge**	1915 N Broad	MU-1
21	**Passions**	3921 Downman	S-B2
22	**Visions**	4000 Downman	S-B2
23	**She She**	9000 Chef Menteur	BIP

Prior to the adoption of the current Comprehensive Zoning Ordinance (CZO) on August 12, 2015, the term adult live performance venue did not exist. When researching the term, it was determined that both the adult cabaret[10] and live adult entertainment[11] (entertainment with nudity), found in the former CZO, are components of the definition of the adult live performance venue. [12] Understanding the breadth of venue types as it pertains to adult entertainment helps illuminate the complexities in trying to regulate a use (adult live entertainment) that is associated (by inference through the history of previous CZOs) with other uses (live entertainment) and venues that provide these uses. This illusive scenario seems to follow adult live entertainment throughout the previous CZOs until the definition of the adult live entertainment venue (classified as an adult use), was finally included in the current CZO.

Identifying and understanding similar terms to adult live performance venue used historically in referring to land use both before and during the implementation of CZOs are important when addressing the directives issued by Motion No. M-16-22. Live adult entertainment or venues/establishments that provided live adult entertainment were investigated when researching the history of the use.

The adult live performance venue's definition in the current CZO contains components of both the live adult entertainment and adult cabaret definitions found in the former CZO. The use of the term "cabaret" and its connection to live adult entertainment shows the challenge in developing the term adult live performance venue. The term cabaret became synonymous with adult live entertainment. The cabaret was popularized in Paris around the 16th century. It is a form of entertainment featuring music, song, dance, recitation, or drama occurring in a venue/establishment [(restaurant, night club, pub, bar (saloon), supper club, dance hall, music hall, etc.]. Just like the cabaret varied in the types of entertainment associated with it, venues or establishments varied in the types of live entertainment they provided. Interpretation of former CZOs allowing live adult entertainment wherever live entertainment was permitted ultimately made it difficult to regulate live adult entertainment.

[10] **Article 2, Section 2.2.4.i** *Adult Cabaret of the former CZO*
[11] **Article 2, Section 2.2.110.b** *Live Adult Entertainment of the former CZO*
[12] Former Comprehensive Zoning Ordinance and ZD078-97

When researching the history of the adult live performance venue, previous CZOs and any available existing historical land use information for that period were considered. In general, the zoning ordinances of the City of New Orleans, beginning with the 1929 Comprehensive Zoning Ordinance were continuously revised until replaced by a new ordinance. The City of New Orleans has had four such ordinances covering the periods of 1929-1952, 1953-1969, 1970-2015, 2015-present all with their corresponding zoning maps. Existing land use surveys available from 1929, 1949, and 1997 were considered. In addition, for this study, an existing land use map of the VCE District is determined through field verification.

Using the historic zoning ordinances and land use information, the history of the adult live entertainment venue in the City of New Orleans is discussed in the following periods: 1929-1952 (period 2), 1953-1969 (period 3), 1970-2015 (period 4), and 2015-present (period 5). However to get an understanding of how the adult live entertainment existed prior to the first CZO, the period prior to the adoption of the first CZO from 1857 to 1929 which documented the regulating of prostitution and brothels was discussed as period 1.

1857 to 1920s Adult Live Performance Venue History in New Orleans

One venue that supplied adult live entertainment was the brothel. Starting in 1857, brothels were confined to what is known as the Vice District. Brothels provided adult live entertainment to clientele while other adult entertainment venues like concert saloons and gambling establishments provided clientele to brothels. This is an example of how adult uses, or vices as they were called in this period, coexisted in the Vice Districts. The Vice District along with its brothels played an important role in the history of the adult live performance venue in New Orleans. In considering the history of the Vice District's adult uses and their connection to the Adult Live Performance Venues, it is important to understand the socioeconomic makeup of the city center and the land use challenges that occurred at this time.

By 1787, the French Quarter, being the city center, became highly concentrated with many types of uses. At this time, Bourbon Street had more people residing on it than any other street with 679 residents.[13] By the early 1800's, Bourbon Street real estate was considered reasonably priced for light commerce and homemaking among the working and middle classes. However, it still included a number of both poorer and wealthier families.[14] Bourbon Street with its concentration of various uses including live adult entertainment became very popular with residents in and around the city.

Around the 1850s there was a rise of the "nocturnal food, drink, and entertainment district" in the French Quarter, with Bourbon Street and its grandest venue the French Opera House (once located on the corner of Bourbon and Toulouse Streets) being the entertainment district's center. With all its various cultures, bars, restaurants and available sleeping quarters, New Orleans became a tourist destination and Bourbon Street saw its share of tourists.

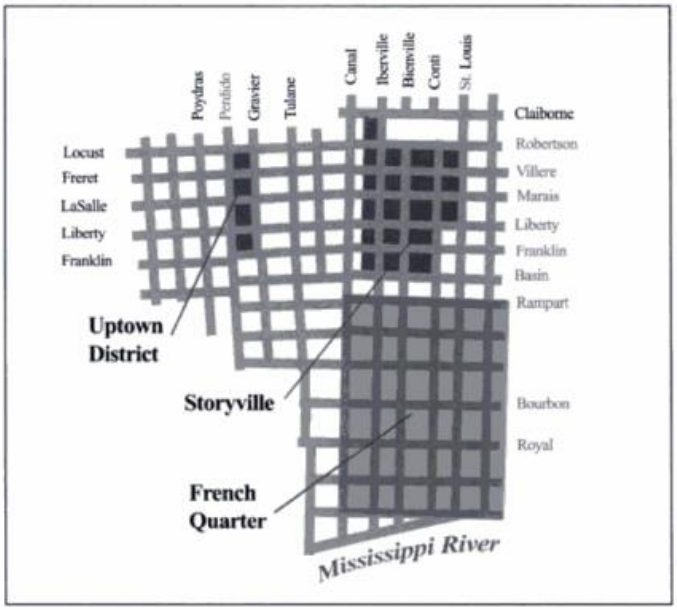
[13] Analysis of 1805 Mathew Flannery census by the author, as transcribed in New Orleans in 1805: A directory and a Census (New Orleans: Pelican Gallery, 1936)
[14] Bourbon Street : a History / Campanella, Richard. Page 29, 2014.

In addition to the notoriety the French Quarter gained from becoming a tourist destination, it received additional attention when the landlords and property owners lobbied the city to leave their "productive working tenants" alone due to their ability to pay higher rents per square foot.[15] The city soon passed ordinances aimed at taxing the "productive working tenants". There was a connection between "productive working tenants" and boarding houses. Boarding houses and the "productive working tenants" began to displace some long-term residents.
In 1857, the City Council passed Lorette Ordinances 3267 O.S. and 3428 O.S., one of which restricted the sex trade by taxing (in certain areas) prostitutes $100 and brothel keepers $250 annually.[16] By 1859 the ordinance was found unconstitutional by the Louisiana Supreme Court on licensing technicalities. However over the next 40 years, city leaders passed eight versions of the Lorette Law ultimately limiting the spatial boundary of the Vice District to a total of nineteen (19) blocks made up of Storyville and the Uptown District areas (see Figure 3).[17] There were also restrictions aimed to make the sex trade invisible while allowing it to exist. For instance, one of these ordinances stated that "harlots" could not occupy any one story building, or lower floor of any structure. It even stated that they could not "stand upon the sidewalk …or at the alley way... and they could not solicit johns in cabarets or coffeehouses"[18] This is an early example of how the City used zoning regulations to regulate the "productive working tenants" and adult entertainment establishments.

After the Civil War (1865) and emancipation, the French Quarter became extremely congested. The inner core (with its remarkable economically and racially mixed population) saw an exodus of its wealthy and middle class citizens. The French Quarter became less desirable. Real estate values began to decrease which opened up areas for additional uses (breweries, food processing, and sugar refineries) into spaces once dedicated to residential and retail uses. New Orleans' inner core including the French Quarter became increasingly commercialized and industrialized. These areas soon became "dirty, depressed and dodgy".[19] Once prevalent on the urban fringe, saloons and gambling establishments began to creep into the French Quarter and onto Bourbon Street.[20] Bourbon Street began to see its share of bordellos and boardinghouses along with dance halls and concert saloons all of which were considered venues for the "soft sex trade". The aggregation of these adult uses and the venues in which they were provided further showed the connection or influence one use had over the other.

[15] Ibid., p 62
[16] Ibid., p 68
[17] The Great Southern Babylon Alecia P. Long. Page 107, 2005.
[18] Bourbon Street : a History / Campanella, Richard. Page 68, 2014.
[19] Bourbon Street: a History / Campanella, Richard. Page 74, 2014
[20] The Great Southern Babylon Alecia P. Long. Page 151, 2005.

Figure 3. Story Ordinances (13,485 C. S.), 1917. Sam Rykles[21]



Vice-district boundaries defined by Ordinance 13,485 C.S., the final version of the so-called Story Ordinance. *Sam Rykels*

By default, the Lorette Law and similarly subsequent versions dispersed various vices, but did not restrict prostitution on the swamp (lake) side of Basin between Canal and Toulouse Streets in an area that later became known as Storyville. During 1857-1917, the City authorities began to see specific vices associated specific areas known as the "hard districts".[22] In the First District (French Quarter and Faubourg Treme), the vice zone lay around the rear of the Old City (two and three hundred blocks of Burgundy Street) and in the Second District (today's Warehouse District, Central Business District, Superdome area, and Lower Garden District) the vice area was concentrated at the intersection of Gravier and O'Keefe Streets (known as Phillippa Street then)[23] which had a concentration of brothels. The periphery of the French Market (along Gallatin Street and Elysian Fields Avenue) formed the highest concentration of any vice area.[24] Out of the 284 spatially referenced reports of vice incidences gathered by Judith K. Schafer based on police reports, court records, and news articles (1846-1862) [25], not one had occurred on Bourbon Street. However, due to the increase concentration of vices in these areas, the city was looking for a way to further regulate this industry. Alderman Sidney Story proposed a way to do so.

In 1897, Alderman Sidney Story (City Councilman), wrote guidelines and legislation to control prostitution and other vices within the city.[26] One of those ordinances (Ordinance 13,032 C.S.) was passed by the full council on January 29, 1897. The area designation by this ordinance is depicted in Figure 6.[27] Ordinance 13,032 C. S. designated a sixteen block area as the part of the

[21] Ibid., p. 141
[22] Bourbon Street: a History / Campanella, Richard. Page 62, 2014
[23] Ibid., p. 65
[24] Ibid., p. 66
[25] Ibid., p. 64,67
[26] The Great Southern Babylon Alecia P. Long. Page 108, 2005
27 Ibid., p. 108

city in which prostitution, although still nominally illegal, was tolerated or regulated. The area was bounded by North Robertson, Iberville (former Customhouse), Basin, and St. Louis Streets and was found between the French Quarter and Interstate 10. [28,29] This area was again defined with the adoption of Ordinance 13,485 C.S. The largest section of the Vice District was dubbed "Storyville" mocking the councilman. New Orleans got a national reputation for the adult uses that occurred in Storyville, which became known as the red-light district of New Orleans, Louisiana from 1897 to 1917. However, a use that covered a large portion of the city (see Figure 4) with the Lorrette Ordinances (3267 O.S and 3428 O.S) was first reduced to about 160 blocks (see Figure 5) ended up being reduced to a total of 19 blocks (see Figure 6).

Figure 4. Lorette Ordinances (3267 O.S and 3428 O.S) 1857. Sam Rykels[30]

[28] Ibid., p. 108
[29] Ibid., p. 141
[30] Ibid., p. 108

Figure 5. Ordinances 4434 C.S, 1890. Sam Rykles[31]

Figure 6. C. Story Ordinances (13,032 C. S. and 13,485 C. S.) 1917. Sam Rykles [32]

[31] Ibid., p. 108
[32] Ibid., p. 108

Ultimately the Storyville ordinances limited vices to an area of town where authorities could monitor and control prostitution and drugs and the adult uses that went along with these and other vices. One example of this is Ordinance 13,604 C.S. which stipulated that, "it shall be unlawful to open, operate or carry on any cabaret, concert-saloon or place where cancan, clodoche, or similar female dancing or sensational performance are shown" outside the newly defined limits below Canal Street where Storyville existed. The Law was amended in 1897 essentially making the Vice District limits below Canal Street the only physical place inside the city where concert saloons and other sexually oriented entertainment venues could legally be established.

Another hiccup came to Storyville when the Gay-Shattuck Law went into effect on January 1, 1909. This law essentially removed women from all places where liquor was sold or consumed except for restaurants and hotels that served meals. The law also banned musical instruments and musical performances from saloons.[33] Storyville was dramatically affected because its activities were fueled by both the presence of women and alcohol. Establishments providing adult live entertainment morphed to get around the law. Storyville proprietors turned their businesses into restaurants. The morphing of these uses and establishments would prove to be difficult to specifically regulate restaurants that provided live entertainment for future CZOs. It also made it generally even more difficult to regulate adult live entertainment as various CZOs were interpreted by inference to allow adult live entertainment wherever live entertainment was permitted.

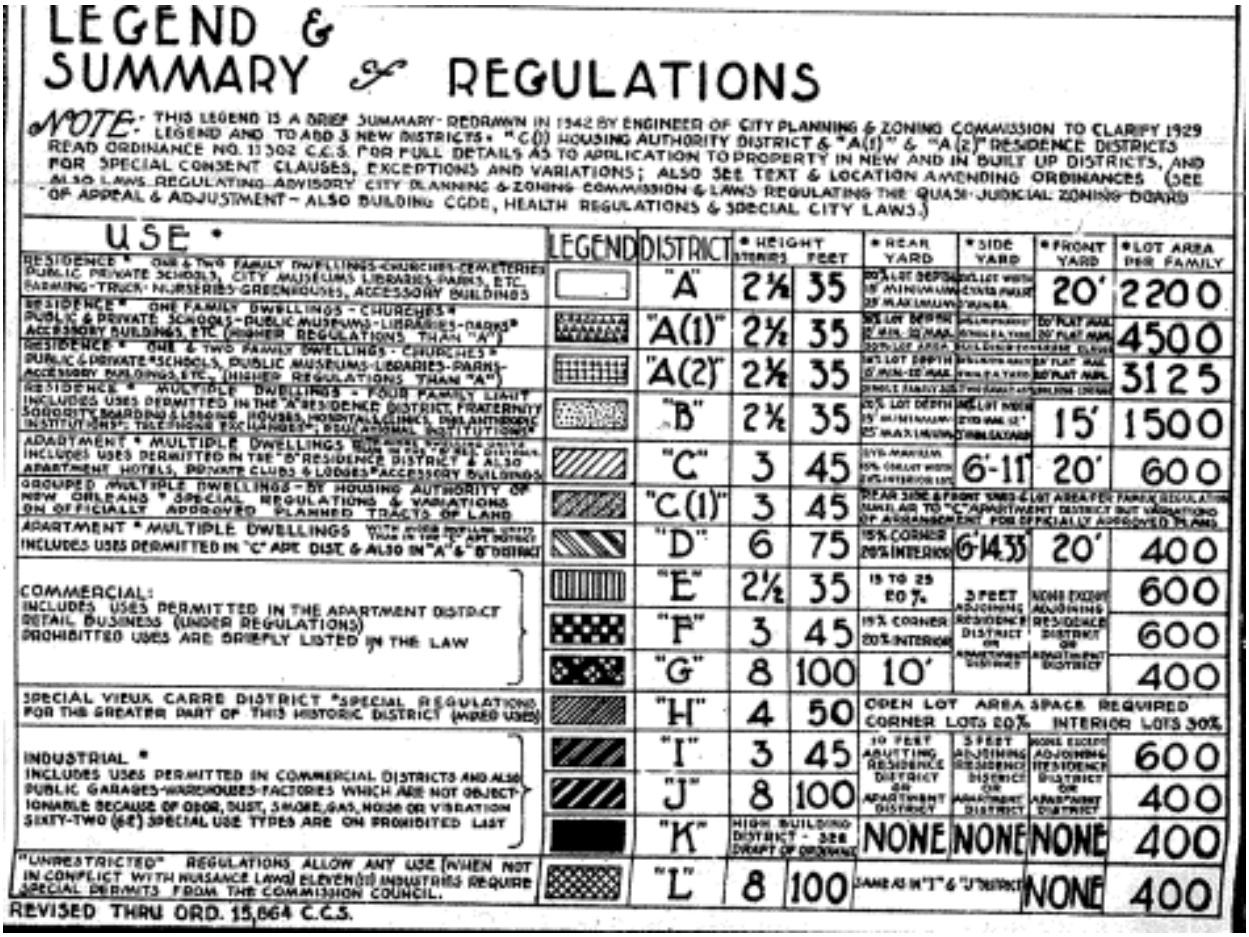
By the end of 1917, the Federal Government passed a law that made it illegal to have any vice district within a 5 mile radius of a military base or camp. Ultimately, this law marked the end of Storyville/the Vice District when the Navy prevailed and the City was forced to shut down Storyville. In 1918, the State Legislature of Louisiana passed Act 27, which empowered municipalities with populations of more than fifty thousand people to regulate construction within zones. In 1922, that power was extended to all municipalities. By 1923, New Orleans created its City Planning and Zoning Commission. The Commission produced the Major Street Report that ultimately led to New Orleans's first Comprehensive Zoning Ordinance (The Handbook on Comprehensive Zone Law for New Orleans, Louisiana), which was adopted on June 6, 1929. However, this zoning ordinance did not address live entertainment, adult live entertainment, cabarets, or Adult Live Performance Venues.

1920s-1952 Adult Live Performance Venue History in New Orleans

During period 2 (1929-1952) for zoning purposes the City of New Orleans was divided into 15 Districts generally broken down into Residential [A(1), A(2), B], Apartment (C, D), Housing Authority C(1), Commercial (E, F, G), Vieux Carre (H), Industrial (I, J, K) and Unrestricted L (see Figure 1). Based on the city's regulations in the existing zoning ordinance at the time and the historical interpretation of live entertainment, adult live entertainment would have occurred in the same venues where the secondary use of live entertainment was allowed. The secondary use of live entertainment was allowed in Apartment (C, D), Housing Authority C (1), Commercial (E, F, G), Vieux Carre (H), Industrial (I, J, K) and Unrestricted L Districts.

33 The Great Southern Babylon Alecia P. Long. Page 181, 2005.

Figure 7a. Legend for the 1929 Zoning Map of the City of New Orleans



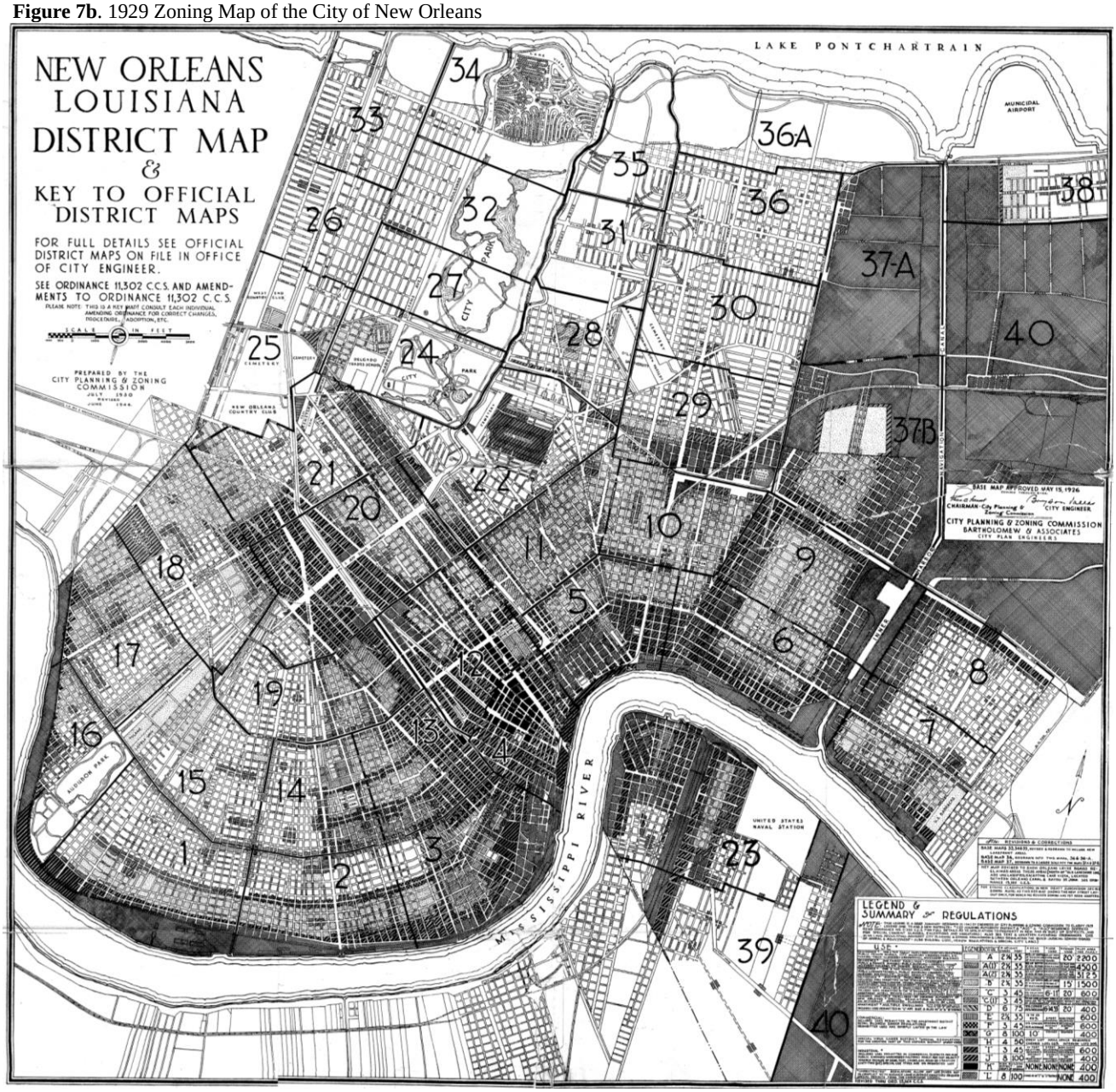
LEGEND & SUMMARY OF REGULATIONS

NOTE - THIS LEGEND IS A BRIEF SUMMARY - REDRAWN IN 1942 BY ENGINEER OF CITY PLANNING & ZONING COMMISSION TO CLARIFY 1929 LEGEND AND TO ADD 3 NEW DISTRICTS - "C(1) HOUSING AUTHORITY DISTRICT & "A(1)" & "A(2)" RESIDENCE DISTRICTS READ ORDINANCE NO. 11302 C.C.S. FOR FULL DETAILS AS TO APPLICATION TO PROPERTY IN NEW AND IN BUILT UP DISTRICTS, AND FOR SPECIAL CONSENT CLAUSES, EXCEPTIONS AND VARIATIONS; ALSO SEE TEXT & LOCATION AMENDING ORDINANCES (SEE ALSO LAWS REGULATING ADVISORY CITY PLANNING & ZONING COMMISSION & LAWS REGULATING THE QUASI-JUDICIAL ZONING BOARD OF APPEAL & ADJUSTMENT - ALSO BUILDING CODE, HEALTH REGULATIONS & SPECIAL CITY LAWS.)

USE *	LEGEND	DISTRICT	* HEIGHT STORIES	* HEIGHT FEET	* REAR YARD	* SIDE YARD	* FRONT YARD	* LOT AREA PER FAMILY
RESIDENCE * ONE & TWO FAMILY DWELLINGS-CHURCHES-CEMETERIES PUBLIC PRIVATE SCHOOLS, CITY MUSEUMS LIBRARIES PARKS, ETC. FARMING-TRUCK-NURSERIES-GREENHOUSES, ACCESSORY BUILDINGS		"A"	2½	35	20% LOT DEPTH 15' MINIMUM 25' MAXIMUM	10% LOT WIDTH 3' MIN. 5' MAX.	20'	2200
RESIDENCE * ONE FAMILY DWELLINGS - CHURCHES * PUBLIC & PRIVATE SCHOOLS - PUBLIC MUSEUMS - LIBRARIES - PARKS * ACCESSORY BUILDINGS, ETC. (HIGHER REGULATIONS THAN "A")		"A(1)"	2½	35	20% LOT DEPTH 10' MIN. 30' MAX. 20% LOT AREA	10% LOT WIDTH 3' MIN. 5' MAX.	20' FLAT MAX. 30' FLAT MAX.	4500
RESIDENCE * ONE & TWO FAMILY DWELLINGS - CHURCHES * PUBLIC & PRIVATE * SCHOOLS, PUBLIC MUSEUMS-LIBRARIES-PARKS-ACCESSORY BUILDINGS, ETC., (HIGHER REGULATIONS THAN "A")		"A(2)"	2½	35	20% LOT DEPTH 10' MIN. 30' MAX.	[illegible]	20' FLAT MAX. 30' FLAT MAX.	3125
RESIDENCE * MULTIPLE DWELLINGS - FOUR FAMILY LIMIT INCLUDES USES PERMITTED IN THE "A" RESIDENCE DISTRICT, FRATERNITY SORORITY BOARDING & LODGING HOUSES, HOSPITALS, CLINICS, PHILANTHROPIC INSTITUTIONS *, TELEPHONE EXCHANGES *, EDUCATIONAL INSTITUTIONS *		"B"	2½	35	20% LOT DEPTH 15' MINIMUM 25' MAXIMUM	NO LOT WIDTH 5' MIN. 12' MAX. 10% MAX. LOT WIDTH	15'	1500
APARTMENT * MULTIPLE DWELLINGS [illegible] INCLUDES USES PERMITTED IN THE "B" RESIDENCE DISTRICT & ALSO APARTMENT HOTELS, PRIVATE CLUBS & LODGES * ACCESSORY BUILDINGS		"C"	3	45	[illegible] MAXIMUM 10% CORNER WIDTH 20% INTERIOR LOT	6'-11"	20'	600
GROUPED MULTIPLE DWELLINGS - BY HOUSING AUTHORITY OF NEW ORLEANS * SPECIAL REGULATIONS & VARIATIONS ON OFFICIALLY APPROVED PLANNED TRACTS OF LAND		"C(1)"	3	45	REAR SIDE & FRONT YARDS & LOT AREA PER FAMILY REGULATIONS SIMILAR TO "C" APARTMENT DISTRICT BUT VARIATIONS OF ARRANGEMENT FOR OFFICIALLY APPROVED PLANS			
APARTMENT * MULTIPLE DWELLINGS WITH [illegible] THAN IN THE "C" APT. DISTRICT INCLUDES USES PERMITTED IN "C" APT. DIST. & ALSO IN "A" & "B" DISTRICT		"D"	6	75	15% CORNER 20% INTERIOR	6'-14.33'	20'	400
COMMERCIAL: INCLUDES USES PERMITTED IN THE APARTMENT DISTRICT RETAIL BUSINESS (UNDER REGULATIONS) PROHIBITED USES ARE BRIEFLY LISTED IN THE LAW		"E"	2½	35	15 TO 25 20%	3 FEET ADJOINING RESIDENCE DISTRICT OR APARTMENT DISTRICT	NONE EXCEPT ADJOINING RESIDENCE DISTRICT OR APARTMENT DISTRICT	600
		"F"	3	45	15% CORNER 20% INTERIOR			600
		"G"	8	100	10'			400
SPECIAL VIEUX CARRE DISTRICT * SPECIAL REGULATIONS FOR THE GREATER PART OF THIS HISTORIC DISTRICT (MIXED USES)		"H"	4	50	OPEN LOT AREA SPACE REQUIRED CORNER LOTS 20% INTERIOR LOTS 30%			
INDUSTRIAL * INCLUDES USES PERMITTED IN COMMERCIAL DISTRICTS AND ALSO PUBLIC GARAGES-WAREHOUSES-FACTORIES WHICH ARE NOT OBJECTIONABLE BECAUSE OF ODOR, DUST, SMOKE, GAS, NOISE OR VIBRATION SIXTY-TWO (62) SPECIAL USE TYPES ARE ON PROHIBITED LIST		"I"	3	45	10 FEET ABUTTING RESIDENCE DISTRICT OR APARTMENT DISTRICT	3 FEET ADJOINING RESIDENCE DISTRICT OR APARTMENT DISTRICT	NONE EXCEPT ADJOINING RESIDENCE DISTRICT OR APARTMENT DISTRICT	600
		"J"	8	100				400
		"K"	HIGH BUILDING DISTRICT - SEE DRAFT OF ORDINANCE		NONE	NONE	NONE	400
"UNRESTRICTED" REGULATIONS ALLOW ANY USE (WHEN NOT IN CONFLICT WITH NUISANCE LAWS) ELEVEN (11) INDUSTRIES REQUIRE SPECIAL PERMITS FROM THE COMMISSION COUNCIL.		"L"	8	100	SAME AS IN "I" & "J" DISTRICT		NONE	400

REVISED THRU ORD. 15,864 C.C.S.

Figure 7b. 1929 Zoning Map of the City of New Orleans



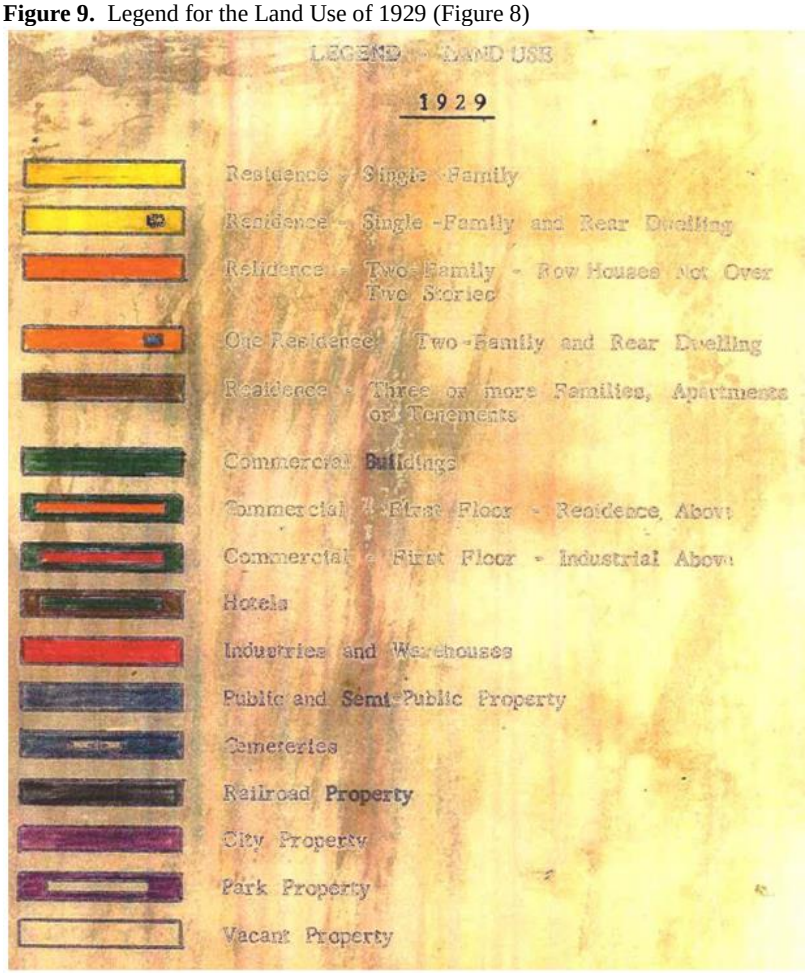
In a few cases, this secondary use would have been allowed under a process similar to the Conditional Use process. One example of this is where private clubs and lodges, whose chief activity were a service customarily carried on as a business. Based on the Zoning Map of 1929 (see Figures 7a and 7b), private clubs and lodges were allowed specifically on lots along Saint Charles Avenue, Magazine Street (from Canal Street to 2.5 blocks before Audubon Park), Tchoupitoulas Street, North and South Claiborne Avenues (from the Mississippi River to Orleans Avenue), Canal Street, South Claiborne (from Canal Street to Napoleon), South Claiborne (from Canal Street to Elysian Fields) and the majority of the current central business district, French Quarter, Marigny, Marigny Triangle, Algiers, and all lands east of the industrial Canal.

In period 2 (1929-1952), the zoning designation in the 200 block to approximately 2/3s of the 300 block of Bourbon Street was zoned Industrial, District J (see Figures 7a and b). The 1929 Zoning Map documents mixed use development (commercial on the first floor with residential above and commercial on the first floor with industrial above) and hotels of for the district (see Figures 7a and b). The rest of the Bourbon Street up to the end of the 700 block was zoned Special Vieux Carre District, District H (see Figures 7a and b). The 1929 Zoning Map documents identical zoning to that of District J previously mentioned with the addition of residential (single and two-family) and public/semi-public (see Figures 7a and b). Live adult entertainment was allowed where the secondary use of live entertainment was permitted historically. Secondary use of live entertainment was allowed in Vieux Carre (H) and Industrial (I) Districts; therefor, live adult entertainment could have occurred in the VCE District.

The 1929 Land Use Map documents mixed use development of commercial, industrial and ware houses, residential (two-family, three or four-family, and multi-family), Hotels, and Public/Semi-Public when considering the 200 to the 700 blocks of Bourbon Street (see Figures 8 and 9). During this time period, the CZO did not specifically regulate or define live entertainment or live adult entertainment. In addition, the term adult live entertainment venue which is a compilation of the terms adult cabaret and live adult entertainment did not exist. However, it is common knowledge that bars, brew pubs, private clubs, restaurants, supper clubs, and night clubs existed and that they historically provided live entertainment which could be adult live entertainment.

Figure 8. Land Use of 1929 along the 200 Block to the 700 blocks of Bourbon Street.

Figure 9. Legend for the Land Use of 1929 (Figure 8)



1953-1969 Adult Live Performance Venue History in New Orleans

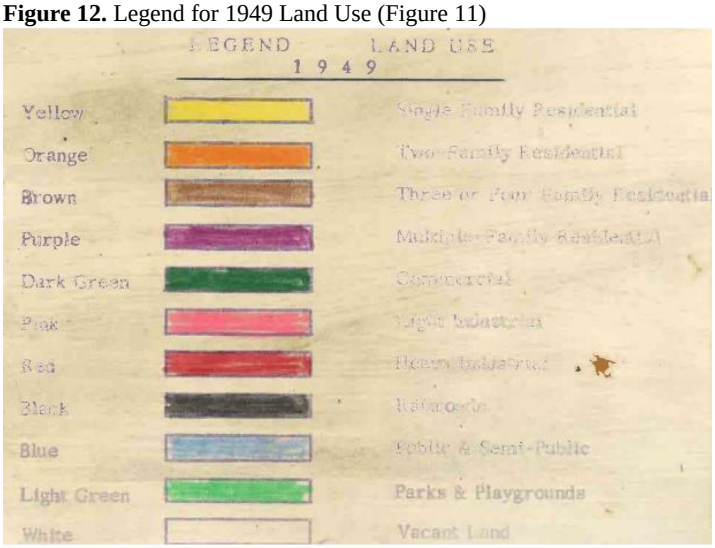
During period 3 (1953-1969), for zoning purposes the city was divided into 17 Districts that were generally broken down into Residential (S-Suburban District, A-Single-Family District, B-Two-Family District, C-Four-Family District), Apartment (D-Multiple Family), Medical Service Districts (M-1 and M-2), Commercial Districts (E-Neighborhood Shopping District, F-Heavy Commercial District, G-Eight-Story Commercial District), Industrial Districts (J-Light Industrial and L-Heavy Industrial), Business District (K-Central Business District), Unrestricted District, and Vieux Carre Districts (H-1 Vieux Carre Residential District, H-2 Vieux Carre Residential District, H-3 Vieux Carre Industrial District). Private Clubs became a permitted use in all districts except in A-Single Family District and B-Two-Family District. Lodges became permitted uses in all districts except S-Suburban, A-Single Family and B-Two-Family Districts. Most areas that were designated for single and two-family districts in 1929 remained with those designations. However, new uses in Vieux Carre Districts had to secure a special permit from the Vieux Carre Commission.

Figure 10. 1953 Zoning Map of 100 block (left side) through the 800 block of Bourbon Street

In period 3 (1953-1969), the zoning designation in the 200 block through the first 1/4 of the 700 block of Bourbon Street became H-2 Vieux Carre Commercial District (see Figure 10). The zoning of the rest of the 700 block along Bourbon Street became H-1 Vieux Carre Residential District. The 1949 Land Use Map documents mixed use development of commercial, industrial (heavy and light), residential (two-family, three or four-family, and multi-family) and Public/Semi-Public of this portion of Districts H1 and H2 (see Figures 11 and 12).

Figure 11. 1949 Land Use from the 100 block (left side) through the 800 Block of Bourbon Street.

Figure 12. Legend for 1949 Land Use (Figure 11)



After adoption of the 1953 CZO, the city began to address the previous morphing of adult uses

and establishments that provided these uses that occurred as a byproduct of State Law. Regulations addressing dancing in restaurants, adult entertainment in hotels, and live entertainment in cocktail lounges were subsequently enacted. Any regulations on live entertainment also impacted live adult entertainment since live adult entertainment was continued to be allowed where live entertainment was permitted.

The "Zoning Law New Orleans, Revised as of May 1957", definition of a restaurant states that "no permitted dancing by proprietors patrons or employees". The definitions of hotel, hotel apartment, rooming house, lodging house, boarding house, continued to not address live entertainment although these uses at times provided live entertainment and therefore also may have provided live adult entertainment. However, "adult entertainment" was specifically not permitted in a hotel. No other terms associated or previously thought to be associated with live entertainment or live adult entertainment were defined in the "Zoning Law New Orleans, Revised as of May 1957".

In the 1957 CZO (see Table 2), the majority of the establishments (bars, brew pubs, private clubs, supper clubs, and night clubs) with the exception of the restaurant, known to provide live entertainment, were now specific uses listed in the CZO. In addition, with the exception of the cocktail lounges and hotels, these establishments could continue to provide live entertainment and therefore, could also provide live adult entertainment. However, it is expected that live entertainment in the current area of what is currently the VCE District would have been regulated, since new uses in Vieux Carre Districts had to secure a special permit from the Vieux Carre Commission.

Overall live entertainment and live adult entertainment were only partially addressed by the 1957 CZO. Many outlier issues remained. An example of this is that live entertainment (up to three (3) members), was permitted in restaurants in the Central Business District and in supper clubs. Therefore, live adult entertainment would also be allowed. In general, this time period (1953-1969) of the CZO still did not specifically regulate live adult entertainment as live adult entertainment continued to be allowed where live entertainment was permitted.

Table 2. Permitted Uses in Districts

Zoning District	***A***	***B***	***C***	***M-1***	***D***	***M-2***	***E***	***F***	***G***	****H-1***	****,**H-2***	****H-3***	***J***	***K***	***L***	***U***
Establishment/Venue																
Clubs and Lodges			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Theatres							P	P	P		P	P	P	P	P	P
Private Clubs and Lodges not for Business			P	P	P	P	P	P	P	P			P	P	P	P
Restaurant							P	P	P			P	P	P	P	P
Amusement Places							P	P	P						P	
******Hotels**								P	P		P	P	P	P	P	P
Tourist Courts				P	P	P	P	P	P		P	P	P	P	P	P
Apartment Hotel					P	P	P	P	P	P	P	P	P	P		P
Tourist homes				P	P	P	P	P	P	P	P	P	P	P	P	P
Boarding and Lodging Houses			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Trailer Parks and Courts								P	P		P	P	P	P		P
Barroom												P	P	P	P	P
Nightclub							P	P	P			P	P	P	P	P
Athletic Clubs			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Ballrooms							P	P	P	P	P	P	P	P	P	P
Bar							P	P	P	P	P	P	P	P	P	P
Bath House							P	P	P	P	P	P	P	P	P	P

Zoning District	*A*	*B*	*C*	*M-1*	*D*	*M-2*	*E*	*F*	*G*	**H-1*	**,**H-2*	**H-3*	*J*	*K*	*L*	*U*
Baths, Turkish							P	P	P	P	P	P	P	P	P	P
Cafes or Cafeterias							P	P	P	P	P	P	P	P	P	P
Beer Parlors							P	P	P	P	P	P	P	P	P	P
Billard Parlors							P	P	P	P	P	P	P	P	P	P
Clubs, Supper and Amusement							P	P	P	P	P	P	P	P	P	P
*****Cocktail Lounges**							P	P	P	P	P	P	P	P	P	P
Country Clubs			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Dance Hall							P	P	P	P	P	P	P	P	P	P
Guest House			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Lodge Hall			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Massage				P	P	P	P	P	P	P	P	P	P	P	P	P
Membership Clubs (except Supper Clubs)			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Resort Hotel							P	P	P	P	P	P	P	P	P	P
Rooming House			P	P	P	P	P	P	P	P	P	P	P	P	P	P

*Any use change, for a permitted use, with exterior change required a special permit through a VCC approval hearing.
**Nightclubs and barroom were prohibited in this district.
*** Did not include Live Entertainment
**** Excluded live adult entertainment

1970s-2015s Adult Live Performance Venue History in New Orleans

The fourth period covers the Comprehensive Zoning Ordinance (former CZO) from 1970 to 2015. For simplicity purposes districts were placed in the following broad categories used in the CZO [(Residential, Special Commercial, Business and Commercial (which include the CBD Districts), Industrial, the Vieux Carre and Historic Marigny/Treme Districts].

In 1978, the VCE District (ZD15/78) was established in the French Quarter to monitor and regulate live entertainment and subsequently monitor the adult live entertainment venue. An argument could be made that the Vice District, created to regulate and monitor an adult use in 1897, had found its way back to Bourbon Street where it was once removed.

Soon after the creation of the VCE District, night club was defined and allowed in the VCE in 1980 with the passing of ZD16/80, followed by another Ordinance to allow Cocktail Lounges or Bars in the VCE (ZD17/80). The Council adopted regulations (ZD58/81) concerning retail stores and shops in the VCC-1, VCC-2, VCS and VCE, and later we see another ordinance adopted to regulate T-shirts shops in the VCE. In 1992 the VCE-1 District, another entertainment district in the French Quarter, was created under ZD054/92.

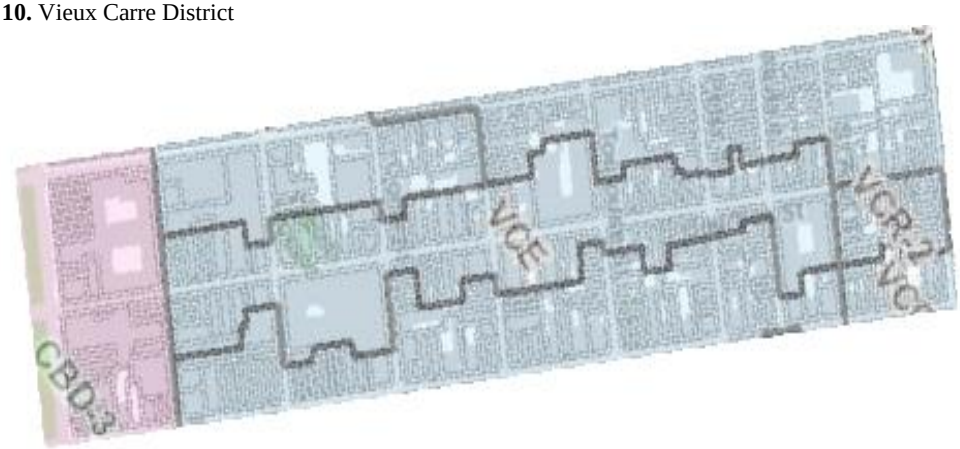
With the creation of the VCE and VCE-1 Districts and the adoption of regulations of ZD78/97, are regulations in place pertaining specifically to live adult entertainment and an adult cabaret. The adoption of the recommendations of ZD78/97 defined live entertainment as an ancillary use in conjunction with a variety of different main uses, but adult live entertainment continued to be permitted with live entertainment. The definition of an adult establishment was amended to include an adult cabaret. An adult establishment was now defined as an adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult cabaret or massage business. Distance regulations were implemented as an adult establishment was not allowed to be located within a thousand-foot radius of any residential zone, any residential use or any habitable unit; any church or religious institution, any school, any playground, any public park or any area zoned for the aforesaid uses except in districts where an adult cabaret was allowed. Adult

Cabarets were classified as follows: in the C-l General Commercial District (Conditional Use), C-2 General Commercial District (Conditional Use), LI Light Industrial District (Permitted Use), HI Heavy Industrial District (Permitted Use), VCS Vieux Carre Service District (Conditional Use - prohibiting this use in the area bounded by Barracks Street, Decatur Street, Ursuline Avenue and North Peters Street), VCE Vieux Carre Entertainment District (Permitted Use), VCE-l Vieux Carre Entertainment District (Conditional Use) HMLI Historic Marigny/Treme Light Industrial District (Conditional Use).

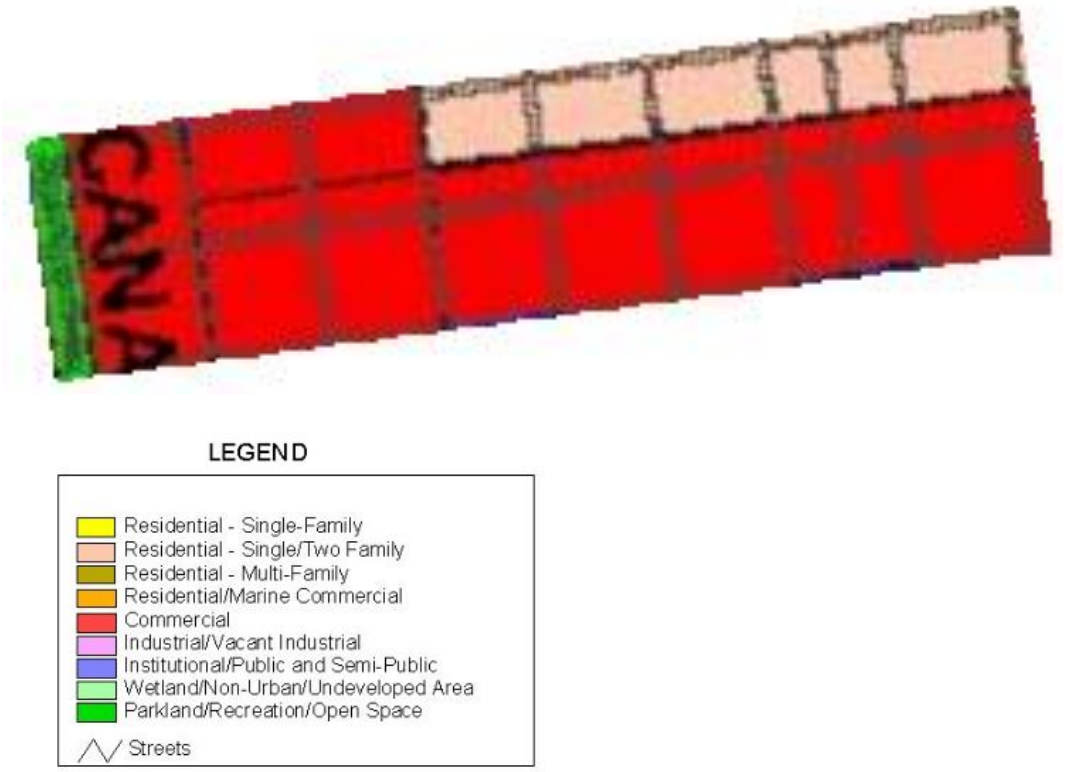
The former CZO was updated to prohibited live adult entertainment at night clubs, supper clubs and/or amusement places, and private clubs. The changes also eliminated the possibility of broad interpretations by stating live adult entertainment should only be permitted in conjunction with an Adult Cabaret (dancers, go-go dancers, exotic dancers, male or female impersonators or similar entertainers or live entertainment where persons regularly appear in a state of nudity whether or not any such business is licensed to sell alcoholic beverages). Also, live entertainment included a subsection defining Live Adult Entertainment (entertainment that features dancers, go-go dancers, exotic dancers, male or female impersonators or similar entertainers or live entertainment, where persons regularly appear in a state of nudity or where live performances are characterized by the exposure of specified anatomical areas or by specified sexual activities as defined in Article 2, Section 2.2.4(g) and 2.2.4(h) of the Former Comprehensive Zoning Ordinance). In addition, adult entertainment was excluded from: Amusement Place, Nightclub, Supper Club, Brew Pub, Restaurants (where live entertainment is permitted, live adult entertainment shall be prohibited), Hotels and Theaters.

In period 4 (1970-2015), the zoning designation in the 200 block through to the end of the 700 block of Bourbon Street became VCE Vieux Carre Entertainment District (see Figure 10). The generalized 1997 Land Use Map shows the existing use within the VCE District to be commercial with some residential (see Figures 11 and 12). However, residences existed within the district.

Figure 10. Vieux Carre District



Figures 11 and 12. 1997 Land Use Map and Legend



2010s-Present Adult Live Entertainment Venues in New Orleans and on Bourbon Street

During period 5 (2015-Present), for zoning purposes, the city was divided into districts that were generally broken down into broad place types (Open Space, Rural Development, Historic Core Neighborhood, Historic Urban Neighborhood, Suburban Neighborhoods, Commercial Center and Institutional Campus, Centers for Industry, and Central Business). The definitions of adult cabaret and live adult entertainment were combined to create the adult use called the adult live performance venue.

An adult live entertainment venue is allowed as a permitted use in the VCE District[34] and is allowed through a Conditional Use in the LI and HI Districts (see Figure 2). The 200 block through the end of the 700 block of Bourbon Street continues to be designated as the VCE District (see Figure 13). Field reconnaissance showed the majority of the existing land use in the VCE to be commercial. A closer look at these commercial uses showed 14 adult live entertainment venues with an additional 4 adult live entertainment venues within 600' of the VCE's District's boundary (see Table 3) located in CBD-2, VCR-1 and VCR-2 Districts all within the French Quarter. Elsewhere in the city, there are 4 adult live entertainment venues located in the S-B2, MU-1, and the BIP Districts (see Table 3).

[34] Motion No. M-16-124 created the Adult Live Performance Venue Interim Zoning District (IZD) that classified *Adult Live Performance Venues* in the VCE District as a Conditional Use.

Figure 13. Vieux Carre Entertainment District Existing Land Use

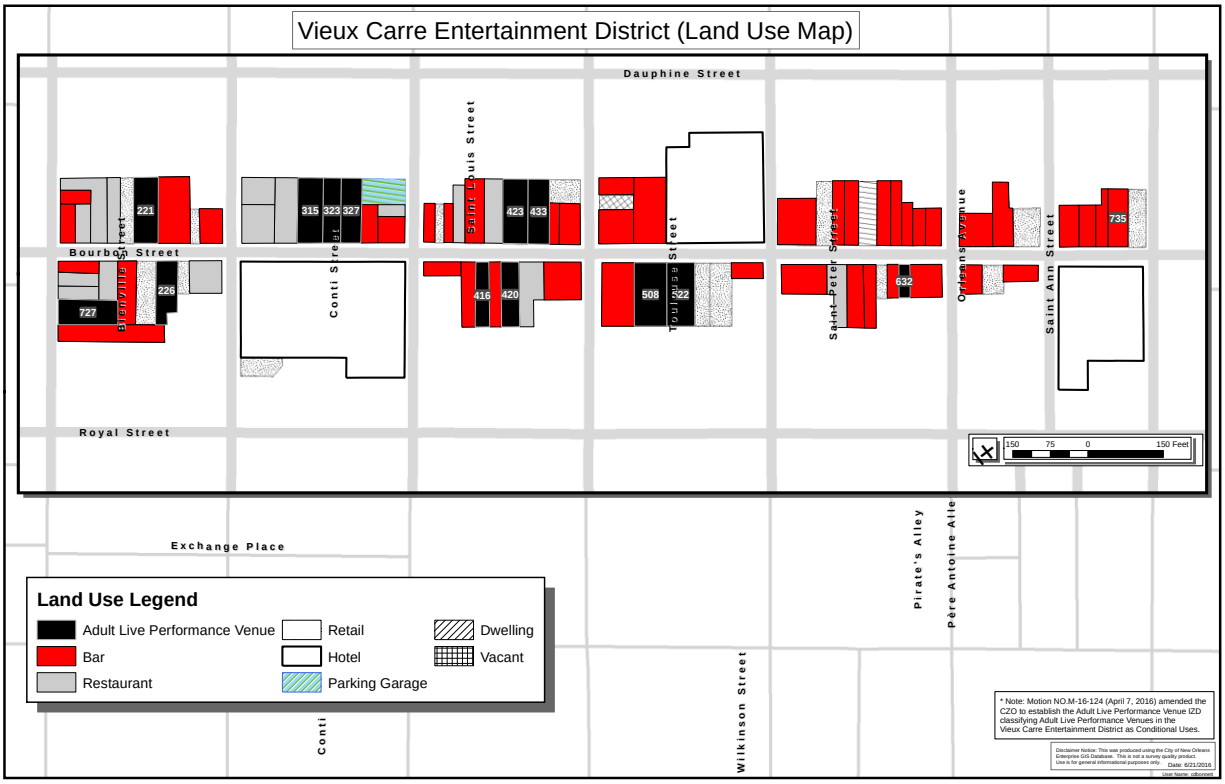


Table 3: Adult Live Performance Venue Licenses and Permits

	Venues	Address	Zoni	Occupational License	Occ. Code	Mayoralty Permit	Mayoralty Code	Certificate of Occupancy
1	**Babe's Cabaret**	433 Bourbon	VCE	Bar	1126	Music for Entertainment (Admission Charge)	8440	Night Club/Cocktail Lounge
2	**Rick's Cabaret**	315 Bourbon	VCE	Bar with adult Entertainment	1126	Adult Entertainment (No Admission Charge)	8593	Night Club/Cocktail Lounge
3	**Rick's Sporting Saloon**	522 Bourbon	VCE	Bar with adult Entertainment	1126	Adult Entertainment (No Admission Charge)	8593	Night Club/Cocktail Lounge
4	**Déjà vu Showgirls**	226-228 Bourbon	VCE	Bar with live Entertainment	1126	Music for Entertainment (Admission Charge)	8440	Night Club/Cocktail Lounge[1]
5	**Hustler Barely Legal**	423 Bourbon	VCE	Bar with live Entertainment	1126	Music for Entertainment (Admission Charge)	8440	Bar/Cocktail Lounge
6	**The Penthouse Club**	727 Iberville	VCE	Bar	1126	None	None	Restaurant (49 people and under)
7	**Big Daddy's**	508 Bourbon	VCE	Bar with adult Entertainment	1126	Adult Entertainment	8593	Adult Cabaret
8	**V Live Club New Orleans**	735 Bourbon	VCE	Bar with live Entertainment	1126	Music for Ent/Dance w/ Admin Charge	8440	Night Club/Cocktail Lounge
9	**Hustler Larry Flint**	225 Bourbon	VCE	Restaurant with live Entertainment	1126	Music for Entertainment w/ Admin Charge	8440	Night Club/Cocktail Lounge
10	**Stilettos**	325 Bourbon	VCE	Bar	1126	None	None	Night Club/Cocktail Lounge

	Venues	Address	Zoni	Occupational License	Occ. Code	Mayoralty Permit	Mayoralty Code	Certificate of Occupancy
11	**Temptations**	327 Bourbon	VCE	Bar	1126	None	None	Night Club/Cocktail Lounge
12	**Scores**	416 Bourbon	VCE	Bar with ABO license (package liquor store)	1126	None	None	Bar[2]
13	**Lipstixx (Platinum Bourbon)**	420 Bourbon	VCE	Bar with ABO license (package liquor store)	1126	None	None	Night Club/Cocktail Lounge
14	**Badboys**	632 Bourbon	VCE	Bar	1126	None	None	Night Club/Cocktail Lounge
15	**Corner Pocket**	940 Saint Louis	VCR-1	Bar with Live Entertainment	1126	Music for Entertainment w/ Admin Charge	8440	
16	**Bourbon Pub & Parade Disco**	801 Bourbon	VCR-1	Bar	1126	Music for Entertainment (Admission Charge)	8440	Bar/Cocktail Lounge
17	**Oz**	800 Bourbon	VCR-2	Bar with adult Entertainment	1126	Adult Entertainment (Admission Charge)	8594	Night Club/Cocktail Lounge
18	**Dixie Diva's**	606 Iberville	CBD-2	Bar with adult Entertainment	1126	Adult Entertainment (No Admission Charge)	8593	Bar/Cocktail Lounge
19	**Chez Joey**	608 Iberville	CBD-2	Bar	1126	Adult Entertainment (No Admission Charge)	8593	Bar/Cocktail Lounge
20	**Showcase Bar & Lounge**	1915 N Broad	MU-1	Bar with live Entertainment	1126	None	None	Night Club/Cocktail Lounge
21	**Passions**	3921 Downman	S-B2	Bar with live Entertainment	1126	Music for Entertainment w/ Admin Charge	8440	Night Club/Cocktail Lounge
22	**Visions**	4000 Downman	S-B2	Bar with live Entertainment	1126	Music for Entertainment w/ Admin Charge	8440	Bar/Cocktail Lounge[3]
23	**She She**	9000 Chef Menteur	BIP	Bar with Live Entertainment	1126	Music for Entertainment w/ Admin Charge	8440	

1[1] Permit Application received April 2016 with use classification "Adult Cabaret. Permit not issued yet.
1[2] Permit description indicates use as "Adult Cabaret"
1[3] Permit application received in 2015 with use "Adult Establishment" but permit never issued.

Bourbon Street is now an entertainment district attracting tourist with its assortments of bars adult uses, similar to the uses that existed in 1857, which lead up to the city creating the Vice District. However, residences are virtually nonexistent. A good example of this modern evolution of uses throughout New Orleans and on Bourbon Street is the adult live performance venue at 327 Bourbon Street which once was the home of the prominent Creole August St. Martin (now known as the Judah Benjamin House). Another example is the 1820's Creole cottage that still stands today which houses the Famous Door Bar at the corner of Bourbon and Conti Streets.

Today, similar to the City determining to regulate adult uses by creating the Vice Districts, the City is considering regulating the number of Adult Live Performance Venues within the VCE

District. Previously, the city has permitted by right an unlimited number of Adult Live Performance Venues to exist in the VCE District. Today 14 Adult Live Performance Venues exist within the 6 blocks that make up the VCE District. The effects of the Adult Live Performance Venues on the surrounding uses, as with any use in this similar situation, increases as the number of these uses increase within a confined space. Ultimately, regulations controlling the number of uses in order to decrease effects a use has on other surrounding uses become necessary. Bourbon Street has seen its share of land use regulations as uses have congested the area going back to 1857. Bourbon Street will continue to see the need for use regulations as uses evolve secondary effects are identified and business compete in the City's biggest tourist attraction.

Current regulations can be found in the Comprehensive Zoning Ordinance, in the City of New Orleans Municipal Code and in the State of Louisiana's Statuses.

B. Current Adult Live Performance Venues Regulations

Under current law, Adult Live Performance Venues are regulated under the City of New Orleans Comprehensive Zoning Ordinance, the City of New Orleans Municipal Code, and Louisiana Statutes. The Comprehensive Zoning Ordinance provides land use regulations for Adult Live Performance Venues and other adult uses, such as adult retail goods establishments and adult motion picture theaters. The Municipal Code contains regulations for all establishments selling alcoholic beverages, as well as various operational restrictions and criminal regulations often found in State law[35].

1. Comprehensive Zoning Ordinance Regulations

The Comprehensive Zoning Ordinance provides land use regulations for Adult Live Performance Venues and other adult uses, such as adult retail goods establishments and adult motion picture theaters. Adult Live Performance Venues are permitted in very limited locations.

Definitions

Article 26 of the Comprehensive Zoning Ordinance lists the definitions for Adult Live Performance Venues, specified anatomical areas, and specified sexual activities:

Adult Live Performance Venue. An establishment that features dancers, go-go dancers, exotic dancers, or similar entertainers or live entertainment, where persons regularly appear in a state of nudity, or where live performances are characterized by the exposure of specified anatomical areas or by specified sexual activities as defined below. Such establishments specifically exclude minors, or minors are specifically prohibited by statute or ordinance, regardless of whether or not any such business is licensed to sell alcoholic beverages.

Specified Anatomical Area. Specified anatomical area means:

[35] See Appendix 5

1. Less than completely and opaquely covered genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola.
2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified Sexual Activities. Specified sexual activities means:

1. Human genitals in a state of sexual stimulation or arousal.
2. Acts of human masturbation, sexual intercourse or sodomy.
3. Fondling or erotic touching of human genitals, pubic regions, buttocks or female breasts even if completely and opaquely covered.

Use Standards

Pursuant to **Section 20.3.B**, Adult Live Performance Venues, as well as all other adult uses are prohibited within a thousand (1,000) feet of any residential district, place of worship, educational facility, and park or playground. The regulation does not apply to adult uses in the Vieux Carre Entertainment District (VCE) where adult uses are allowed by this ordinance.

Permitted and Conditional Uses

Below are the use tables that show the zoning districts where Adult Live Performance Venues and other adult uses are permitted, conditional, and prohibited uses.

In the Historic Core Neighborhoods Non-Residential Districts, adult uses are allowed by right in the VCE Vieux Carré Entertainment District only. However, a new Interim Zoning District (IZD) named *Adult Live Performance Venue IZD* was adopted by the City Council on March 8th, 2016. Its purpose is to classify an Adult Live Performance Venue (Adult Use) in the Vieux Carré Entertainment District (VCE District) as a Conditional Use. These regulations are valid for one year and can be found in **Article 19** of the Comprehensive Zoning Ordinance.

Table 4: Historic Core Non-Residential District Permitted and Conditional Use table[36]

"Table 10-1: Permitted and Conditional Uses

USE[1]	VCC-1	VCC-2	VCE	VCE-1	VCS	VCS-1	VCP	HMC-1	HMC-2	HM-MU	USE STANDARDS
RESIDENTIAL USE											
[…]											
COMMERCIAL USE											
Adult Use			**C,P[Z]**								**Section 20.3.B**
…											**[…]"**

"TABLE 10-1 FOOTNOTES
[1] The terms in this column ("Use") are defined in Article 26.

[36] Article 10, Section 10.2.B.9

[…]
[6] Subject to the use restrictions in Section 10.2.B.9"
[7] **All Adult Uses are Permitted Uses except for Adult Live Performance Venue which is classified as a Conditional Use[37].**

In the Centers for Industry Districts, an adult use is a conditional use in the LI Light Industrial and HI Heavy Industrial Districts.

Table 5: Centers for Industry Permitted and Conditional Use Table[38]

"Table 16-1: Permitted and Conditional Uses

USE[1]	LI	HI	MI	BIP							USE STANDARDS
RESIDENTIAL USE											
[…]											
COMMERCIAL USE											
Adult Use	**C**	**C**									**Section 20.3.B**
…											**[…]"**

"**Table 16-1 Footnotes"**
"[1] The terms in this column ("Use") are defined in Article 26."
"[2] Subject to uses and design standards in Section 16.4."

Adult Live Performance Venues are prohibited in all other zoning districts.

Non-Conforming Uses

Pursuant to the definition of the Comprehensive Zoning Ordinance, a Nonconforming Use is the use of a structure or land that does not comply with the use restrictions of the applicable zoning district. A legal nonconforming use is a use that legally existed prior to the enactment of the current Ordinance and was legally maintained after the effective date of the Ordinance.
If a property maintains a use as non-conforming without interruptions in time, the use remains legally non-conforming. There are several non-conforming Adult Live Performance Venues in New Orleans, as shown on Table 1.

2. Municipal Code Regulations

Alcoholic Beverages Permits Regulations (Chapter10)

Special requirements must be fulfilled by Adult Live Performance Venues and employees of Adult Live Performance Venues that come in contact with or are likely to come into contact with patrons. Within three days of the date of original employment, any employees or contractors must be fingerprinted by the police department and issued a "cabaret" or "night club" employee's identification card[39]. The licensee must ensure that all employees have their

[37] Motion No. M-16-124 in 2016 created the Adult Live Performance Venue Interim Zoning District (IZD) that classified Adult Live Performance Venues in the VCE District as Conditional.
[38] **Article 16, Section 16**
[39] Cabarets and night club mean any room, place or space in the city in which any musical entertainment, singing or dancing, or other similar amusement is permitted in connection with the business of directly or indirectly selling to the public alcoholic beverages. The term "musical

identification cards physically on them or on file with the licensee on the premises. All individuals participating in the physical operation of the premises are required to have an employee's identification card. These identification cards are issued by the superintendent of police and have to be renewed every year. Both the original application and renewal fees are three dollars. Moreover, licensees must maintain a record of every employee – the "personnel roster". This document must be made available for inspection anytime that the establishment is open to the public.

The Police Department is charged to make periodic investigations of the businesses holding city alcoholic beverage permits or persons holding identification cards. When a violation occurs, an affidavit should be filed with the Mayor and the Alcoholic Beverage Control Board setting forth the circumstances of the violation. Then a hearing is held by the Alcoholic Beverage Control Board to determine if the permit should be suspended or revoked.

This Chapter also provides provisions regarding maintenance of responsible person on premises. A manager must always be on premises during operating hours.

Grounds for suspension or revocation of an alcoholic beverage license include but are not limited to:

- "selling or serving alcohol beverages to persons under 21 years old, or to intoxicated persons,
- permitting prostitutes to frequent the premises,
- permitting improper conduct[40],
- permitting females to solicit patrons for drinks,
- violations of any provisions of the city building code,
- allowing doorman and barkers to solicit passersby to enter the establishment,
- written complaints from either ten or more residents of the election precinct where the venue is located or 70 percent of the owners of real property located within 300 feet of the site,
- operating where two or more instances of criminal activity have occurred around the premises within a five-year period," etc. [41]

Pursuant to **Chapter 10, Article III, Division 3, Section 10-371**, dancers and performers under 21 are not permitted. If the Alcoholic Beverage Control Board determines that an alcoholic beverage outlet is in violation of this section, penalties can range from a seven days suspension of the alcoholic beverage permit for a first offense to a one year suspension or revocation for a fourth offense.

Pursuant to **Chapter 10, Article III, Division 5, Section 10-435**., entertainment of striptease shows have to be from a stage or platform raised at least 18 inches above the floor, effectively forbidding performances in private rooms or booths as many are currently set up.

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entertainment" shall not include recorded music, reproduced through a coin operated device or otherwise, nor shall it include television or radio entertainment.

Employee of a cabaret or night club means a person employed in any capacity or title in connection with a cabaret or night club, including the licensee and any/or all persons responsible for the control or management thereof. It shall also include a concessionaire and each person employed by such concessionaire.

[40] Chapter 10, Article III, Division 5, Section 10-434. Nudity, sexual conduct of employees

[41] Chapter 10, Article II, Division 4, Section 10-157. Grounds

Chapter 10, Article II, Division 4, Section 10-158. Molesting passersby

Criminal Code (Chapter 54)

The Criminal Chapter of the City Code has rules that apply specifically to Adult Live Performance Venues in Division 2 of the Chapter, which regulates sexual immorality. Regulations include:

- bans on prostitution and prostitution loitering,
- soliciting for prostitution,
- lewd conduct[42],
- public displays, sale, or distribution of explicit sexual material or material harmful to minors,
- obscene live conduct[43], public display of signs containing vulgar, explicit or offensive language.

Penalties for violations of these sections include fines up to 1,000 dollars for a first offense, and in some cases imprisonment up to one year.[44]

3. Permitting & Licensing Requirements

Occupational License and Mayoralty Permit

A Mayoralty Permit[45] and an Occupational License are required in order to operate an adult entertainment business in Orleans Parish. Mayoralty Permits allow applicants to use a building to conduct this type of business. Occupational licenses allow the City of New Orleans Bureau of Revenue to collect applicable fees and sales tax. The license is tied to the business activity and the taxes associated with it. The Permit is tied to where the activity is conducted and whether this activity is allowed at that specific place. Both the Mayoralty Permit and Occupational License can be applied for at the Department of Safety and Permits and are renewed annually with the Bureau of Revenue. An initial review of the application is completed by the Department of Safety and Permits in order to verify that the location meets all building and zoning code requirements. When submitting an application for an Occupational/General Business License to the Department of Safety and Permits, an applicant will have to choose the type of applicable license/permit. Among these permit categories are the alcohol beverage permit and the amusement permit. Checking these two types of permits will trigger the need for an Alcoholic Beverage license, which is a separate application, and the need for a mayoralty permit. There are different types of mayoralty permits for all kinds of uses, activities and different types of amusement, such as street entertainers, Mardi Gras activities, itinerant and transient vendors,

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[42] A lewd conduct act is:
i. An exposure of one's genitals; or
ii. Sexual intercourse; or
iii. Masturbation; or
iv. Urination or defecation.

[43] Obscene live conduct is defined in Chapter 54, Article V, Division 2, Section 54-260. (See Appendix 2)

[44] See Appendix 2: Chapter 54, Article V, Division 2, Section 54-256.1. - Prohibited public display of signs containing vulgar, explicit or offensive language, and Chapter 54, Article V, Division 2, Section 54-259. – Sale, exhibition, or distribution of material harmful to minors

[45] Mayoralty permits are regulated in Chapter 30 of the Municipal Code, under Article III (See Appendix 3).

artists, live entertainment, adult live entertainment, etc. However, there are no specific mentions of these different types on the Occupational License application submitted to Safety and Permits or the Business Registration Application submitted to the Department of Revenue. The application only provides a white box for the applicant to describe their business, which may have led to some inconsistencies between licenses of the same business type.

When applying for an Occupational or General Business License, an applicant first submits his application to the Department of Safety and Permits. The information captured on this application includes the type of license/permit applied for (Alcoholic Beverage Permit, Chain store tax, Amusement Permit, Hotel/Bed and Breakfast, Artist Permit, etc.), a description of the proposed business, whether the business is a new or an existing business changing its status, and general information about the business and the business owner. The applicant will then have to submit a notarized Business Registration Application (Schedule A) to the Bureau of Revenue. The information captured in the Schedule A includes the type of permit applied for, such as alcoholic beverage permit (which will trigger the need for a separate application for an Alcoholic Beverage Permit), amusement permit (which will automatically triggers the need for a Mayoralty Permit, as part of the same application), artist permit, chain store tax, etc. The application also requests the number of employees, the owner, partnership or corporation information, and questions for alcoholic beverage outlets. These questions include a full description of the exact space to be occupied by the outlet, with dimensions of floor areas, and disclosure of alterations or enlargements made or intended to be made to the building.

The Occupational License tax is based on a sliding scale according to the revenue generated by the business. According to a fee schedule provided by the Department of Safety and Permits, the Mayoralty Permit fees are as follow:

Music for Entertainment (Admission Charge): $750.25
Adult Entertainment (No Admission Charge): $100.25
Adult Entertainment (Admission Charge): $250.25

Alcoholic Beverage Permit

Additionally, all prospective adult live entertainment venues that serve alcoholic beverages have to apply for an alcoholic beverage permit with the City's Department of Finance, Alcoholic Beverage Division. When conducting a business that will sell alcoholic beverages, an applicant has to apply directly to the Bureau of Revenue instead of the Department of Safety and Permits. In addition to submitting Schedule A to the Department of Revenue, the applicant will also submit a Schedule B, a registration application for an Alcoholic Beverage License. The information captured in the Schedule B includes general business and licensee information, as well as the disclosure of felony or misdemeanor convictions, and prior alcoholic beverage license revocations within one year of the application.

Certificate of Occupancy

The Certificate of Occupancy ensures that a location complies with all current zoning and building code regulations. A certificate of occupancy is required if the applicant is changing the use of a building to adult live performance venue, or if the facility involves any work that requires a building permit. An inspection of the premises is required when a Certificate of Occupancy is issued or when the occupant of a building changes. Some minor renovation are exempt from building permit and do not require a certificate of occupancy. Exemptions are found in Section 105-2 of the amendments to 2006 Building Code[46]. The fee for a Certificate of Occupancy is tied to the building permit.

4. Building Code & Life Safety Code Requirements

Both the International Building Code and Life Safety Code set the occupant load factor at 5-15 net square feet per person depending on the concentration of the use. Meaning, a venue with 1000 square feet of assembly space could have a range between 66 and 142 occupants. These numbers are used to calculate the required number of means of egress, the width of egress etc.

International Building Code (IBC)

The International Building Code is published by the International Code Council and is the governing building code for any structure that is not a one- or two-family dwelling. The New Orleans Department of Safety and Permits uses the IBC when evaluating commercial renovation and new construction projects. Commercial structures are also required to be accessible to persons with physical disabilities. Different requirements are triggered based on the layout of the structure, the type of construction, and the number of occupants.

Below are the Section Assembly Groups defined by the IBC:

303.1 Assembly Group A.
Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

303.1.1 Small buildings and tenant spaces.
A building or tenant space used for assembly purposes with an *occupant load* of less than 50 persons shall be classified as a Group B occupancy.

303.1.2 Small assembly spaces.
The following rooms and spaces shall not be classified as Assembly occupancies:

[46] See Appendix 4

1. A room or space used for assembly purposes with an *occupant load* of less than 50 persons and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.
2. A room or space used for assembly purposes that is less than 750 square feet (70 m^2) in area and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.

303.3 Assembly Group A-2.

Assembly uses intended for food and/or drink consumption including, but not limited to:
Banquet halls
Casinos (gaming areas)
Nightclubs
Restaurants, cafeterias and similar dining facilities (including associated commercial kitchens)
Taverns and bars

The City's Building Code requires that any time there is a proposed change in the use of a building or space, a permit must be obtained, regardless of the extent of work that will be done. Changes in a building's occupancy type can trigger new building code or zoning code requirements. Applying for a Change of Use permit provides the Department of Safety and Permits an opportunity to review possible changes in applicable requirements. The Department of Safety and Permits will not approve a permit without an exemption letter or a set of plans approved from the State Fire Marshal.

Life Safety Code (NFPA 101)

The Life Safety Code is published by the National Fire Protection Association and is the governing code used by the Louisiana State Fire Marshal. Residential and commercial occupancy types are addressed in the Life Safety Code and the bulk of the standards address construction, protection, and occupancy features necessary to minimize danger to life from the effects of fire, including smoke, heat, and toxic gases created during a fire.
The Life Safety Code defines Adult Live Performance Venues as assembly occupancies: An assembly occupancy is generally defined as "an occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load." Assembly occupancies might include the following: Armories, assembly halls, auditoriums, club rooms, dance halls, drinking establishments and exhibition halls among others.

5. Enforcement

Zoning Violations

Zoning violations for Adult Live Performance Venues are handled, as for any other uses, by the Zoning Division of the Department of Safety and Permits. Violations are investigated as complaints are received from the public. Complaints can be submitted by calling the Zoning Division directly, calling 311, or visiting the One Stop Shop and speaking with a Zoning Inspector.

After a complaint is received, it is entered into LAMA, the City's Land Management Software, and the complaint is handled as any other zoning violation. A Zoning Inspector performs an inspection of the property to determine if a violation exists. If the inspector is able to find a violation, he/she will cite the property owner and send a violation letter. The violation letters typically give the property owner 30 days to come into compliance by either ceasing illegal use of the property or applying for the appropriate license. If corrective action is not taken by the property owner within 30 days, then legal action in the form of an adjudication hearing can take place. If the adjudication hearing officer finds the property owner guilty, a maximum fine of $500 can be imposed per Louisiana State Revised Statute Title 33. The Department of Safety and Permits hasn't received any complaints about Adult Live Entertainment uses during the past seven years.

ABO violations

According to Chapter 10 of the City Municipal Code, the Department of Police has the duty and authority to enforce the provisions of the City Code Chapter regulating alcoholic beverages. The Police Department has the duty to make investigations of all persons holding city alcoholic beverage permits. Violations of any state laws or city ordinances are cause for suspension or revocation, or remedial sanctions of a permit shall be imposed for permitting illegal and improper conduct. Examples may include disturbing the peace or obscene, lewd, sexually indecent, immoral or improper conduct taking place on the licensed premise.

The Law Department handles ABO violations for noise, aggressive barkers, criminal activities, etc. When a complaint is received, Alcoholic Beverage Control inspectors start an investigation to review the operation requirements of such establishment such as security details, operating hour limitations, and live entertainment limitations. Two courses of action are possible when requirements are not met. Either a consent judgment is issued on an agreement between the business owner and the City Attorney, or the owner has to appear in front of the Alcoholic Beverage Control Board. If the consent judgment is broken, the establishment has to shut down for 90 days. When an Alcoholic Beverage license is revoked, no ABO license can be given to that location in the following year. If the use was legal non-conforming, it then loses its legal non-conforming status.

The enforcement division of the Louisiana Office and Tobacco Control (ATC) also ensures the lawful compliance of all alcoholic beverage outlets in Louisiana. ATC can both revoke the ABO

license of the establishment subject to a violation, but can also prevent the issuance of another alcoholic beverage license at this site.

6. State Regulations

Most of the restrictions on operations of Adult Live Performance Venues are set forth in Section 90 of the Alcoholic Beverage Control law. Aside from general prohibited acts such as sales under age 21, prostitution, and possession or sale of narcotics, these regulations include performance restrictions. Sexual acts, touching of the breasts, buttocks, anus or genitals, display of pubic hair, genitals or nipple of the female breast are forbidden. Entertainers whose breasts or buttocks are exposed to view have to perform only upon a stage at least 18 inches above the floor and removed at least 3 feet from patrons. (See Appendix 5) Additionally, Statutes 15:541.1 mandates that adult businesses post National Human Trafficking Resource Center Hotline Posters.

Anyone that is determined in violation of these provisions shall be fined between one hundred and five hundred dollars or imprisoned between thirty days and six months.

7. Constitutional issues / Case Law

Regulations imposed by local government on Adult Live Performance Venues can cause constitutional issues because the First Amendment's guarantee of freedom of expression protects many forms of controversial expression and non-obscene sexually oriented media, including nude dancing.

The basic First Amendment principles that relate to nude dancing are:

- It protects speech on a wide variety of topics including arts and entertainment.
- It protects not only verbal communication but also certain forms of expressive conduct.
- It protects expression that some people may find offensive or disagreeable.
- It protects sexual expression as long as it does not meet the legal definition of obscenity.
- It does not equate nudity with obscenity.

Pursuant to the Supreme Court, nude or topless dancing is expressive conduct (symbolic speech) that is "marginally" within the First Amendment, and entitled to some protection (the Court has noted that it is "only within the outer ambit of the First Amendment's protection."). Barnes v. Glen Theatre, Inc. 501 U.S. 560 (1991). But adult businesses, including strip clubs, are subject to zoning and other licensing requirements. Young v. Am. Mini Theatres, Inc., 427 U.S. 50 (1976). Furthermore, a City's interest in combating the negative secondary effects associated with adult entertainment establishments can be unrelated to the suppression of the erotic messages conveyed by nude dancing. City of Erie v. Pap's A.M. tdba "Kandyland," 529 U.S. 277 (2000). Therefore, cities may enact laws aimed at reducing the negative secondary effects of adult entertainment businesses without running afoul of the First Amendment, even if the regulations may have some impact on speech. City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986).

Relative to ordinances that restrict nude dancing, the Supreme Court has noted that the State's interest in preventing harmful secondary effects is not necessarily related to the suppression of

expression. City of Erie v. Pap's A.M. tdba "Kandyland," 529 U.S. 277 (2000). "In trying to control the secondary effects of nude dancing, the ordinance seeks to deter crime and the other deleterious effects caused by the presence of such an establishment in the neighborhood." Id. at 293.

Basically, the Supreme Court has held that laws impacting adult entertainment businesses must be content neutral, narrowly tailored and address their negative secondary effects, and not the conduct of nude dancing. Any recommendation stemming from the study should adhere to addressing negative secondary effects, not the conduct itself.

Many cities have explored the correlation between adult uses and negative secondary effects.

C. Assessment of Impacts of Adult Live Performance Venues

There is a significant amount of study by planners, criminologists, and public health officials dedicated to adult uses. These uses really became the subject of intense study beginning in the late-1970's, with the rise of adult movie theaters, peep shows, book stores, and live entertainment venues. The majority of these studies focused on determining whether there is a link between increases in criminal activity or lowering property values and the locations of adult uses of all kinds. There is also research regarding strip clubs and potential public health impacts on workers and surrounding neighborhoods. In the following section, the staff will summarize the findings of various studies regarding the secondary effects of adult uses and provide three case studies documenting how some cities are responding to those effects.

1. Secondary Effects Theoretical Underpinnings

In a report written to the City Attorney of the City of Los Angeles in 2007, Richard McCleary relies on the routine activity theory to link the relationship between crime and adult uses. The routine activity theory is used to explain why crime might be happening at certain 'hotspots.' The National Institute of Justice states that this theory "suggests that crime occurs when a motivated offender, a suitable target, and the lack of capable guardian converge in the same place at the same time.[47] Tailored to the specifics of adult uses, McCleary suggests adult uses create an environment with a high density of suitable targets that attract offenders looking for "soft targets".[48] "Furthermore adult use patrons are said to be soft targets for three reasons: they are disproportionately male, open to vice overtures, and reluctant to report victimizations to the police."[49] This is compounded even more when alcohol is added to the equation.[50] McCleary states that these offenders select sites with suitable targets and low police presence.[51] When applied to Bourbon Street, one could argue that adult live entertainment venues are one of the few closed-door entertainment venues on the street, concealing the activities within. Naturally, this is to conceal the nature of these uses from public view, but could also have the effect of

[47] Why Crime Occurs in Hot Spots. National Insitute of Justice. 14 October 2009. http://www.nij.gov/topics/law-enforcement/strategies/hot-spot-policing/pages/why-hot-spots-occur.aspx#routineactivity.
[48] McCleary, Richard. Crime-Related Secondary Effects of Sexually-Oriented Businesses. Report to the City Attorney. Los Angeles. 2007: p. 2.
[49] Ibid.
[50] Ibid. p. 4.
[51] Ibid. p. 14.

lessening the effectiveness of street patrolling and as a result make them a more desirable target for a rational offender.

In their review of past studies on the secondary effects of adult uses, McCord and Tewksbury discussed the importance of anonymity in adult use districts and how this creates an atmosphere that is conducive for increased criminal activity.[52] Since anonymity is important, patrons are less likely to report criminal activity for fear of being discovered. Criminals searching for easy targets presumably know this and prey on people in these areas for that reason. McCord and Tewksbury further state that adult uses do not benefit from 'strict control' of the inside of use for this reason as well, further contributing to an environment in which criminal activity can thrive.[53] Conversations with local club owners and operators refute these study claims, as all owners and operators stressed that safety within the club is a priority. McCord and Tewksbury also argue that the typical location of adult uses could contribute to the amplification of criminal activity. The researchers suggest that these uses are typically located in "neighborhoods of social disorganization and social economic status where the community lacks the political power to resist their placement."[54] Arguably, this is not the case in the French Quarter as the neighborhood has high property values, is a focal point of the city and the main attraction for visitors.

2. Secondary Effects Study Findings

Studies from various municipalities and criminologists have attempted to prove a link between adult uses and greater incidence of criminal activity. Many of these studies have been conducted by municipalities in order to evaluate the adult use industry in their community. Other studies have been conducted by criminologists conducting research of the secondary effects of adult uses, sometimes at the request of municipalities. The majority of these studies focus on adult uses collectively, meaning that the impacts of individual types of adult uses typically are not measured; rather, the impacts of adult uses as a whole are considered. With that said, the composition of the adult use market in each city varies. Some studies focused mostly on adult live entertainment (Seattle, Charlotte) and some on theaters, book stores, and video stores (Los Angeles).

Indianapolis, Indiana (1984)[55]

The City of Indianapolis responded to an increase in adult uses in 1984 by conducting a study to determine if these businesses created any secondary impacts, specifically regarding crime and depressed property values. The City conducted the survey of 6 areas (14% of adult use areas in the city at that time) which contained varying numbers of adult uses in them. The City compared these results to 6 control sites that were chosen based on similar development characteristics as

[52] McCord and Tewksbury. Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses. Louisville, KY. 2013: p. 5.
[53] McCord and Tewksbury. Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses. Louisville, KY. 2013: p. 6.
[54] Ibid. p. 7.
[55] City of Indianapolis, IN. Adult Entertainment Businesses in Indianapolis: An Analysis. Department of Metropolitan Development, Division of Planning. 1984.

the adult use sites. The City of Indianapolis found that the study sites had a crime rate that was 19% higher than the control sites over a five year period (1978 – 1982). Even more significant was the difference in the incidences of sex-related crime between the study area and the control area. The sites with adult uses had a 77 percent higher sex-related crime rate than the control sites with no adult uses. The Indianapolis study also collected data on average mortgage values for study and control sites in 1979 for property value comparison. The study found that properties in areas with adult uses appreciated at a lower rate than those without (8.7% versus 24.7%). The final data presented in the Indianapolis study were the results of a survey of real estate appraisers from around the United States. This survey asked the appraisers if locating of an adult bookstore would have any impacts on surrounding property values. Eighty percent (80%) of respondents believed that the location of an adult bookstore within one-block of a residential property would decrease property values, compared to seventy-two percent (72%) for commercial properties. Survey results also found that the majority of appraisers believe these negative effects were "negligible" at a distance of three blocks.

New York City, New York (1994)[56]

New York City's 1994 study came at a time when adult uses were proliferating in the city. The report found that the number of adult video and bookstores had increased by almost 300 percent in the period between 1984 and 1993, and the number of adult live entertainment venues increased by 26 percent. The report attributes some of the extreme increase in video and bookstores to the changes in technology and the availability of cheap pornographic materials. The proliferation of adult video store could also explain the 52 percent decline of adult theaters during that same time period. Also important to New York City's study of adult uses is to note that over 75 percent of adult use establishment operating in 1994 were located in districts that also permitted residences.

In order to measure any potential impacts on crime adult uses may have, the New York City study analyzed 3 months of calls-for-service in 1993 for blocks with adult uses and control sites with similar land uses. The results of this analysis was inconclusive as of the 6 study areas, 3 of the control areas had more complaints, 2 of the study areas had the more complaints, and one study area did not have any complaints reports. The New York City study also included an analysis of property assessments to determine the percent change between 1986 and 1992. This data was analyzed for both the control and study areas, as wells as community district and borough levels. In the Times Square study area, there was a significant difference in the increase in property value between adult use properties and non-adult use properties. The study block experienced an increase in property values of 68% compared to the control blocks' assessment experiencing an increase of 165%.

The New York City study concluded that adult uses in the city did create secondary impacts including the depressed increases in property value. The City survey also found that these uses are generally perceived by its neighbors to generate additional negative impacts such as loitering and a loss of nighttime business. These findings in combination with the findings of studies in other communities led the City of New York to recommend a zoning amendment that dispersed adult uses and ensured the separation of adult uses from sensitive uses. New York City's

[56] City of New York, NY. Adult Entertainment Study. Department of City Planning. Second Printing. November 1994.

approach and the outcomes of this legislation are considered in further detail in a later section of this report.

Denver, Colorado (1998)[57]

The City of Denver's adult use study focused on all of the city's adult uses: adult bookstores, theaters, and cabarets. The City conducted a survey of residents and business owners neighboring these uses and analyzed adult uses' correlation with the incidence of criminal activity and effect on property values. The study utilized police calls-for-service from 1995 and 1996 found a proportionately higher incidence of crime at and around adult uses than the city as a whole. The study's analysis of property values from 1994 to 1997 suggested that commercial property values for properties on adult uses blocks were typically less than other surrounding commercial properties. The study also found that residential properties abutting adult use blocks had lower values than the surrounding area, a finding also found for residential properties located near non-adult businesses blocks.

The City of Denver also surveyed a mix of 82 residents and business owners that lived or worked within one block of an adult use. This survey found that 56% of nearby business owners reported a negative impact from being located within close proximity to an adult use, compared to 69% of surveyed residents. The report explains that this finding is likely due to the operating hours of the adult uses, some of which operate 24 hours a day. While businesses often close relatively early in the evening, an adult use business is likely to be open the same time residents are likely to be at home.

Charlotte, North Carolina (2004)[58]

In 2004, Linz et al. conducted a study of 20 adult live entertainment venues in Charlotte. The researchers studied the police calls for service to the venues as well as control sites selected to show if there is any relative increase in crime reporting for adult uses. The researchers utilized data for crimes reported between 1998 and 2000 for the area within a 500-foot and 1,000 foot radius of the adult live entertainment venues and control sites. In order to control for variables related to increased crime risk, the researchers sought control sites that were matched similarly in certain demographic indicators with the adult live entertainment venues. This resulted in three groupings by crime risk: high, medium, and low, all with a corresponding control site. The control sites included two fast food restaurants and one gas station. The results of the study concluded that once controlled for crime risk indicators, that the adult live entertainment venues were not responsible for increased criminal activity. In many cases, the radii around the adult live entertainment venues reported significantly less crimes than the control sites. The researchers' concluding thoughts suggest that adult uses might not be generating the crime expected because they may have evolved from their earlier incarnations in the 1960s and 1970s. This evolution could have removed these uses from the societal fringe and established them as

[57] City of Denver, CO. A Report on the Secondary Impact of Adult Use Businesses in the City of Denver, prepared by multiple city departments for Denver City Council. January 1998.

[58] Linz, D., Paul, B., Land, K. C., Williams, J. R., & Ezell, M. E. An Examination of the Assumption that Adult Businesses Are Associated with Crime in Surrounding Areas: A Secondary Effects Study in Charlotte, North Carolina. Law Soc Rev Law Society Review, 38(1), 69-104: 2004.

legitimate businesses. The author also suggests that it is possible that crime in and around adult uses may be reported at a lower rate due to the patrons' desire for anonymity.

San Diego, California (2006)[59]

In response to the "assumptions made by the government and by conservative religious policy advocates," Linz, Paul, and Yao studied 19 adult theaters operating in San Diego in order to determine if these uses created increased incidents of criminal activity. The study analyzed police calls-for-service between 1997 to 2001 for the area 1,000 feet on either side of each adult theater along the street. Calls-for-service for the control areas were collected 1,000 feet outside of the adult theater study areas and included no other adult uses. The results showed that the average calls-for-service for the areas surrounding the adult theaters was almost 14 percent higher than the control areas. Though the average calls-for-service was higher in around the adult theaters, the researchers concluded that the increased rate was not statistically significant. The researchers also analyzed the calls-for-service that occurred only between the hours of 2am and 6am, and though the areas immediately surrounding the adult theaters had a higher rate of calls-for-service, the researchers determined that increased number was not significantly significant. Linz, Paul, and Yao determined that their statistically analysis did not prove that calls-for-service to adult theaters in San Diego were significantly greater than the control areas without adult theaters.

Seattle, Washington (2006)[60]

Seattle's study focused strictly on the land use impacts of adult live entertainment (adult cabarets) establishments. The study discussed the pros and cons of dispersal and concentration models of regulating these businesses, while balancing the need to honor the constitutional rights of these uses. The study also explored various studies conducted by other communities to determine the potential impacts of adult live entertainment, including effects to property values and crime. In conclusion, Seattle recommended a land use strategy of concentrating adult live entertainment uses in certain industrial areas of the city. The report admitted that this recommendation could have adverse impacts on industrial recruitment, if certain employees/employers are repelled by the proximity of adult uses in those industrial areas. With that said, the recommendation was grounded in the perceived need to concentrate the uses in an easily monitored area that would be the most resistant to potential impacts in property value and crime.

Los Angeles, California (2007)[61]

Richard McCleary, a Professor at the University of California, Irvine, was asked to present a report regarding the secondary effects of adult uses to the City Attorney of Los Angeles. This study focused on adult bookstores and adult bookstores with viewing rooms. McCleary found different patterns of the ambient crime risk associated with each adult use type. The adult

[59] Linz, D., Paul, B., & Yao, M. Z. Peep show establishments, police activity, public place, and time: A study of secondary effects in San Diego, California. Journal of Sex Research, 43(2), 182-193: 2006.
[60] City of Seattle, WA. Adult Cabarets in Seattle. Director's Report, Department of Planning and Development. 28 March 2006.
[61] McCleary, Richard. Crime-Related Secondary Effects of Sexually-Oriented Businesses. Report to the City Attorney. Los Angeles. 2007.

bookstores with viewing rooms was found to be very close to that location, whereas the adult bookstore without viewing rooms had secondary effects that extended well beyond the location of the use. In summary, the author found that both adult use types pose ambient risks of criminal activity, that the form by which those risks manifest themselves are different and require different policing strategies, and that "(a)s a hypothetical pedestrian walks toward the site, victimization risk rises; walking away from the site, victimization risk falls."

Jefferson Parish, Louisiana (2010)[62]

Jefferson Parish conducted a study of adult uses and bars located in the Fat City neighborhood of the Parish. The study of the impacts of these uses were a part of the implementation of the strategic plan of the neighborhood and led to the adoption of neighborhood specific zoning districts with enhanced design standards that promoted the future vision of the area as a walkable mixed-use neighborhood. At that time, Fat City had 3 adult uses (one "establishment", two cabarets) and 20 bars, mostly centered on the only East – West street in the neighborhood, 18th Street. Also important to note is that in 1985, Jefferson Parish adopted zoning amendments that made the Fat City adult uses and bars nonconforming uses. Though the total number of bars and adult uses decreased by 38% from 1985 to 2010, the neighborhood was still experiencing the negative effects of these uses. The Parish determined that simply making these uses nonconforming was not successful in revitalizing the area to the extent that the vision of Fat City would be achieved.

The Fat City study relied on calls for service to determine if the bars and adult uses were generating any negative secondary impacts. The results indicated that the core area along 18th Street accounted for nearly half of all service calls in the one-half mile area studied. The study results also stated that the majority of those calls occurred during late night-early morning hours; the times when bars and adult uses are the only uses open. The study concluded that the negative secondary impacts generated by these uses, which were nonconforming uses at that time, were inconsistent with the vision for the Fat City neighborhood. All adult uses in Fat City have since closed.

Louisville, Kentucky (2013)[63]

McCord and Tewksbury studied 30 adult uses in the Louisville Metropolitan area, 21 of which had adult live entertainment. The researchers studied one year of crime data in the areas surrounding the adult uses and control intersections for comparison. They found that within 500 feet of an adult use, the presence of an adult use was the most influential variable on the crime rates in that range. Further, this significant influence on crime continued up to 1,000 feet from the establishment, though they argued it was less influential than other existing variables within the community. McCord and Tewksbury argue that adult uses attract a clientele that are easy targets for criminal activity, and that criminals are likely to prey on these victims close to the actual establishment. The researchers also made point to declare that the study methodology did not distinguish between adult uses with live entertainment and retail stores. Though this point is

[62] Parish of Jefferson, LA. Zoning and Comprehensive Plan Text and Map Study Report: Fat City. Department of Planning. 19 August 2010.
[63] McCord and Tewksbury. Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analyses. Louisville, KY. 2013.

made in the study, it is also important to recognize that adult uses with live entertainment represented 70 percent of uses in the study.

American Planning Association Planning Advisory Service Report (2000)[64]

The American Planning Association published a comprehensive study of adult uses, their potential land use impacts, and how communities are regulating them. This study was published in 2000, and also included a significant report of the history of adult uses and a summary of findings. One of the conclusions this study was that adult uses with live entertainment had greater secondary impacts than retail oriented adult uses with no on-premises entertainment. The report makes the analogy that "the comparison is somewhat analogous to a liquor store and a bar – both sell alcohol, but the one that encourages people to stay and enjoy the alcohol there has a greater effect on the community that the one that simply provides retail, take-out goods." The report continues to state that though some studies conclude that adult uses attract crime and some studies state that they do not, no study concludes that adult uses are compatible with residential and institutional uses. It also states that recommendations for distances requirements are well founded up to 1,500 and should be tailored to the individual community. With that said, the PAS report suggests that any distance requirement prescribed for adult live entertainment should be the same as for bars with live entertainment, because of similarities in land-use impacts.

Adult uses and potential effects on health

A study conducted by Johns Hopkins University from 2008 to 2009 focused on determining if the "strip club environment" led to behaviors that increased the risk of HIV/STI for performers.[65] Data for the study were collected through surveys completed by performers in clubs located in The Block area of Baltimore. The Block is a dense collection of adult uses located in about a two-block area of the city near the downtown area and a few blocks from Baltimore Harbor. The study focused on potential health impacts such as increased incidence of unprotect sex and drug use. The study admits that the responses were gathered from willing participants and therefore the results cannot necessarily be extrapolated to all performers in this area or nationwide. Even so, the results point to an environment that contributes to increased drug use and incidences of unprotected sex in and outside of their workplaces. This conclusion is supported by the findings of the study in which 34% of performers began using drugs after they began dancing, and 67% engaged in transactional sex after they began dancing. The researchers concluded that interventions aimed to decrease the spread of HIV/STIs should be focused toward the adult live entertainment 'environment' as opposed to the individual performer.

Another concern regarding the adult live entertainment venues is that they can be an environment in which human trafficking is a concern. The Modern Slavery Project released a report in 2014 that discusses findings from the analysis of data collected by the National Human Trafficking Resource Center (NHTRC).[66] The data represents calls to the Center's hotline, some of which

[64] Kelly and Cooper. Everything You Always Wanted to Know About Regulating Sex Businesses. Planning Advisory Service PAS Report No. 495-496. Chicago: American Planning Association, 2000.

[65] Reuben, J., Serio-Chapman, C., Welsh, C., Matens, R., Sherman, S.G. Correlates of Current Transactional Sex Among a Sample of Female Exotic Dancers in Baltimore, MD. J Urban Health. April 2011, 88(2): 342 – 51.

[66] Murphy and Ea. The Louisiana Homan Trafficking Report. The Modern Slavery Research Project at Loyola University. New Orleans, LA: 2014.

result in potential instance of human trafficking. The report found that 68% of potential trafficking cases related to sex trafficking. The majority of the potential sex trafficking cases were "pimp-controlled" sex workers, and one of the cases reported to be in the "hostess / strip club" venue. The report stresses that these numbers are far from complete in reporting the total number of people being trafficked, because this data represents self-reported cases to the national hotline. Even so, adult live entertainment venues in the United States have been found to be sources of human trafficking. The NHTRC's 2016 data[67], (current through March 2016) shows that the "Hostess/Strip Club" venues have the most trafficking cases of any other type of venue/industry with 144 cases followed by Commercial Front Brothels (140), and Online Ad, Venue Unknown (82). This is a departure from the data from previous years in which Commercial Front Brothels and Hotel/Motel Based venues were typically in the top one or two venues/industries.

[67] https://traffickingresourcecenter.org/states

3. Case Studies: Concentration vs. Dispersal

Boston, Massachusetts

The City of Boston concentrated all of its adult uses in one area centered on Washington Street named the "Combat Zone." At the time, this area was bookended by vacant lots and received little development pressure, which the City found to be an ideal location for adult uses. By the early 1970's a portion of Washington Street in the City of Boston became the well-recognized center for adult uses in Boston.

By 1974, these uses continued to proliferate in this area and residents and business owners in surrounding neighborhoods became increasingly concerned that the Combat Zone would spread beyond its confines on Washington Street.[68] In reaction to these growing concerns, the Boston Redevelopment Authority (BRA) attempted to devise a plan to address these fears. One initial thought of the agency was to mimic the Detroit strategy, to disperse adult uses throughout the city to avoid the potential secondary effects of large concentrations of these uses.[69] The BRA decided against this strategy for fear of spreading adult uses throughout the City, and that with Boston's relatively compact municipal footprint, adult uses would likely be located near sensitive uses. Instead, the BRA crowned the Combat Zone the city's adult entertainment district and proposed a number of public and private investments that were aimed at changing the seedy reputation of the area. These investments included new sidewalks, streets, lighting, and the creation of a new public park to be named "Liberty Tree Park", after the proposed rebranding of the area.[70] The City was less successful in promoting the renovation of buildings in the Combat Zone, a source a serious conflict between the City and property owners. Additionally, the plan never seemed to have the buy-in from the police department, which was reportedly offended that a "…bunch of city planners were telling them how to control vice in the city."[71] Others complained that the adult entertainment district designation legitimized the Combat Zone and only made the issues worse in the area.[72] The BRA's plan was adopted, but was not a complete success. The lack of investment by the property owners, coupled with a mayor that was seen as lax on the issue of prostitution led to the further decline of the area.[73]

Giorlandino suggests that three events occurred in 1976 that finally pushed the City to crackdown on the activities in the Combat Zone: 1) an internal investigation of the police department that reported widespread corruption within the department, 2) the appointment of a new police chief that was motivated to clean up the Combat Zone, and 3) the high-profile murder of a Harvard student in the Combat Zone.[74] The police department focused its effort to clean up the Combat Zone and was successful in closing four establishments. As time went on, the police realized that the crackdown of this area could not be done alone, especially with the adult entertainment zoning protections. As mentioned before, the City of Boston is very compact and land is scarce, particularly in or near the downtown area. This scarcity of land coupled with the relatively low rents of the Combat Zone eventually drove development pressures to the area.

[68] Giorlandino, Salvatore M. The Origin, Development, and Decline of Boston's Adult Entertainment District: The Combat Zone. Massachusetts Institute of Technology. 15 January 1986: p. 18.
[69] Ibid. p. 21.
[70] Ibid. p. 24.
[71] Ibid. p. 25.
[72] Ibid. p. 26.
[73] Ibid. p. 37-38.
[74] Ibid. p. 40.

The then-Mayor Raymond Flynn recognized this and began promoting the district as an area ripe for redevelopment.[75] These development pressures, the proliferation of video tapes, and the spread of adult uses into suburban communities all contributed to the eventual demise of the Combat Zone as it was once known.

Figure 14. Boston's Combat Zone before and after[76]

New York City, New York

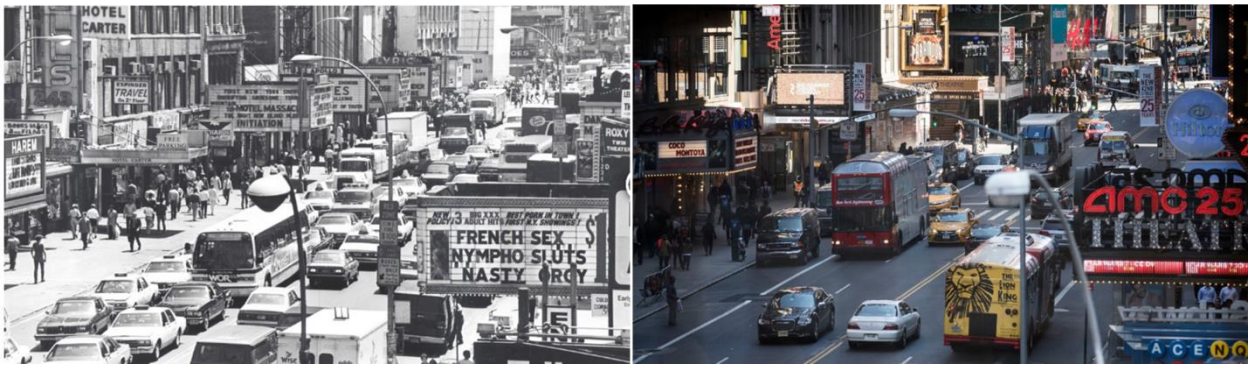
As mentioned in a previous section of this report, New York City found that the concentrations of adult uses in the city were causing negative secondary effects including crime and depressed property values. The City adopted land use regulations that dispersed adult uses and specifically, implemented distance requirements from adult uses and residential uses and from other adult uses. At the time of the 1994 New York City study, there was a concentration of adult uses in Time Square, which was also an important tourist area due to the adjacent theaters, restaurants, and its central location. The City found that the concentration of these uses in Times Square and other parts of the city did not allow these areas to realize their full development potential. By dispersing adult uses, the City would avoid creating or maintaining certain concentrated zones of adult uses which could be very unattractive to visitors and residents of the city. The dispersal of adult uses was mostly to industrial areas, much like Seattle's approach, which are theoretically more resistant to the potential impacts of adult uses. This zoning approach was met with stiff resistance from the adult use owners in the city, mainly because it amortized nonconforming adult uses after one-year's time. This was predicted to lower the number of adult uses in Times Square down to 6 or 8.[77] The new zoning requirements were challenged and eventually upheld as constitutional because of other locational allowances for adult uses throughout the city. The 1995 zoning amendments and subsequent confirmation by the courts did not mark the end of the City's tweaking of their adult use regulations. The 1995 amendments defined adult uses as a use in which a "substantial portion" of the use is dedicated to providing adult products or entertainment.[78] Predictably, this led to the City having to determine what constituted a

[75] Ibid. p. 43.
[76] Knothe, Alli. Now and then: Chinatown, Combat Zone. Boston.com. http://archive.boston.com/business/gallery/combat_zone_now_and_then?pg=10
[77] Maureen Fan, Jon R., Sorensen Bill, Hutchinson Frank, Lombardi John, Schultz. "State Gives Porn the Red Light City Can Oust Sex Shops, Clubs." New York Daily News. 25 February 1998: 3. Web. http://www.nydailynews.com/archives/news/state-porn-red-light-city-oust-sex-shops-clubs-article-1.799215.
[78] Salkin, Patricia. "NY Appellate Court Strikes Down Amendments to New York City's Adult Use Zoning Regulations." Law of the Land. 5 September 2015: 6. Web. https://lawoftheland.wordpress.com/2015/09/05/ny-appellate-court-strikes-down-amendments-to-new-york-citys-

substantial portion, to which a 60/40 formula was devised. Some establishments sought to exploit this formula by providing the necessary 60 percent of non-adult goods and dedicating the remaining 40 percent to their adult use. The New York Times reported an example of adult live entertainment venues adding non-adult spaces in which food service and even Shakespeare performances were held.[79] The City proposed amendments to the adult uses regulations in an attempt to end this apparent subversion of the intent of the 1995 zoning amendments.

Concurrent with the City's efforts to draft adult use zoning regulations were several planning efforts aimed towards creating a new vision for Times Square. In the 1980's, then-Mayor Edward Koch pursued a Times Square revitalization plan that included the construction of four skyscrapers, and the use of eminent domain to take over undesirable uses in the area.[80] This proposal attracted dozens of lawsuits and eventually failed with the downturn in the economy in 1991. The economic downturn, and failure of the 1980's revitalization plan provided an opportunity to create a new vision for the Times Square area. This new vision harnessed the historic vibrancy of Times Square and promoted that as an attraction along with entertainment options. The New York Times attributes this turnaround to one of the first major tenants to invest in the area: Disney.[81] The Times humorously points out that Disney is in part actually responsible for the Disneyfication of Times Square. This decision for Disney to renovate a theater in Times Square was occurring at the same time as the New York City Department of Planning was considering the regulation of adult uses. Already in place at this time, was an ordinance requiring big, dazzling signage as a part of developments in Times Square, aimed to fulfill the vision of a vibrant commercial and theater district. The adoption of the adult use zoning amendments combined with the re-envisioning of the Times Square area, appear to have spurred significant change, as there has been a 74 percent increase in number of tourists since 1993, a total of 12 million theater goers reported in 2010, and a reported violent crime rate that is one-tenth of what it was in 1994.[82]

Figure 15. New York City's Times Square before and after the dispersal of adult uses[83]



adult-use-zoning-regulations-as-unconstitutional/.

[79] Saulny, Susan. "Judge Rules Against Giuliani Plan on Sex Shops." The New York Times. 11 September 2003: 1. Web. http://www.nytimes.com/2003/09/11/nyregion/judge-rules-against-giuliani-plan-on-sex-shops.html.

[80] Bagli, Charles V. "After 30 Years, Times Square Rebirth is Complete." The New York Times. 3 December 2010: 6. Web. http://www.nytimes.com/2010/12/04/nyregion/04square.html?_r=0.

[81] Ibid.

[82] Lieberman, Samuel. "Times Square Crime has Dropped so Much That the Police Station is Losing its Jail Cell." New York. 18 February 2016: 1. Web. http://nymag.com/daily/intelligencer/2016/02/times-square-police-station-to-get-a-makeover.html#.

[83] Chakraborty, Deblina. When Times Square was sleazy. CNN.com. 18 April 2016. http://www.cnn.com/2016/04/18/us/80s-times-square-then-and-now/

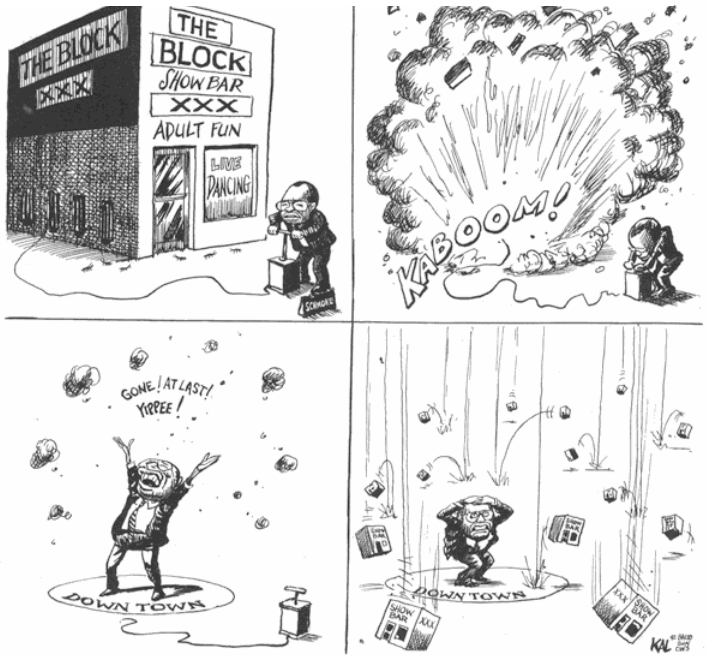
Baltimore, Maryland

Unlike New York City, the City of Baltimore subscribes to the concentration model of locating adult uses. The 400 block of East Baltimore Street, known as The Block, is located within close proximity of Baltimore City Hall, police headquarters, and several blocks from the Inner Harbor's waterfront entertainment area. The Block notably came under fire during the terms of former Mayor Kurt Schmoke, who took several different approaches to curb what many viewed as the degradation of the once thriving area.

In the early 1990's, Mayor Schmoke considered submitting legislation that would have shut down the adult uses on The Block for good, citing the proliferation of drugs, prostitution, and other crimes plaguing the area. Though the adult uses would have been closed on The Block, legally there still had to be a place for these businesses within the City. Therefore the strategy, much like New York City's would have been to break up a former concentration of adult uses and disperse those in areas that would be less impacted by any negative impacts the uses generate. He withdrew the legislation after consideration of the effects the dispersal would have on the City. Schmoke specifically pointed to the influence that a political cartoon had on him.[84] The drawing depicts Mayor Schmoke ridding Baltimore of The Block only to have a dozen smaller Blocks rain down on him. The former mayor admitted that this drawing had a powerful effect on him while considering the impacts of dispersing adult uses throughout the City.

Instead of dispersing adult uses, in 1994 the City of Baltimore created a number of changes to the licensing of adult uses in order to mitigate negative impacts. The adopted ordinance included regulations that limited signage, barkers in front of clubs, and established rules for the suspension and revocation of licenses.[85] The changes also placed the burden of enforcement onto the Department of Housing and Community Development. The adopted regulations seemed to be a solid compromise to improve the aesthetics of the street and to curb illegal activity occurring in the clubs, because the threat of fines or a forced closure was possible. A 1999 Baltimore Sun article even states that "(t)he city has spruced up The Block with new lampposts and brick

Figure 16. 1992 Baltimore Sun political cartoon drawn by Kevin Kallaugher (KAL) showing then-Mayor Schmoke "Blowing up The Block"



[84] Schmoke, Kurt. "The mayor: Blowing up The Block." The Baltimore Sun. 10 May 2012: 2. Web. http://articles.baltimoresun.com/2012-05-10/entertainment/bs-sm-kurt-schmoke-20120513_1_zoning-action-cartoon-frame.

[85] Snyder, Brad. "Restrictions for Block approved." The Baltimore Sun. 10 December 1994: 2. Web. http://articles.baltimoresun.com/1994-12-10/news/1994344106_1_blaze-starr-ambridge-adult-entertainment.

sidewalks in an effort to encourage club owners to create a more tourist-friendly atmosphere similar to New Orleans' French Quarter."[86] Again, the desire to 'spruce-up' The Block is no surprise considering its proximity to the highly successful tourist destination, the Inner Harbor. Ultimately, the 1994 regulations were not successful, leading Mayor Schmoke to again call for an overhaul of the City requirements.

The breakdown in the 1994 regulatory regime appear to have begun with enforcement, which was placed on the Department of Housing and Community Development, a task Housing Commissioner Daniel P. Henson III admitted his department was not equipped to handle.[87] Ultimately, the enforcement responsibilities were transferred to the Baltimore Board of Liquor License Commissioners. In the years immediately after that transfer of enforcement authority, the City issued a substantial amount of fines and suspensions, but did not revoke any licenses. The Baltimore Sun reported that between February 2000 and November 16, 2002, the Commission issued a total of $105,000 in fines and 60 days of suspensions.[88] The same article details how the area is operating as usual, no matter the additional 'cost of doing business.' The article also mentioned that the City's mayor at the time, Martin O'Malley, did not have any intentions of dispersing adult uses, continuing former Mayor Schmoke's stance on the area.

4. Summary

The ongoing saga in Baltimore is an interesting departure from the stories out of New York City and Boston. The City of Baltimore, faced with a concentration of adult uses and the proliferation of crime and drugs in that particular area, mixed with the development pressures of the Inner Harbor pressing northward, decided that the concentration strategy is the best fit for its community. Again pointing to the political cartoon illustrating the potential dispersal of adult uses, the City decided over a decades-long period that finding a way to appropriately regulate adult uses and sift out the criminal element that seems to be attracted to these establishments would be the best approach. Boston's designation of an adult entertainment "Combat Zone" was viewed as a failed experiment until development pressures began to encroach into the area and eventually forced out the majority of the adult uses. New York City moved to aggressively disperse adult uses into areas deemed more capable of withstanding their effects, and armed with a new vision, Times Square was reborn into one of the most visited places in the City of New York. In both of those cases, prime location factored heavily in the revitalization. Though in the case of New York City it could be argued that the amortization of nonconforming adult uses in that area created an environment that was more conducive to redevelopment and further promoted the vision the City leaders had in mind. This point is especially important because it appears to confirm the NYC Department of City Planning's 1994 study finding that redevelopment of the area was suppressed by the concentration of adult uses, and that even if those uses are not directly causing crime, they are deterring investment in the area.

The concentration of adult live entertainment venues in New Orleans on Bourbon Street is not exactly the same situation as the three cities presented, but there are lessons to be learned from

[86] Shields, Gerard. "Block strip clubs lose zoning appeal." The Baltimore Sun. 28 April 1999: 2. Web. http://articles.baltimoresun.com/1999-04-28/news/9904280066_1_zoning-board-clubs-liquor-board.

[87] Daemmrich, JoAnna. "Schmoke seeks hearings on regulations for Block Call for public review generally well-received." The Baltimore Sun. 30 May 1997: 2. Web. http://articles.baltimoresun.com/1997-05-30/news/1997150066_1_schmoke-public-review-strip-clubs.

[88] Calvert, Scott. "The Block shows no signs of change." The Baltimore Sun. 16 November 2002: 3. Web. http://articles.baltimoresun.com/2002-11-16/news/0211160009_1_block-clubs-club-pussycat-rid.

each case. It is undeniable that Washington Street in Boston and Times Square in New York City have undergone extreme transformations from the time when each were heavily concentrated with adult uses. This was coupled with the individual cities' desire to reinvent these areas. Though Times Square has been a significant tourist draw for a century, it has now become *the* destination for tourists, so much so that the City recently closed portions of the street to allow more space for the increasing volumes of pedestrians. Conversely, Baltimore's Block has not undergone a significant transformation, though it has been reported that the opening of the strip club Norma Jean's, a more elegant strip club, might be a sign of the area improving.

Even though each city took different approaches toward regulating the adult use industry, all three admitted that these areas were problematic. NYC determined that adult uses needed to be set apart from each other, Boston allowed its adult entertainment industry to basically disappear, and Baltimore has been tweaking its enforcement mechanisms to eliminate the criminal element from preying on the adult uses on The Block. All three cities determined that significant intervention and attention to the concentration of these uses was necessary in order to protect the health, safety, and public welfare of their community.

In determining where the City of New Orleans lacks in current regulations, the staff reviewed municipal codes and zoning ordinances of several cities in the United States.

D. Nationwide Practices in Adult Live Performance Venues Regulations

The City Planning Commission researched the adult live performance venue regulations of 15 cities in an effort to better understand how these uses are regulated in other communities. The staff selected cities with similarities to New Orleans, whether similar in size, region, role as a travel destination, or any combination of these characteristics.

The geographical distribution of surveyed cities is spread fairly evenly, with Southeastern cities being the most represented group. This includes tourism-oriented cities like Nashville, TN, Fort Lauderdale and Key West, FL. Also included in the Southeastern cities are Columbia, SC, Jackson, MS and Biloxi, MS, which is a city that also has a relatively strong local tourism industry. The second most represented regional group is located in the Western United States and includes several cities that have all have a different approach to regulating Adult Live Performance Venues, including San Diego, CA, Las Vegas, NV and a city often cited for its inventive planning practices, Portland, OR. Other cities researched during this process include large Northeastern cities such as New York City, NY and Boston, MA as well as Mid- and Southwestern cities including Phoenix, AR, El Paso, TX, and Kansas City, MO. This selection includes a few of the cities that are part of the largest convention markets in the United States: Atlanta, Miami-Fort Lauderdale and Las Vegas.

Staff has organized this information into 11 categories:

1. Definitions
2. Zoning Districts
3. Overlay Districts
4. Spacing Requirement
5. Medallions

6. Business and Entertainer licenses
7. Use standards and design guidelines
8. Other types of regulation
9. Fines and enforcement
10. Amortizations
11. Cases uphold in court

The last category includes references to additional cities that were not included in the original sample because of lack of similarities with New Orleans. Most of the court cases researched involve cities that are significantly smaller than New Orleans. However, in an effort to understand what type of regulation on adult live entertainment does not infringe on the First Amendment, the Planning Commission staff also looked into the type of regulations that have been upheld by the Federal Court, regardless of the cities' characteristics.

In order to be constitutional, regulations of adult live entertainment and other adult uses cannot be taken as intended to limit access by adults to sexually oriented material, activity or expression, protected by the First Amendment of the United States Constitution. Rather, they can only be intended to be land use controls meant to regulate the harmful secondary effects of such uses only. Communities' ordinances addressed some or all of the components listed above either in the Zoning Code or Business License Code or combination thereof. The following section summarizes the different approaches taken in regulating adult live entertainment relative to the above listed components, and will then assess these regulations and describe what the City of New Orleans can take away from their experiences.

1. Aspects of Adult Live Entertainment Venues

Definitions

Communities typically have several definitions that fall under the term of "adult uses" or "sexually oriented businesses", or "adult entertainment". These include but are not limited to Adult Live Performance Venues". Other definitions falling under the "adult use" category include adult bookstores or video stores, adult cabarets, adult motion picture theaters, sexual device shops, or some variant of these.

Communities defined Adult Live Performance Venues in a similar way but named it in a variety of ways, using different terms including "adult entertainment establishment" (Atlanta, GA), "nude live entertainment" (El Paso, TX), "adult performance establishment (Key West, FL), or "adult nightclub" (Nashville, TN).

Definitions of the various communities are essentially the same, in that they refer to any establishment in which performers engage in displaying or exposing specified anatomical areas or specified sexual activities. Specified anatomical areas means less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the areola. Specified sexual activities mean erotic touching of human genitals, pubic region, buttock or female breast, masturbation, or sexual intercourse.

The majority of communities surveyed regulate all types of sexually oriented businesses the same way. For example, New York, Fort Lauderdale and El Paso have the same zoning regulations for adult bookstores, adult motion picture theaters and nude live entertainment clubs. Key West, FL also created similar regulations for adult bookstores, adult video stores, adult performance establishment, adult-themed merchandise stores, adult motion picture theaters and limited adult cabarets.[89]

Regulations of these uses are covered in the following sections.

Zoning Districts

Most zoning districts prohibit adult live entertainment altogether except in a few limited zoning districts. Typically, adult entertainment is allowed as a limited use in industrial and some commercial districts. New York, San Diego, Atlanta, Phoenix, Las Vegas, allow for adult uses in both commercial and industrial districts subject to conditions. Biloxi, has a more restrictive regulation as it only permits adult uses in its Waterfront District. It also forbids an adult use to be located on the same block as a residential or agricultural zoning district. Columbia also restricts these uses to the industrial districts only.

Portland, to the contrary, has an exceptionally permissive regulation. Any type of adult entertainment, including Adult Live Performance Venues can be located in most commercially zoned location, in the same way as other businesses, without any spacing requirements.

Las Vegas is the only city surveyed in which Adult Live Performance Venues, as well as all sexually oriented businesses, are only allowed as conditional uses. They are conditional uses only in the Commercial/Industrial District and the Industrial District and are prohibited in any other district. The application, called the Special Use application costs one hundred twenty five ($125) dollars. The applicant has to demonstrate that a number of considerations[90] have been addressed and the approval of a special use is warranted. In order to approve a proposed special use permit application, the Planning Commission has to determine that the proposed use can be

[89] Limited adult cabaret is differentiated from adult performance establishment in such a way that live performers have to be clothed or seminude and cannot expose specified anatomical areas or engage in specified sexual activities, unlike in adult performance establishments.

[90] 1. CIRCULATION: Number and location of access points to the property and the proposed structures, with particular references to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire.
2. PARKING AND LOADING: Location of off street parking and loading areas.
3. EFFECT ON ADJACENT OR NEIGHBORING PROPERTY: Effects of the proposed use on nearby property, including, but not limited to the effects of noise, glare, odor and traffic.
4. SERVICE ENTRANCES AND AREAS: Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.
5. UTILITIES: Location and availability of utilities.
6. SCREENING AND LANDSCAPING: Installation of screening and fencing where necessary to protect adjacent property.
7. SIGNS AND LIGHTING: Locations of exterior lighting and signs with reference to glare, traffic safety, economic effect and compatibility with other properties in the area.
8. OPEN SPACE: Location of required yards and other open spaces and preservation of existing trees and other natural features.
9. COMPATIBILITY: The level of general compatibility with nearby properties and the appropriateness of the use in relationship to other properties.
10. ANY OTHER REVIEW FACTORS WHICH THE BOARD OF ADJUSTMENT CONSIDERS TO BE APPROPRIATE TO THE PROPERTY IN QUESTION.

conducted in a manner that is harmonious and compatible with existing surrounding land uses, and with future surrounding land uses as projected by the General Plan. The subject site must be physically suitable for the type and intensity of land use being proposed, street or highway facilities providing access to the property are or will be adequate in size to meet the requirements of the proposed use, and approval of the special use permit at the site in question will not be inconsistent with or compromise the public health, safety and welfare or the overall objectives of the General Plan. The Planning Commission decision is final but can be appealed to City Council.

Overlay Districts

Some of the surveyed communities have created an overlay district to provide adequate locational opportunities for adult entertainment establishments while reasonably directing such uses to locations that minimize disruption both to the general community and specific land uses. This is the case of Kansas City, where Adult Live Performance Venues are allowed only in the CX/O adult entertainment overlay district. This overlay district can only be established if its boundaries are at least 1,000 feet from any place of worship, day care facilities, public park, educational institution, library, museum, cultural exhibit, community center, children's amusement park, residential building, or residential district. It can also only be established in combination with certain zoning districts (a few commercial districts and industrial districts). Several location and site requirements apply within the overlay district. In particular, the property on which such use is located must have a minimum of fifty (50) feet of street frontage and access must be provided from a major thoroughfare. Additional spacing requirements are discussed in the following section.

Nashville has also created an adult entertainment district within the downtown area of the city. Within the overlay district, adult entertainment establishments have to be located at least 500 feet from religious institutions, educational facilities, day cares, parks, and at least 150 feet from the property line of another adult entertainment establishment.

In Boston, adult entertainment venues are not allowed anywhere except in the adult entertainment overlay area within the General Business District. Boston is the only city surveyed that only used a concentration technique rather than dispersion. Most cities use a mix of both, where adult uses are allowed only in certain zoning districts or overlay (concentration) but where spacing requirements apply in that district (dispersion).

Spacing Requirements

Nearly all of the surveyed cities pair their zoning districts or overlay districts limitation with spacing requirements. Specific spacing requirements on all sexually oriented businesses, including Adult Live Performance Venues is one of the most common provisions found in local zoning regulations. Separation requirements include separation from other sexually oriented uses, separation from adjacent residential district boundaries, and separation from sensitive uses. Sensitive uses generally refer to schools, places of worship, parks, and in only a few cases include public owned buildings, day care centers, social service institutions or bars. Distance

requirements vary from city to city. Cities will often set a different distance requirement to separate a sexually oriented business from the type of use that is meant to be protected: either a another similar use, or a sensitive use, or a residential district. Measurements are usually made in a straight line, either from the adult use's property line or from the nearest portion of the building or structure used as a part of the premises of a regulated use to the nearest property line of any sensitive uses or residential district.

For example, Atlanta requires an adult use to be located 1,000 feet from another adult use or from a sensitive use, but only 500 feet from a residential district. Conversely, Jackson requires an adult use to be located 1,000 feet from sensitive uses and residential districts, but only 250 feet from similar adult uses. Fort Lauderdale is similar to Atlanta in that it requires an adult use to be 1000 feet of another existing adult use, but 500 feet from the property line of a residentially zoned property, a place of worship, a school or a public park. Columbia's minimum distance requirement is set at 1000 feet from any parcel occupied by another sexually oriented business, 700 feet from sensitive uses or any residence or property zoned for residential use. It is more prescriptive than most cities in that a spacing requirement applies not only tor residentially zoned property but to any residence. Kansas City requires all sexually oriented businesses to be located 1,000 feet from sensitive uses. It also doesn't allow more than two of these businesses within 1,500 feet of each other.

Nashville's requirements are less prescriptive in that it only requires 150 feet from similar adult use and 500 feet from sensitive uses. Similarly, Key West only has a 250 foot requirement from similar and sensitive uses. These uses are public parks, schools, licensed day care, churches or other place of religious worship, publicly owned buildings, and other adult entertainment establishments. Key West's ordinance acknowledges that due to the small geographic size of Key West, there is no commercial district that does not also contain residences and houses of worship; therefore, the Key West Planning Commission has recognized that there can be no substantial separation between these amiable uses and adult entertainment establishments.

Some of the cities will have the same distance requirement regardless of the type of use it is intended to protect. San Diego and El Paso establish a 1,000 feet separation requirement from any adult entertainment businesses or sensitive uses and from the property line of a residentially zoned property, which is a similar approach to what New Orleans requires outside of the Vieux Carré Entertainment District. Sensitive uses in San Diego include churches, schools, public parks and social service institutions.

New York zoning code requires that, where permitted, adult establishments (including adult bookstores, adult theaters, adult restaurants, and other adult commercial establishments) must be located at least 500 feet from sensitive uses or a residential district, or any other adult establishment. It also must be limited to one establishment per lot. In a similar way than New York, Columbia requires no more than one adult entertainment use per building.

Table 6. Representative Separation Standards

Municipality	Distance from		
	Residential District	Churches, Schools and other sensitive uses	Other similar Adult Establishments
New York, New York	500 feet	500 feet	500 feet
San Diego, California	1000 feet	1000 feet	1000 feet
Atlanta, Georgia	500 feet	1000 feet	1000 feet
Phoenix, Arizona	500 feet	500 feet	1000 feet
Key West, Florida	-	250 feet	250 feet
Las Vegas, Nevada	-	1000 feet	1000 feet
Nashville, Tennessee	-	500 feet	150 feet
El Paso, Texas	1000 feet	1000 feet	1000 feet
Jackson, Mississippi	1000 feet	1000 feet	250 feet
Fort Lauderdale, Florida	500 feet	500 feet	1500 feet
Biloxi, Mississippi	1000 feet	1000 feet	1500 feet[91]
Kansas City, Misouri	-	1000 feet	1500 feet
Columbia, South Carolina	900 feet	900 feet[92]	1000 feet

Caps

Only one of the surveyed communities limits the number of Adult Live Performance Venues by an absolute number. The city established this cap at nine businesses in the city on May 1, 2004. Nine is the number of establishments that existed at that time in the HRCC-1 Historic Residential Commercial Core zoning district. Any adult entertainment establishment that either is not located in the HRCC-1 zoning district or does not comply with the separation requirements is legally nonconforming. If such a use ceases to operate for a period of 120 days it loses its legal nonconforming status and must be closed. Businesses that were existing and recognized by the city as of May 1, 2004 were granted de facto temporary licenses to continue in operation while they comply with the terms of the general requirement section.

Business and Entertainer Licenses

All of the cities surveyed have more or less restrictive licensing standards for adult entertainment uses. These regulations specify licensing requirements and procedures, and additionally regulate the operations of the adult business, limit operating hours, regulate standards of conduct for employees or contractor's, and regulate the facilities. They are always prefaced by purpose, rationale and findings sections that establish justification for regulations. These statements of purpose identifying a relationship between adult uses and certain secondary effects are part of the factual evidence the city has to gather prior to the passage of any restrictive legislation.

In San Diego, Adult Live Performance Venues are regulated in the Permits and Licenses chapter of the City's business regulations, in a section about police regulated occupations and businesses. The code states that the intent of the regulations are to prevent prostitution, obscenity, money

[91] 1,500 feet from similar uses and bars
[92] 1,250 feet from schools

laundering and the infiltration of organized crime and its associated problems, the spread of disease, the deterioration of neighborhoods, to reduce crime in and around adult entertainment businesses, and to preserve quality of life. There is an extensive list of information to provide to the Police Department to apply for both business and entertainer permits including photographs, convictions/criminal records and fingerprints.

Several cities, such as El Paso, Key West, and Columbia issue the same annual license for all sexually oriented businesses. The type of sexually oriented business must be indicated on the application. These cities classify sexually oriented businesses with several categories such as adult bookstore, adult video store, adult merchandise store, adult cabaret, adult performance establishment, sexual device shop, or adult motion picture theater.

The list of required documents to submit for a license is usually the same from one city to another: age, photographs, address, prior convictions, and fingerprints. A few cities that enforce more specific use and design standards require additional information. El Paso, Nashville and Columbia, for example, require a sketch or diagram showing the configuration of the premises. Columbia goes further by asking for a statement of total floor area and a statement of floor area visible or accessible to patrons, excluding bathrooms. In a few cases, the business applicant must sign a notarized affidavit stating convictions and giving permission to the City to conduct a criminal background check, as in El Paso and Atlanta. Atlanta has a License and Permit unit within its Police Department to regulate adult entertainment, and to ensure applicants fulfill the age requirement and have not had prior convictions. Obtaining this permit is required for everybody working inside the facility.

A lot of surveyed communities, such as Jackson, Kansas City, San Diego, Columbia, Nashville and others have both a business license and an employee or entertainer license requirement, that are typically both valid for one year and renewable. The definition of employee includes anyone that performs any service or work on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. San Diego has a police permit that applies specifically to nude entertainers, and excludes the other types of employees. In Jackson, the employee permit has to be submitted to the Police Department with photographs, fingerprints, and convictions. Nashville requires the applicants for both business and employee permits to provide their employers' names for the past five years, to be fingerprinted and provide information regarding convictions of sex-related crimes. The license application goes to the police, fire, codes administration, and health departments. The departments must inspect the premises of the proposed adult business to determine its compliance with local ordinances, and the police department must investigate the entertainer's criminal history.

License Fees

Fees are a necessary component of any permitting system. Fees can pay for processing and reviewing of applications and requests as well as enforcement. The table below lists some of the surveyed communities' adult entertainment fees and renewals.

Table 7. Sexually oriented business fees of surveyed communities

City	Fees			
	Business Permit	**Business Renewal**	**Entertainer Permit**	**Entertainer Renewal**
Nashville, TN	$500	$500	$100	$100
Key West, FL	$125			
El Paso, TX	$550	$350	$50	$25
Kansas City	$100	$100		
Atlanta, GA	$370	$370	*$370	$370
Jackson, MS	$375	$265	$193	$110
New Orleans	*Gross sales*	*Gross sales*	**$3*	*$3*

*all workers

Business permit fees vary widely and range from $100 to $500. Fees for renewing permits also vary widely. Some communities charge the same amount as for the initial permit fee, and others charge only a portion of it. Atlanta charges the same amount of money for business and entertainer permits.

If the City of New Orleans determines a reevaluation of the permit fees is necessary, it will have to determine an amount that will cover the costs associated with review, without unfairly penalizing this specific type of use.

Use Standards and Design Guidelines

The staff has found that the cities with the most detailed operational controls use business licensing rather than zoning to implement the appropriate regulations. (The only city for which adult entertainment licensing regulations are found in the Zoning Code is Key West). Local governments often require various operating standards that typically include age restrictions, sometimes business hour restrictions and entertainer conduct requirements. These "time, place, and manner" regulations on adult businesses are a way to limit certain nuisances without suppressing speech.

San Diego's nude entertainment business operating requirements include an age restriction of 18 years old, hour restriction (such business is not allowed to be open between 2 a.m. and 6 a.m), and conduct standards. The distance requirement between patrons and a nude person is a minimum of 6 feet. Intentional touching is forbidden during performances, and no other nude person is allowed on the premises other than adult entertainers who are performing. Adult Entertainers operating requirements include the same conduct standards and compel an entertainer to notify the Chief of Police of any change of business or residential address within 15 days of the change. The list of standards takes the form of a statement of understanding, which has to be signed by the applicant. A permit can be denied if the applicant has been convicted of any offense described in the California Penal Code within five years preceding the filing of the application. It can be suspended or revoked for violation of the regulations.

El Paso regulates hours of operation as well. No sexually oriented business can be open between 2am and 6am on any day. It obliges the operator of the business to be on the premises at all times when in operation, and to post clearly visible signs summarizing prohibited conducts like loitering, and dancing closer than 6 feet from patrons. The operator also has to designate one or

more employees to monitor the activities of the persons on the property by visually inspecting the property at least once every 90 minutes or by using video cameras and monitors. Lighting of the exterior premises must be provided. Finally, dancers must remain on a stage at least 18 inches from the floor in a room of at least 600 square feet, effectively forbidding lap dance booths and private lounge areas.

Jackson's licensing code includes facility configuration regulations such as employee's stations or private and semi-private rooms remaining unobstructed from view, minimum lighting level requirements, or provision of dressing rooms. It has similar hours of operation regulations as other cities in that these establishments are not allowed to remain open between 2:00 a.m. and 7:00 a.m. The employee permit requires an applicant to be at least 21 years old.

Biloxi sets several criteria in its licenses and business regulations that apply to all sexually oriented businesses. The goal is to ensure that no sexual activity, prostitution, or solicitation for prostitution takes place on the premises, and to prevent publicly displaying explicit sexual material. The ordinance contains standards for the location and manner of presenting sexually oriented live entertainment. Dancing or other live entertainment characterized by an emphasis on the depiction or description of "specific sexual activities" or "specified anatomical areas" for observation by customers shall take place only in an open room of at least 600 square feet, on a stage elevated at least three feet above the level on which customers sit or stand, with a horizontal separation of at least two feet between the edge of the stage and the nearest space to which customers shall have access. This separation has to be enforced by a partial wall, rail or other physical barrier. Operational guidelines and management policies must ensure that there will be no physical contact between entertainer and customer.

The City of Las Vegas uses similar conduct requirements in its business and licenses code. Patrons are not allowed to enter private rooms with dancers, and dancing has to take place within an area visible from the entry room, from one staffed security station or from a service bar area. Further, no dancing can be visible to the outside sidewalk or street areas.

Fort Lauderdale's licensing code also indicates that an adult live performance venue must have a stage for the display or exposure of specified anatomical areas or stimulation thereof consisting of a platform of 18 inches above the ground and encompassing an area of at least 100 square feet. Exposure to public view is restricted to the stage and patrons must remain between four feet from any partially nude entertainer.

Boston's adult entertainment business code requires all areas where dancers perform to be separated by a walkway of at least two feet in width between any stage or platform and areas where drinks are served and consumed.

The City of Nashville provides standards for the physical layout of the business. The business operator is responsible for the conduct of entertainers at the business. No entertainer or other employee can engage in sex acts. No employee can allow a minor to frequent the business or view the adult entertainment. The business must close by 3 a.m. every day and cannot open before 8 a.m. (noon on Sundays). The entertainer must be at least 18 years old and cannot have been convicted of misdemeanor sex crime in the previous two years or a felony sex crime within the preceding five years.

In Columbia, sexually oriented businesses cannot stay open between midnight and 6 a.m. on any day. The operator must install signs stating that no loitering is permitted on the premises, must designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises every 90 minutes or inspecting by use of video cameras and monitors, and must provide lighting of sufficient intensity to illuminate every place to which customers are permitted access. A list of prohibited conduct includes among other, requirement that entertainers remain at least 6 feet from patrons, on a stage at least 18 inches from the floor in a room of at least 600 square feet. It also forbids anyone to operate more than one sexually oriented business in a single building or structure.

New York City requires adult establishments to not exceed 10,000 square feet of floor space. Staff did not find examples of cities that require adult establishments to have a specified minimum floor area.

The only city surveyed that addresses alcohol regulation is Atlanta. The City's Alcohol licensing code prohibits alcohol licenses for adult businesses within 2,000 feet of sensitive uses.

From a land use point of view, much of the discussion and concern surrounding adult live entertainment negative secondary effects involves the outside appearance of these establishments, such as excessive signage, and loitering. Most cities do not have specific signage regulations for these uses. Signage regulations follow the general signage regulation of the city and usually forbid signs that flash, blink, or move by mechanical means. Boston is the exception, in that the prohibition of moving and flashing signs does not apply to the adult entertainment district overlay.

However, several communities, like Key West and Kansas City, have regulations that forbid the display or exhibit of any adult material on the exterior of the premises, including in doors and windows. Kansas City requires facilities to be designed so that all openings, entries and windows prevent view into such facilities from sidewalk, walkway, street or other public area, provided that the development plan may provide for openings into such facility where needed for security reasons if no merchandise or pictures can be viewed from the openings.

Special Review procedures and Other Type of Regulations

Some of the communities surveyed use a review procedure that is different from the typical business licensing process. In San Diego, the application package for an adult entertainment business license include an adult entertainment establishment zoning use certificate (which is not a permit or license), a 1000 foot radius map, a site plan, a $1,500 application and review fee. The zoning use certificate certifies that the proposed business location is not within 1000 linear feet of any sensitive uses (another adult entertainment business, the property line of a residentially zoned property, the property line of a church, of a school, of a public park, or of a social service institution) and certifies that the proposed business will comply with all requirements.

Two of the surveyed cities, Jackson, and Nashville, have created a board to review sexually oriented business licensing. Board members are appointed by the Mayor. In Jackson the

entertainment review board has nine members. Nashville's board has five members, among which must be one attorney, and at least one health care provider. The board can hire inspectors.

One city stands out from all the communities surveyed in that it does not have regulations singling out adult businesses from other businesses. Portland does not have zoning restrictions on adult uses in the city. In Oregon more generally, Adult Live Performance Venues can open in most commercially zoned locations. Instead of zoning restrictions, the city has enacted ordinances that focus on the effects of an adult business in form of a "chronic nuisance property" provision. The provision lists 21 illegal effects[93] thought to proliferate from adult businesses, such as harassment, disorderly conduct, public indecency, sexual abuse, prostitution, or excessive noise. If a certain number of citations are issued within a certain time period (for example 3 within 6 months) within close proximity to the adult business, the property may be closed as a public nuisance. For example, an adult business may be legally operating within a city and within a three week period two arrests for prostitution are made and one arrest for an illegal drug transaction within one block of the business. While the city may not be able to close the business immediately, the city may be able to initiate a nuisance claim against the business to build a record of complaints and citation against the business. After a certain number of such incidences, the city will be able to change the operation of the business and close it as a chronic nuisance. Portland also requires an establishment to serve food in order to be granted a full liquor license.

The State of Florida has passed a law that became effective in January 2016 requiring adult entertainment venues to post human trafficking awareness signs. All strip clubs, massage parlors and other adult entertainment businesses are required to post public awareness signs, with a toll-free hotline number to call. The law gives county commissions the power to pursue noncriminal citations and fines against noncompliant businesses. Strip club owners and managers created an alliance three years ago with the Department of Homeland Security to train the business' staffs on what to look for.

Penalties and Enforcement

The key tool to make all these regulation effective is enforcement. All cities surveyed have the ability to suspend and revoke both the sexually oriented business license and the entertainer license or to fine these establishments. Fines for adult entertainment businesses that violate the provisions of an ordinance vary greatly between cities and from one type of violation to another. Fines range from $50 to $3,000 per violation.

[93] Harassment as defined in ORS 166.065(1)(a). 2. Intimidation as defined in ORS 166.155 through 166.165. 3. Disorderly conduct as defined in ORS 166.025. 4. Assault or menacing as defined in ORS 163.160 through ORS 163.190. 5. Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as defined in ORS 163.415 through ORS 163.445. 6. Public indecency as defined in ORS 163.465. 7. Prostitution or related offenses as defined in ORS 167.007 through ORS 167.017. 8. Alcoholic liquor violations as defined in ORS Chapter 471.105 through 471.482. 9. Offensive littering as defined in ORS 164.805. 10. Criminal trespass as defined in ORS 164.243 through 164.265. 11. Theft as defined in ORS 164.015 through 164.140. 12. Arson or related offenses as defined in ORS 164.315 through 164.335. 13. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through 475.285, and/or 475.940 through 475.995. 14. Illegal gambling as defined in ORS 167.117, and/or ORS 167.122 through ORS 167.127. 15. Criminal mischief as defined in ORS 164.345 through 164.365. 16. Any attempt to commit (as defined in ORS 161.405), and/or conspiracy to commit (as defined in ORS 161.450), any of the above activities, behaviors or conduct. 17. Fire or discharge of a firearm as defined in Portland City Code 14A.60.020. 18. Unlawful operation of sound producing or reproducing equipment as defined in Portland City Code 14A.30.010 and/or excessive noise as defined in Portland City Code Chapters 18.04 and/or 18.14. 19. Unlawful drinking in public places as defined in Portland City Code 14A.50.010. 20. Curfew as defined in Portland City Code 14A.80.010. 21. Indecent exposure as defined in Portland City Code 14A.40.030.

The City of Jackson can suspend a license for a period not to exceed 30 days if it determines that the adult use violates or is not in compliance with any section of the licensing regulation article. It can also revoke a license if a cause of suspension occurs and the license has been suspended two times within the preceding 12 months. Reasons for revocation also include determination by the city that a licensee gave false or misleading information during the application process, that a licensee has knowingly allowed possession, use, sale of controlled substances, prostitution, solicitation, or the commission of a felony on the premises, as well as any other criminal activity.

The City of El Paso revokes both business and employee licenses if licensee violates the ordinance on two or more occasions within a 12 month period.

In Columbia, a revocation happens after only 1 suspension within a 12 months period, or if the licensee has knowingly given false information in the application for either the business license or employee license, or if the license has knowingly engaged in possession, use or sale of controlled substances, or prostitution on the premises.

Nashville's ordinance provides for the suspension and revocation of licenses and permits for various causes, such as allowing minors to view adult entertainment. In addition, violations chapter are subject to a $500 fine per offense.

Jackson Police Department has to inspect each sexually oriented business at least 4 times a year to assess compliance.

Amortizations

Some communities such as Jackson, San Diego, Columbia and New York have an established amortization period, requiring non-conforming adult entertainment venues to be amortized over a specified period at the end of which they must be terminated. For example, Columbia and Jackson, have amortization periods of two and three years, respectively. New York has an amortization period of one year, as discussed in Section C of this report. These provisions allow the owner of a non-conforming, lawfully existing and fully operational adult establishment some time to recoup investments in the nonconforming use. At the end of the amortization period, the use is not recognized as a lawful nonconforming use and must conform to the current regulations. Generally, one or more extensions of the original amortization period may be applied for upon showing financial hardship.

The Court of Appeals has upheld such provisions when the amortization period is reasonable in relation to the investment and when the benefit to the public outweighs the private loss suffered by the property owner.

Ordinances Upheld in Court

To determine the constitutionality of ordinances regulating Adult Live Performance Venues, Appeal Courts examine ordinances in light of four principles:

- The regulation is within the constitutional power of the government,

- The regulation promotes an important or substantial government interest,
- The governmental interest in unrelated to the suppression of free expression, and
- The incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.[94]

In 2007, the City of El Paso adopted a sexually-oriented business ordinance as a direct response to a 2006 conviction of an adult cabaret owner on charges of engaging in organized criminal activity involving running a prostitution ring out of her cabaret. The City's ordinance required in part that these businesses have open, instead of closed, booths for customers viewing sexually-oriented videos, unobstructed employee views of the entire premises, overhead lighting fixtures to illuminate every place where patrons are permitted, and employee licensing. This ordinance was upheld in court.

In Columbia, the court found that restricting the hours of operation and requiring an in-person notarized license application for individuals seeking employment in a sexually oriented business was not unconstitutional. It also concluded that there were forty six (46) sites available in the city for a sexually oriented business to locate, so enough alternative sites existed.

In addition to the selection of cities that was chosen by staff to compare with New Orleans regulations, research found that a number of ordinances were upheld in court in various small communities throughout the United States. There are several types of regulation generally upheld in court:

Entertainer Conduct

Ordinances forbidding entertainers from touching, fondling, or caressing patrons, sitting on a patron's lap, or separating a patron's legs is constitutional because it only regulates the manner of expression without suppressing speech. (City of Everett v. Heim). An ordinance prohibiting the sale of alcoholic beverages at sexually oriented businesses and allowing only semi-nudity, not full nudity, was upheld in court (City of Brookhaven, GA), because attempting to reduce crime and preventing neighborhood deterioration by separating alcoholic beverages from adult entertainment were government interests unrelated to the suppression of speech.

Spacing Requirements

In many cities, such as Alachua, FL and Angola, IN, ordinances allowing sexually oriented businesses to locate in a few zoning districts, as long as they were positioned a certain distance from schools, parks, playgrounds, day care centers, religious institutions and residential districts, were upheld in court because they merely limit the locations adult establishments could select, serving as time, place, and manner restrictions.

[94] Adult Entertainment and the Secondary-effects Doctrine. How a zoning regulation may affect First Amendment freedoms, David L. Hudson Jr., May 2002.

Density of Establishments

The U.S. Supreme Court upheld Los Angeles' ordinance which prohibited the establishment or maintenance of more than one adult entertainment business in the same building. The court held that the city could reasonably rely on a study it conducted some years before enacting the present version of the ordinance to demonstrate that its ban on multiple-use adult establishments served its interest in reducing crime.

Distance Rules

Ordinances requiring nude dancers to maintain 4 to 10 foot distance from patrons have been upheld because they only prevent sexual contact and leaves open channels for the protected speech under the First Amendment. Proximity is not an expressive component of erotic dance entitled to protection under the First Amendment (ex: Colacurcio v. City of Kent; D.C.R. Inc. v. Pierce County; Déjà vu v. City of Federal Way; Ino Ino, Inc. v. Bellevue; KEV, Inc. v. Kitsap County)

Hours of Dancing

In Washington, the Court upheld a city's right to restrict times when erotic dancing may be performed (not during early morning hours). (Ino Ino, Inc v. Bellevue)

Illumination

The same court upheld that city's right to require specific level of illumination where nude or semi-nude erotic dancing may be performed (Ino Ino, Inc v. Bellevue)

Backgrounds Check

The same court also upheld the city's right to require an applicant for a nude dancer's license to disclose recent criminal convictions and employment history (Ino Ino, Inc v. Bellevue)

Requirement for Both Operators and Dancers Licenses

In Washington again, the court upheld a city's right to require both a business license and an adult entertainer license. (KEV, Inc. v. Kitsap County)

An example of regulation that was not upheld in court because it was found to be unreasonable was a provision requiring a five-day delay period between a dancer's filing an application and the granting of the license. (KEV, Inc. v. Kitsap County). Another example is a no-touch rule ordinance that was struck down by an appeals court which ruled that the ordinance went too far by criminalizing such actions. (Anaheim, CA)

2. Assessment of Regulations in Other Cities

City officials have created an array of restrictions to regulate adult businesses. These include restrictions on zoning, licensing, hours of operation, and patron-performers buffer zones, to name a few. In order to avoid constitutional issues, a local government must show that it conducted or relied upon planning studies showing evidence of harmful secondary effects of adult businesses. While many of the legislative record and supporting studies are not recent, they are still relevant to local governments wishing to establish new regulations. In Renton v. Playtime, Inc. (1986), the court held that the city of Renton was entitled to rely on the experiences of other cities, and was not required to produce new evidence, before enacting an ordinance, as along as the evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.

In every surveyed city, the code sections regulating adult uses start with a statement of purpose and a rational that claims the City is targeting adult-entertainment establishments not because they wish to suppress free expression, but because they are concerned with certain adverse effects allegedly associated with adult businesses. They list court cases and studies done in other cities as proof of correlation between adult businesses and these adverse effects, which include decreased property values, increased crime, decreasing shopping activity and prostitution.

Cities use two zoning techniques to limit harmful effects of adult businesses. They either concentrate the adult businesses in a single area, or they disperse them to locations throughout the city. An example of the first method is the creation of adult entertainment overlay districts, while dispersion can be achieved with spacing requirements from similar businesses, sensitive uses or residential areas. By concentrating adult uses in a specific area, some municipalities believe these uses will affect fewer neighborhoods and can be avoided by persons who are offended by them. By requiring sexually oriented uses to be separated from one another or from residential areas, a municipality may attempt to avoid the effects of red-light districts. Most of the time cities use both methods together as they limit adult entertainment uses to specific districts, effectively concentrating them in areas of the community less susceptible to greatly suffer from secondary impacts, but they also enforce distance requirements in between establishments and between different types of uses within these districts, as a way to avoid over concentration.

Because there is ample precedent for separation requirements and factual evidence from studies to support such standards, the spacing requirement is widely used in US cities to protect some uses from sexually oriented businesses. All cities typically have distance requirements to separate adult uses from residential districts, places of worship, schools and parks. New Orleans has a similar regulation already (1,000 feet minimum distance requirement), but it does not apply to the Vieux Carré Entertainment District. The City of Columbia has the most restrictive spacing requirement as it applies not only to residentially zoned property but to any residence. In the mix-use context of New Orleans French Quarter, a spacing requirement from any residences is not viable as it would effectively eliminate all adult establishments.

Zoning is an essential but inadequate tool to regulate Adult Live Performance Venues. Business licensing ordinances offer the possibility to provide more detailed operational standards than

zoning. Licensing requirements allow businesses that create no problems to continue to operate and it allows the forced closure of those where problems occur repeatedly.

Since the courts recognize that communities are entitled to protect themselves against secondary effects of such businesses, some operating restrictions are acceptable and should be imposed as long as they are reasonable. All communities have created operation and conduct standards to lessen the impacts of adult entertainment uses. It is believed that establishments with adult live entertainment are likely to have greater impacts than other types of adult uses (such as bookstores or adult retail stores) because there is a risk of inappropriate interactions between entertainers and patrons, regardless of whether the establishment's management encourages such activities.

The staff has found that operation and conduct standards are listed generally located in licensing ordinances rather than zoning ordinances. Patron-performers buffer zones are a way to restrict contact between dancers and customers. By establishing a minimum distance between dancers and customers, table dancing and lap dancing becomes prohibited. Even though State Law already provides this distance to be over 3 feet, many cities have created greater distance requirements in their local ordinances. A few courts have upheld buffer zones of 10 feet, reasoning that it was tailored to prevent illegal sexual contact and drug trafficking. Because there haven't been any cases holding that the Constitutional protection of nude dancing extends to lap dancing or private dancing in a booth, local governments often require that dancers remain on stage.

Some cities regulate hours of operation by preventing adult establishment to operate after 2 am. Hours of operation can be justified by a reliance on secondary effects. However, most states have regulations that forbid any drinking establishment, including standard bars and restaurants to be open after 2 am or forbid the consumption of alcohol outside, which is not the case in New Orleans. Because all businesses are allowed to remain open all night on Bourbon Street, it could be difficult to justify limiting hours of operation of one type of establishment only.

Overall, New Orleans already has a set of regulation in its City Code that resembles a lot of the regulations found in the surveyed cities. These include requirement to use stages for performance, rules regarding minor entertainers, rules regarding crime and lewd conduct, prostitution loitering, exhibition of material harmful to minors, obscene live conduct, maintenance of responsible person on premises, restrictions on activities of barkers and doormen, rules relating to police investigation of alcoholic beverage outlets, and rules related to suspension and revocation of alcoholic beverage permits.
If New Orleans decides to adopt a new licensing or permit systems to further regulate Adult Live Performance Venues, in order to be constitutional, it will have to ensure that these are made to benefit public health, safety, and welfare, and not aimed at forbidding speech or regulating its content. Licensing schemes have to provide clearly defined relevant standards for issuance. A more restrictive licensing or zoning ordinance targeting the location, concentration, and general operations of adult live performance establishments could potentially help combating adverse secondary effects attributed to these establishments.

However some of the secondary effects of these establishments would require additional regulations that are not in the Planning Commission's jurisdiction. The First Amendment

protection of these businesses creates difficulty for local governments in combating adverse secondary effects attributed to these establishments. Zoning and licensing requirement are valid and useful tools but the City of New Orleans needs to combine its efforts and resources to successfully address the real issues of increased crime, prostitution and other so-called "secondary effects" associated with adult businesses. Ultimately, enforcement of the rules is essential.

Considering the fact that any new regulation of Adult Live Performance Venues would affect surrounding neighborhoods, residents, business groups and owners of these businesses, the staff gathered input from the general public, industry representatives and other businesses impacted.

E. Public Input on Adult Live Performance Venue Study

Public input is an important part of any planning study, especially this Adult Live Performance Venue Study. City Planning Commission staff solicited input in a number of ways, which helped guide the study.

1. Public Input Received

Public Hearing

On Tuesday, March 8th, 2016, the City Planning Commission's Planning held a public hearing to get input on the Adult Live Performance Venue Study. At this meeting, each person was given up to two (2) minutes to speak and were allowed to be ceded a maximum of ten (10) minutes from others. Eleven (11) people spoke in favor of further regulating Adult Live Performance Venues. Nobody spoke in opposition.

Written Comments

In addition to the public hearing, the City Planning Commission has received written public comments by mail, by email to CPCinfo@nola.gov or directly to CPC staff members, or in person at the public hearing. By June 21, 2016, the City Planning Commission has received approximately 223 written comments on the Adult Live Performance Venue Study.

Additional Meetings

As a follow up to the public hearing and request to meet the City Planning Commission and as recommended in the City Council's Motion 16-22, the staff invited various groups to meetings to have a conversation on the Adult Live Performance Venue Study. The City Planning Commission staff met with the following individuals and organizations:

- John Kirkendoll, Founder and CEO of the Penthouse Club, Tim Spratt, Vice President of Kirkendoll Management LLC., Ann Kesler, General Manager at Hustler Club, and Robert Watters, owner of Rick's Cabaret (February 18)
- Jim Kelly, Executive Director at Covenant House (February 19)
- Meg Lousteau, Executive Director at VCPORA (Vieux Carré Property Owners Residents and Associates) and Carol Gniady, Executive Director at French Quarter Citizens (February 19)
- James Autry, Pastor at CornerStone Christian Center, Debbie Shinksie, Director at Respect Life Office of the Archdiocese of New Orleans (March 29)
- Andy Lewis from Greater New Orleans Human Trafficking Task Force (April 1)
- William Khan, French quarter resident and entrepreneur (April 5)
- French Quarter Business Association (FQBA) With Robert Watters (President) and Adrienne Thomas (Board Member and director of marketing and P.R. at NOLA Steamboat Company) (April 18)
- Dan MacNamara, Deputy City Attorney with the Alcoholic Beverage Control Board (April 28)

The City Planning Commission staff also held meeting with various governmental agencies including the Department of Safety and Permits, the City's Law Department, Council Member Head's Office and Council Member William's Office regarding this study.

2. Summary of Public Comments

Public comments addressed a number of the negative impacts associated with Adult Live Performance Venues. These negative impacts are summarized in the assessment section below. In addition to describing the impacts of Adult Live Performance Venues, many public comments made recommendations on how to regulate these venues in New Orleans. Of these suggestions, the top recommendations were in favor of special taxes and/or fees levied against Adult Live Performance Venues to ensure proper enforcement of all regulations, existing and proposed, by both the New Orleans Police Department and State Police. Additionally, it was recommended that dancers in these establishments should be hired as regular employees, not independent contractors. Lastly, instituting spacing requirements for these establishments was cited repeatedly.

Comments regarding special taxes and/or fees indicated that due to the recent undercover investigations that revealed crimes such as drug dealing and prostitution within said establishments, taxes and/or fees should be levied against Adult Live Performance Venues to pay for increased law enforcement within the Vieux Carré Entertainment District. Furthermore, these taxes and/or fees would aid ongoing inspections of the establishments and VIP rooms.

Comments pertaining to the procedures of employing dancers included references of the Federal Labors Standards Act. Remarks stated that employees should be afforded standard benefits along with safe, secure, and crime free work environments. Performance and safety standards should also be regularly reported to the City.

Comments relating to spacing requirements, while numerous, were varied. The overall theme however, did indicate that future Adult Live Performance Venues should have spacing requirements limiting their proximity to residences, schools, houses of worship, and daycare facilities. It was noted that such spacing requirements already exist outside of the Vieux Carré Entertainment Districts The New Orleans Comprehensive Zoning Ordinance was cited stating that it currently prohibits adult uses within a thousand (1,000) feet of any residential district, place of worship, educational facility, and park or playground in these districts.

Additionally, comments concerning the link between adult live use performance venues and human trafficking were abundant. Remarks stated that New Orleans is considered a sex trafficking hub by both national law enforcement and human trafficking experts.

A petition mirroring all abovementioned comments was submitted with over 80 total signatures. Specific recommendations that were outlined in the petition and not mentioned above included the following: First, forbid anyone under the age of 21 to work in any capacity at an adult live use performance venue. Second, implement tighter restrictions and regulations for these establishments. Third, the number of strip clubs should be reduced by 65% and any new or re-opened venues should not be allowed outside of the adult live performance venue interim zoning district.

Public comments also contested the proposed recommendations made in this petition. Comments from dancers attested that sex trafficking is a legitimate problem that is witnessed on the streets, and that strip clubs are not responsible for it. Remarks stated that strip clubs managers quickly remove pimps or anyone not respectful of workers out of the facilities, and take significant steps to provide a safer environment for the dancers (camera surveillance, high staff to patron ratio, etc.)

Additional comments included ethnographic studies that have not confirmed the safety issues claimed to be associated with Adult Live Performance Venues, nor have shown evidence that drug use, dealing, human trafficking and prostitution take place in disproportionate amount within strip clubs. Comments referring to crime also stated that criminal activities does not happen more in strip clubs than they do in bars and that most people responsible for assaults, muggings, murders, and sexual violence have no ties to any club on Bourbon Street.

Additionally, there were a few comments made concerning the input and perspective of current dancers. They stated that most dancers are not exploited or abused and have benefited from the industry. Jeopardizing their job could drive dancers who are more prone to risky behavior to resort to desperate measures to compensate for lost income.

Finally, several comments showed opposition to further zoning restrictions targeting adult businesses or any further regulations. The main remarks stated that addressing isolated criminal activities happening in some of the adult businesses should be done by enforcement of the rules

already in place and that further regulation is not necessary. They recommended that operators that do not comply with applicable law have their business license revoked.

F. Analysis and Recommendations: Regulating Impacts of Adult Live Performance Venues

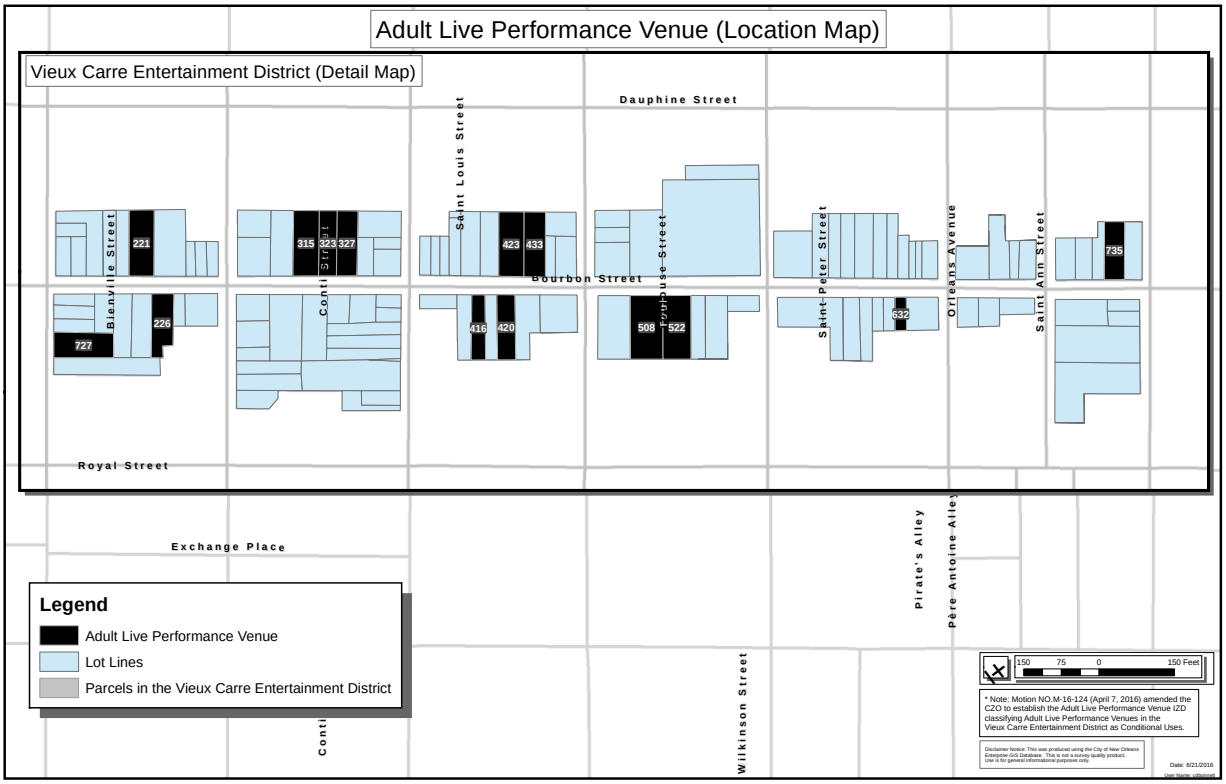
This section analyzes the impacts of Adult Live Performance Venues and proposes recommendations on how to regulate their impacts. In developing regulations, the City Planning Commission staff was guided by the following goals and objectives:

- Protect neighborhood character and minimize impacts to residential areas,
- Ensure a comfortable atmosphere for all residents and visitors to the Vieux Carré and its entertainment districts,
- Enable appropriate entrepreneurial and economic opportunities,
- Create a regulatory framework that is based on best practices yet responds to the unique circumstances in New Orleans and the limitations on City government,
- Permit adult live entertainment venues in districts where they are least impactful to neighboring properties and where public safety can be effectively provided.
- Propose regulations and standards that respond to the secondary impacts of adult live entertainment to minimize nuisances and mitigate the impacts,
- Propose enforceable regulations and prioritize their enforcement,
- Create clear and consistent Licensing with the actual approved use. Licenses and terminology should be clear to various agencies charged with enforcement of regulation, and
- Ensure the safety of residents and visitors traveling to New Orleans.

This section analyzes the following aspects of adult live performances and their regulations: land use and zoning, consistency with the Master Plan, permits, operational standards, and enforcement.

1. Land Use and Zoning Analysis

Figure 17. Existing Adult Live Entertainment Venues in the VCE



Address Potential Secondary Effects of ALPV while Maintaining the Right for the Industry to Exist

Adult Live Performance Venues engage in activities recognized as protected speech under the First Amendment of the United States Constitution. Consequently, the courts have uniformly ruled that these types of adult-oriented businesses cannot be prohibited. They can, however, be regulated. The Adult Live Performance Venues regulations can only impose reasonable time, place, and manner restrictions and cannot be based on content. The adult live entertainment industry has impacts mainly in the Vieux Carré Entertainment District, where they are currently the most concentrated. These impacts can be felt in the French Quarter neighborhoods surrounding Bourbon Street and affect both residents of the French Quarter and tourists. The high concentration of bars and other entertainment uses along Bourbon Street is a major factor of crime. It has been demonstrated in other cities as well that "the nature of nightclubs and live entertainment venues is likely to attract more police related problems than a typical restaurant"[95]. There is indeed a higher concentration of crimes in and around the Vieux Carré Entertainment District. From a land use perspective, it would be hard to associate criminality with Adult Live Performance Venues only, considering the specific nature of Bourbon Street. However, various

[95] Everything you always wanted to know about regulating sex businesses, Eric Damian Kelly and Connie Cooper, American Planning Association.

studies have demonstrated that the most significant impacts of sexually oriented businesses on neighborhoods involved significant numbers of businesses with adult live entertainment. There is also some evidence of an increase in crime around concentrations of sexually oriented businesses.

The goal of the Adult Live Performance Venues regulations should be to regulate this activity in such a way to minimize impacts on neighborhoods. The primary way to accomplish this is to reduce the amount of venues, particularly in the VCE District. This can be done by eliminating them from this district and dispersing them throughout the City, establishing spacing requirements or a cap within the VCE District, or creating new standards which would effectively make some venues become non-conforming uses. The second way to do this is to strictly enforce existing Adult Live Performance Venues regulations or amend them in order to have a better functioning licensing and enforcement system. This would include enforcing the 21 years old age requirement for dancers and the restrictions on private booths. Both are requirements that already exist in the State of Louisiana Revised Statutes regulations.

The sections below analyze all of the land use methods to potentially minimize impacts in the VCE District. They include dispersion measures, conditional use requirements, spacing requirements, limiting the total number of venues within the VCE, and use standards.

Disperse the Impacts of ALPV Throughout the City

Most communities allow Adult Live Performance Venues by right in some commercial and industrial zoning districts subject to a spacing requirement. If the City of New Orleans decided to eliminate these uses entirely from the French Quarter, it would have to show that there are other possible locations within the city where that use is a permitted use. Aside from the Vieux Carré Entertainment District, Adult Live Performance Venues are only permissible as a conditional use in light and heavy industrial districts. For the purpose of this study, it may be problematic to rely on the conditional use process in the Vieux Carré Entertainment District for two reasons. The first is that if conditional uses are never granted, it would raise constitutional issues. The second reason is that making Adult Live Performance Venues a conditional use in the VCE District does not necessarily reduce the number of venues.

If the City of New Orleans wants to prohibit Adult Live Performance Venues in the Vieux Carré Entertainment District, it would either have to consider making them a permitted use within the light and heavy industrial districts, or in some commercial districts.

Permitted use in the Light and Heavy Industrial Districts

Allowing Adult Live Performance Venues as permitted uses in the light and heavy industrial districts would have the effect to disperse Adult Live Performance Venues in less visited parts of the city. While this may serve to meet one of this Study's objectives in creating a comfortable atmosphere for residents and visitors to the Vieux Carre, the dispersal would make it more difficult to monitor the secondary effects of ALPVs and may potentially facilitate criminal activity. Most industrial districts in the city are located in New Orleans East, which has

recovered at a much slower pace after Hurricane Katrina. Additionally, every zoning district has a purpose. The purpose of industrial districts is to conserve appropriate areas of the City for industrial activities, not to be the districts of last resort, whereas the Vieux Carre Entertainment District is intended to accommodate live entertainment and contribute to New Orleans' tourist and entertainment economy. Consequently, Adult Live Performance Venues should not be a permitted use exclusively in industrial districts.

Permitted use in some Commercial Districts

Permitting Adult Live Performance Venues in some Commercial Districts would disperse them throughout the city to areas with lower concentration of these uses, but it would also introduce them to areas of the city where they are currently prohibited. Many commercial areas are located in close proximity to residential areas. The City of New Orleans would have to determine which commercial districts are the most appropriate for Adult Live Performance Venues. One criteria would be to choose commercial districts that are well separated from residential districts. This would ensure that the secondary effects of Adult Live Performance Venues are not felt on residential districts.

Many commercial zoning districts in New Orleans allow for a mix of commercial and residential activities, such as Historic Core and Historic Urban Neighborhoods (VCC, VCE, VCS, HMC, HM-MU, HU-B1). These zoning districts are often intermingled with residential districts, or allow buildings with a mix of commercial and residential uses within the same structure. As such, they would not be suitable zoning districts for Adult Live Performance Venues. Suburban Business Districts tend to be physically more separated from residential areas (S-B, S-LB, S-LC). Finally, Commercial Centers contain commercial districts that address areas of commercial concentration (C-1, C-2, C-3, MU-1, MU-2). A larger variety of commercial uses are allowed in these districts, depending on their proximity to residential areas, their location to major streets, and the intensity of uses allowed within the districts.

If adult live performances venues were permitted in high intensity commercial districts, where auto-oriented uses are permitted, these uses would, like in industrial districts, be less likely to attract travelling pedestrians.

There are many commercial districts in the city, which would prevent over-saturation in any particular area. However, it could also be more difficult to monitor activities generated by these uses. Because some of the goals of the study are to protect neighborhood character, minimize impacts to residential areas, permit Adult Live Performance Venues in districts where they are the least impactful to neighboring properties, and minimize its nuisances, the staff believes that dispersing adult uses throughout parts of the City where the use is currently forbidden is not the most desirable option.

An alternative to dispersing Adult Live Performance Venues throughout the city would be to make the use a conditional use.

Conditional Locations

Currently, Adult Live Performance Venues are conditional uses in the Light and Heavy Industrial Districts, and, for a temporary period, are also conditional uses in the Vieux Carré Entertainment District. The staff reviews every new application for a conditional use in regards to the existing standards for review, listed in **Chapter 4, Section 4.3.F** of the Comprehensive Zoning Ordinance:

1. The proposed use at the specified location is consistent with the policies embodied in the adopted Master Plan.

2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.

3. The proposed use meets all standards specifically applicable to the use as set forth in Article 20 and all environmental performance standards of this Section 21.3.

4. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances, includes improvements or modifications either on-site or within the public right-of-way to mitigate development-related adverse impacts, including but not limited to:

   a. Adequate ingress and egress to property and proposed structures thereon with particular reference to vehicular and pedestrian safety and convenience, and access in case of fire.

   b. Off-street parking and loading areas.

   c. Refuse and service areas.

   d. Utilities with reference to location, availability, and compatibility.

   e. Screening and buffering features to minimize visual impacts and/or set-backs from adjacent uses.

   f. Control of signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

   g. Required yards and open space.

   h. Height and bulk of structures.

   i. Hours of operation.

   j. Roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.

   k. The amount and location of existing impervious surface.

5. Any variance of zoning standards meets the approval standards of Section 4.6.F.

6. The proposed use is not materially detrimental to the public health, safety, and welfare, or results in material damage or prejudice to other property in the vicinity.

Where Adult Live Performance Venues are conditional uses, they can be contained through provisos restricting potential negative impacts. These provisos should address all the existing municipal and state regulations, and could address additional standards such as minimum amenities, configuration of premises, mandatory gate keeper, etc.

Because operational standards already exist in New Orleans Municipal Code, creating a Conditional Use process is not necessary.

Currently in the Comprehensive Zoning Ordinance Adult Live Performance Venues are prohibited everywhere except in the Vieux Carré Entertainment District and in the Light and Heavy Industrial District. The reason behind concentrating Adult Live Performance Venues as permitted uses within the Vieux Carré Entertainment District was to allow existing businesses to remain in their current location while preventing further expansion in other parts of the French Quarter and the city. This was a way to also better monitor them and contain potential crime and other negative impacts associated with these uses. Further, the French Quarter is a strong real estate market where diminishing property value is not an issue.

The staff believes that each zoning district has a purpose and that the creation of the Vieux Carré Entertainment District was a successful measure to contain the negative secondary effects of high impact entertainment uses to one area where they can be easily monitored. For this reason, the staff believes that the Vieux Carré Entertainment District is the most suitable zoning category for adult live performance uses and other types of entertainment, and that prohibiting Adult Live Performance Venues entirely from this district to disperse them in other districts throughout the city would not address the goals of this study.

For these reasons, the staff believes that Adult Live Performance Venues should remain a permitted use within the Vieux Carré Entertainment District, and a Conditional Use within the Light and Heavy Industrial Districts.

However, because the VCE District is a limited geographical area, it cannot sustainably contain an unlimited amount of Adult Live Performance Venues without creating major negative effects on the street itself and the surrounding neighborhood. Therefore a spacing requirement could be a way to mitigate these impacts.

Establish Spacing Requirements within the Vieux Carré Entertainment District

One major concern is the over-concentration of adult live performance venue uses in the Vieux Carré Entertainment District. It is when Adult Live Performance Venues are highly concentrated that they can have major impact on the surrounding properties. To prevent over-saturation in any particular area, regulations need to be in place to limit their number and density.

The Vieux Carré Entertainment District was created specifically to avoid the dispersion of Adult Live Performance Venues in areas of the city that are more difficult to monitor. For this reason, this District is the most appropriate for that type of use. However, the over-concentration of these

uses in this very small district has started to greatly impact the district and neighborhood. The impact of Adult Live Performance Venues can be lowered with an appropriate spacing requirement,. Limitations on concentration can be put in place by limiting the number of venues per blockface and/or square, or per a certain distance measured in feet. This type of regulatory system can spread out Adult Live Performance Venues along Bourbon Street and avoid over-concentration on particular blocks.

The purpose of the entertainment district is to ensure that high impact entertainment uses like bars, live entertainment venues and Adult Live Performance Venues are concentrated in one area, in order to minimize impacts on the largest amount of properties possible. The flip side of this policy is that it greatly affects the properties that are close or adjacent to these uses. While commercial uses are the predominate activity in the Vieux Carré Entertainment District, residential uses are allowed everywhere in the Vieux Carré. The concentration of Adult Live Performance Venues creates secondary impacts that generally would not occur around one single entertainment establishment.

The Comprehensive Zoning Ordinance does not regulate the concentration of these uses in the Vieux Carré Entertainment District. To ensure that these uses do not overwhelm certain blocks and the neighborhood, a density limit is recommended. Cities that regulate the concentration of Adult Live Performance Venues often do so by distance requirements between each establishment. Fort Lauderdale, Columbia, San Diego, El Paso and Atlanta allow one Adult Live Performance Venues every 1,000 feet. New York allows one venue every 500 feet. Key West and Jackson allow one venue every 250 feet and Nashville allows one venue every 150 feet.

While all the cities surveyed establish spacing requirements based on a distance measured in feet, New Orleans often uses spacing requirements based on city blocks and blockfaces for other types of uses, such as the recommendation for Short Term Rentals and Bed & Breakfasts. Currently, 11 of the 14 Adult Live Performance Venues in the Vieux Carré Entertainment District are located on the three blocks between Iberville and Saint Louis Streets. Such separation requirements would deconcentrate these establishments, but it could have the effect to add a few more venues along the three other blocks between Saint Louis and Saint Ann Streets, where there are currently only three Adult Live Performance Venues.

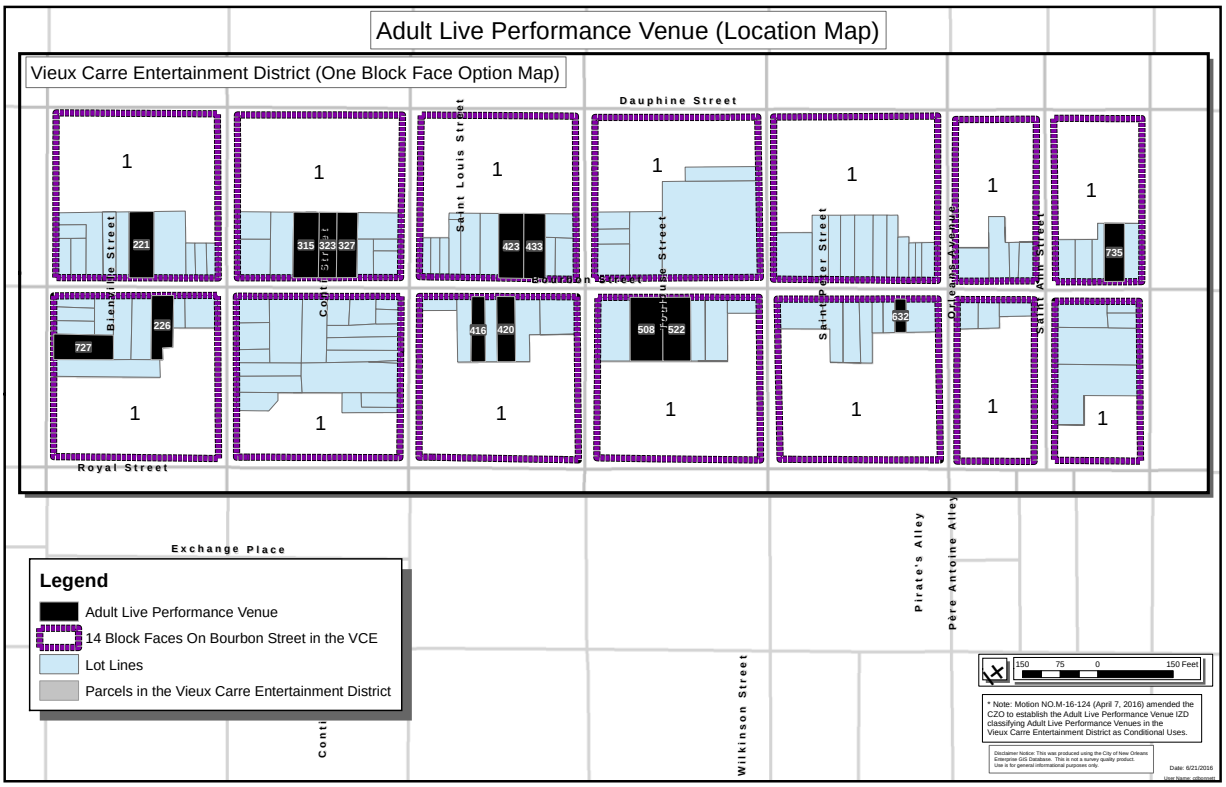
The sections below list the different spacing requirement options that could be applied to the Vieux Carré Entertainment District.

One Venue per Blockface

A blockface is defined in the Comprehensive Zoning Ordinance as one side of a given street between two consecutive intersecting streets. There are seven (7) blocks in the Vieux Carré Entertainment District. Choosing to limit Adult Live Performance Venues to one per block face, would restrict the number to fourteen (14) establishments in the Vieux Carré Entertainment District, between the 200 and 700 blocks of Bourbon Street. Currently some blocks contain more than one adult performance venues, some blocks contain only one, and a few blocks do not contain any (see Figure 18). This type of restriction would be a way to avoid further unlimited

openings of new strip clubs along Bourbon Street, and would break some of the existing clusters, but it would give the opportunity to open one adult live performance venue on each block face that does not currently contain any. Initially, it would not lower the current number of venues, but it could lower it overtime.

Figure 18. One Venue Per Block Face

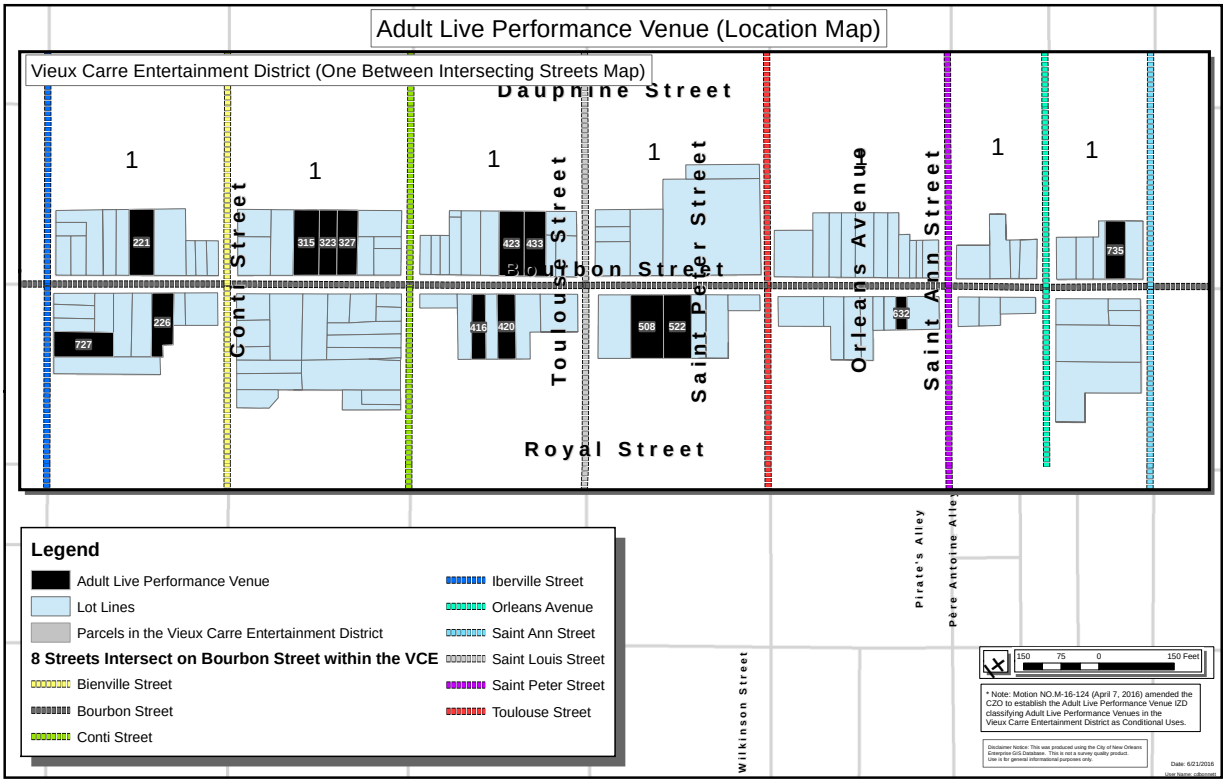


*All block faces that are completely contained within the VCE District

One venue between two intersecting streets

Choosing to limit Adult Live Performance Venues to one between two intersecting streets would would restrict the number to seven (7) establishments along Bourbon Street. Over time, this would cut the current amount of venues in half, and disperse them along Bourbon Street rather than having clusters of two (2), three (3) or more venues on the same block (see Figure 19). Again, this could allow one more venue between Saint Philip and Orleans Street.

Figure 19. One Venue between Intersecting Streets

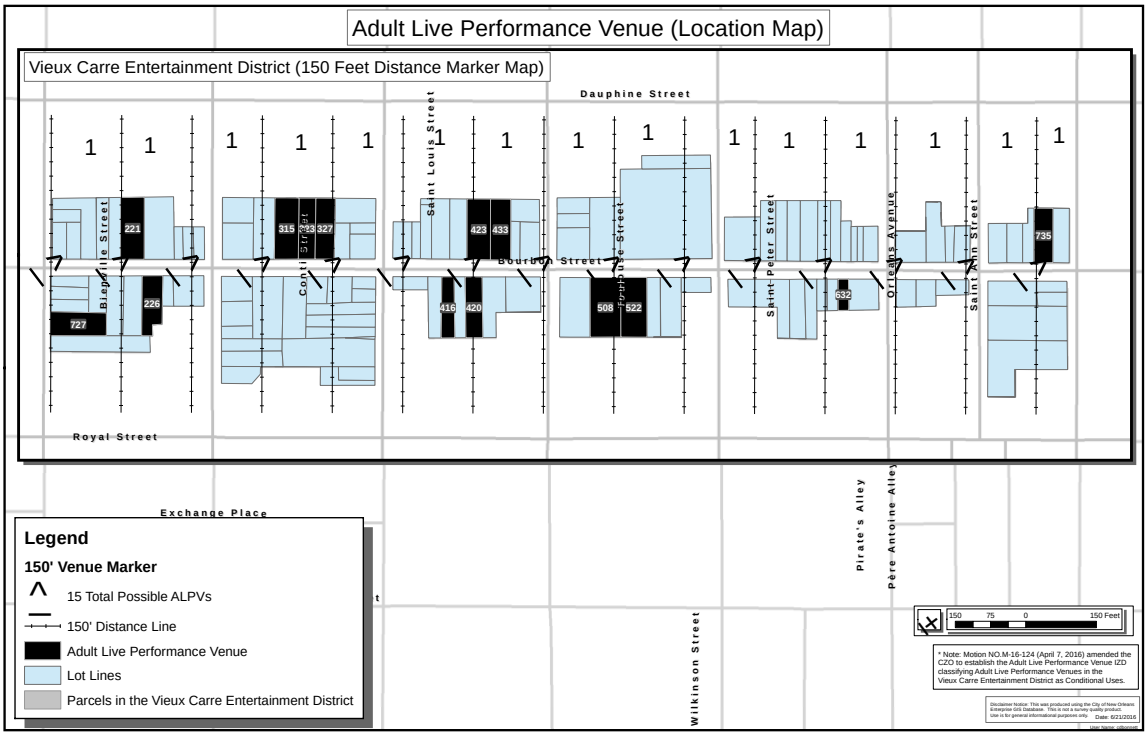


*Streets intersecting within the VCE District

One Venue per so Many feet of Each Other

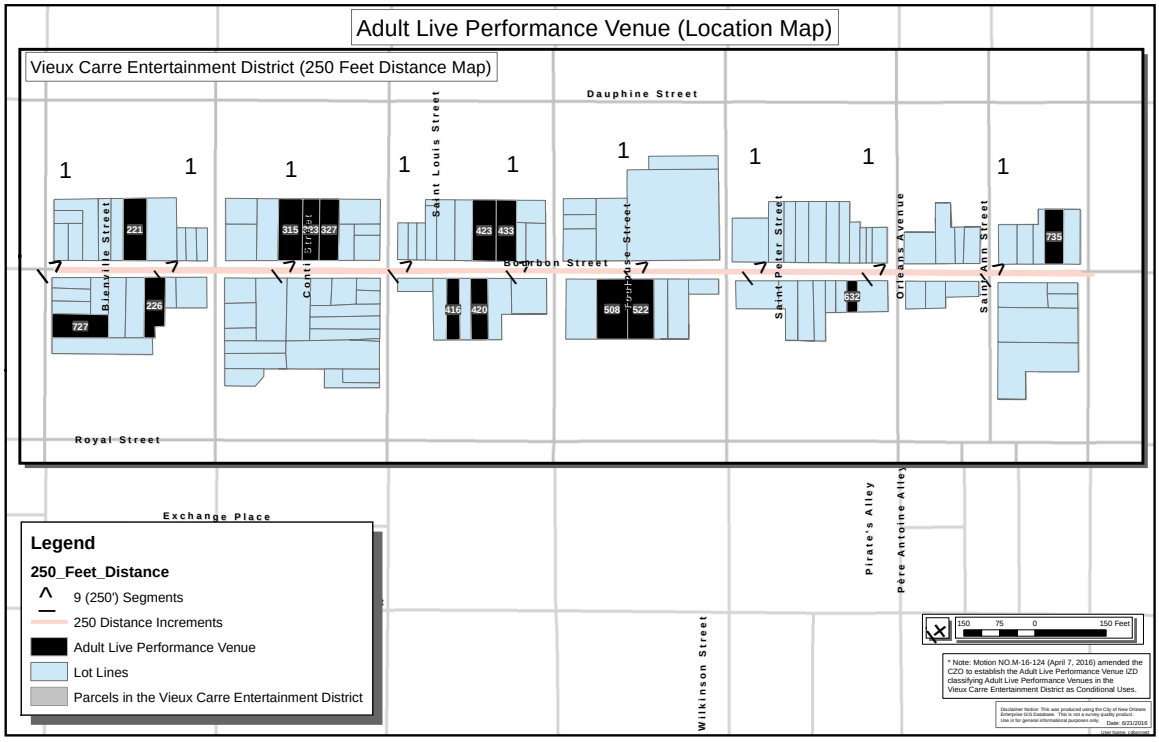
All the surveyed cities established distance requirements between adult live performance uses ranging from 150 feet to 1,000 feet (see Figure 19 and 20). Determining a distance measured in feet would allow more flexibility if the City of New Orleans wants to set a cap on the number of venues that is above 7 but below 14 businesses. This option would restrict where a venue can be located on a block, since the location of one venue would depend on the location of the closest venue.

Figure 20. One Venue per 150 Feet



*****1 venue per 150 feet would allow a maximum of 15 businesses, 1 venue per 300 feet would allow a maximum of 8 businesses. **Measurements are taken along the longest street within the VCE District.

Figure 21. One Venue per 250 Feet



*1 venue per 250 feet would allow a maximum of 9 businesses, *1 venue per 500 feet would allow a maximum of 5 businesses, and *1 venue per 1,000 feet would allow a maximum of 3 businesses. **Measurements are taken along the longest street within the VCE District.

Distance from Sensitive Uses

Most communities created provisions in their zoning ordinances for Adult Live Performance Venues to be separated from certain uses. The City of New Orleans has a similar provision only for venues located outside of the Vieux Carré Entertainment District. Buildings are much less clustered in the parts of the city where the 1,000 foot radius applies than in the French Quarter. Consequently, applying a distance requirement from some sensitive uses in the Vieux Carré Entertainment District would require adapting that distance to the dense fabric and mix use characteristic of the French Quarter.

All surveyed communities consider schools, places of worship and parks to be sensitive places. Some surveyed communities also consider day cares, social service institutions, public buildings or bars. The City of New Orleans would have to determine which uses should be considered sensitive uses for the purpose of distance requirement. The dense mixed-use nature of the French Quarter could be a challenge as this neighborhood likely holds a multitude of these uses. Adding many uses to the list of "sensitive uses" would effectively limit the number of sites available to Adult Live Performance Venues. Contingent to the object of the separation standards (such as protecting impressionable youth, etc.), the City would need to make a survey of all education facilities, places of worship, parks, libraries, day care centers or other sensitive uses in the French Quarter. The staff considered this alternative, but decided not to recommend it because of the dense mixed-use nature of the French Quarter and because adult live performances are only allowed on a linear portion of Bourbon Street forming the Vieux Carré Entertainment District. Additionally, this alternative does not create a cap to the amount of allowed venues, but it only reduces the geographical area where they can be allowed. A survey of all potential sensitive uses could be considered for a future general study of the French Quarter.

Flat cap

In order to avoid an increase of Adult Live Performance Venues on blocks that currently do not contain any, another option is to set a cap limiting the number of such businesses allowed in the Vieux Carré Entertainment District without setting a distance requirement between each establishment. This alternative would allow some of the existing venues to remain, without giving the opportunity for other venues to establish themselves along block faces of Bourbon Street that currently do not contain any Adult Live Performance Venues.

How to Attain the Number of Venues Allowed by a Cap

There are two ways to get the number of venues down to the recommended cap. The most active technique is amortization and the most passive is attrition.

Amortization

Amortization generally refers to the time period a non-conforming use has to conform to new zoning regulation before the use has to be terminated. These provisions allow the owner of a non-conforming, lawfully existing and fully operational adult establishment some time to recoup his investment in the nonconforming use. Other cities surveyed have set amortization periods

between one and three years. Courts have generally ruled that amortization ordinances are valid, and justify the termination of non-conforming uses without compensation, if the public interest outweighs the harm it causes an individual.[97] However, based on the State of Louisiana Law, amortization of non-conforming uses is not an option.

Attrition

Natural attrition is an alternative to the imposition of a cut-off date. The right to a non-conforming use exists only so long as the property owner continues the use itself. If a non-conforming use is discontinued for at least six months, it loses its nonconformity status and is subsequently prohibited.

Use Standards

Most uses listed in the Comprehensive Zoning Ordinance can be allowed by right at least in one zoning district. The reason why Adult Live Performance Venues are allowed by right is because they are a form of speech protected by the Constitution. However, if allowed to continue as a permitted use, this use could rapidly grow in some areas, which would increase the impact of the Adult Live Performance Venues on the Vieux Carré Entertainment District. For this reason, the staff recommends additional use standards and a cap.

Some of the secondary effects generated by Adult Live Performance Venues could be controlled, to some degree, with additional use and design standards. These could be added to the Comprehensive Zoning Ordinance or the City Code. Establishments that do not comply with the new standards would then have non-conforming characteristics. For example, the interior configuration of a venue could prevent passersby to be able to view any adult content. This could include a requirement to build a vestibule at the entrance of all establishments in order to make dancing areas non visible from the public right-of-way. It could also include a requirement to provide specific amenities to the dancers, such as lockers with a determined minimum square footage. The square footage of the venue itself could be regulated as well, in order to ensure that the appropriate amenities are provided to make the venue safer, and provide a more secure work environment.

All new proposed land use standards should be added to **Article 20** of the Comprehensive Zoning Ordinance as they relate to land use impacts. Operational standards should remain in the City Code.

[97] Journal of Urban and Contemporary Law, Vol. 34:99, The reasonableness of Amortization Periods for Nonconforming Uses – Balancing the Private Interest and the Public Welfare, Osborne M. Reynolds Jr., 1988.

Size Limitations and venue configuration

Regulating the size of an adult live performance venue is one way to limit its impact. The staff has noticed during site visits that larger venues seem to offer amenities to the dancers such as lockers, showers, gathering space, security camera monitoring rooms, and office spaces enabling proper operation of a business. If there is more square footage, there should be more room to provide adequate amenities to the dancers, and to provide entry vestibules to prevent views from the sidewalk and right-of-way, as well as the required stage areas. However, setting a minimum square footage would have the effect to incentivize larger strip clubs, which neither is the intent of the staff, nor fitting with the dense building characteristics of the French Quarter. It would also limit the possibility to provide amenities for the dancers and could make it more difficult to meet the distance requirement between dancers and patrons. On the other hand, if there is less square footage, it should limit the possibility to provide private rooms and booths and limit the number of visitors.

For this reason, the staff believes that the configuration of the venues is more important than its size. In other surveyed cities, the staff has not found any examples of minimum size limitation and has found only one example (New York City) of maximum size limitation (10,000 square feet). However, use standards related to the configuration of the space are common. They include distance requirements between patrons and dancers (6 feet in San Diego and El Paso, 4 feet in Fort Lauderdale), stages requirements, forbidding lap dances and private lounge areas (18 inches from the floor in a room at least 600 sq. ft. in Biloxi, El Paso, and Columbia), facility configuration regulations requiring private rooms to remain unobstructed from view (Jackson, Las Vegas), or requiring that no dancing be visible from outside (Las Vegas).

Time Limitations

Another way other cities regulate Adult Live Performance Venues is by limiting their hours of operation. The purpose of this is to limit certain nuisances associated with entertainment venues late at night. In Columbia, Adult Live Performance Venues can only be open from 6am to midnight. In Nashville, permitted hours of operation are from 8am to 3am, while in Jackson, El Paso and San Diego, Adult Live Performance Venues have to close at 2am.

In New Orleans, all the other entertainment uses, such as bars, live entertainment venues, and night clubs in the Vieux Carré Entertainment District are allowed to remain open all night, while most other cities and states have a limit on operation hours for all uses. For example the 2am cut-off applies to all businesses in California. In this case, the staff believes the Vieux Carre Entertainment District is intended to provide late night activities and it would be inconsistent to impose time limitations on a particular type of business.

2. Master Plan Consistency Analysis

Land use actions must be consistent with, or at a minimum not interfere with, the goals, policies and strategies of the *Plan for the 21st Century: New Orleans 2030*, commonly known as the Master Plan. The entirety of the VCE Vieux Carre Entertainment District is within the Master

Plan's Mixed Use Historic Core Future Land Use Map designation. The text of this category is provided below.

MIXED-USE HISTORIC CORE

Goal: Increase convenience and walkability for neighborhood residents and visitors within and along edges of historic core neighborhoods.

Range of Uses: A mixture of residential, neighborhood business, and visitor-oriented businesses. Uses may be combined horizontally or vertically, and some structures may require ground floor retail with residences or offices on upper floors. In some areas where current or former industrial use is verified, existing buildings may be appropriate for craft and value added industry.
Development Character: The density, height, and mass of new development will be consistent with the character and tout ensemble of the surrounding historic neighborhood. Appropriate transitions will be provided to surrounding residential areas.

Since this designation includes "visitor-oriented businesses" within its range of uses, the provision of adult live entertainment within this area is appropriate and consistent with the Master Plan. It is also appropriate for certain controls and limitations to be included within the VCE District to avoid an overconcentration that would hinder the existence of other uses described in the category. The "convenience and walkability for neighborhood residents and visitors" is enhanced when the pedestrian is not overwhelmed by adult uses and when the secondary effects of adult uses are in check.

Other general goals and strategies within the Master Plan's Land Use Plan (Chapter 14) include enhancing livability, providing appropriate transitions between different land use types, and creating a positive image through appropriate development standards. Establishing controls and limitations for adult and other impactful uses is generally supported by the Master Plan

3. Permitting & Licensing Analysis

The permitting and licensing structure for Adult Live Performance Venues is inconsistent with the Comprehensive Zoning Ordinance, mainly because both codes do not use the same terms when referring to them. The definition within the zoning ordinance has evolved over time from night clubs and cabarets to the more specific definition of Adult Live Performance Venue. However, the occupational licenses issued by the Department of Revenue refers to an array of different use classifications such as bar, bar with live entertainment, bar with adult entertainment, or restaurant with live entertainment. These categories do not give a factual description of what the use is. They are attributed to each business according to boxes checked by the applicant on the license registration application. These boxes include "Alcoholic Beverage Permit" and "Amusement Permit", among others, but do not include a specific category for adult live performance, or adult entertainment.

In order to ensure cohesion between the licensing structure and the applicable zoning code, the licensing structure needs an overhaul. Notably, the role of the Mayoralty Permit for Adult Live Performance Venues needs to be reevaluated. Currently, a Mayoralty permit is the permit,

associated with the Occupational License, which allows vendors, artists and individuals to conduct business or promote themselves or their art. These include:

- Live entertainment,
- Street entertainers,
- Mardi Gras activities,
- Itinerant vendors,
- Artists, etc.

Only five of the Adult Live Performance Venues in New Orleans actually hold a Mayoralty Permit for adult entertainment. Most other venues are licensed as bars with live entertainment or simply bars. Considering the current information required on a business license application, and the general blur that has historically existed around live entertainment, it is easy to understand why all these establishments are categorized differently.

The easiest way to improve the functionality of the Mayoralty Permit would be to create a new section on the business license, so that adult live performances venues are not simply categorized as "amusement place", but specifically as "adult entertainment".

Additionally, in order to ensure that operators continue to abide by applicable regulations, the license type needs to have an annual review before being renewed. Currently, an occupational license can be renewed online. This has created a situation where year after year, non-conforming uses have been renewed without having their occupational license category updated. Because adult live entertainment was not a defined use until recently, many businesses still hold occupational licenses labeled with outdated use categories that formerly allowed all types of entertainment (including adult entertainment) to occur within the premises. If a property has maintained the same use without interruption since that period of time, the use would be considered legally non-conforming. The burden of proof should be on the applicant to prove that they are legally non-conforming.

A new license type should be created that is specifically for Adult Live Performance Venues. All Adult Live Performance Venues should be required to renew their occupational license every year in order to ensure that all applicable zoning and building codes are met. A final inspection should be performed by applicable agencies prior to a Certificate of Completion or Occupancy being issued.

4. City Code Standards Analysis

The City Code contains regulations pertaining to Adult Live Performance Venues in the three following chapters:

Chapter 10- Alcoholic Beverages

This chapter regulates police investigation of alcoholic outlets and employees[98], which include fingerprinting of employees, identification card, record of employees, suspension and revocation of alcoholic beverages permits, and ground for violations. It also requires the presence of a responsible person on the premises, it forbids barkers and solicitors, prostitution, lewd behavior, nudity and sexual acts. Further, it requires dancers and performers to be at least 21 years old, and requires striptease shows to be performed on a stage or platform.

Chapter 30 – Mayoralty Permits

Any type of live entertainment requires a Mayoralty Permit that allows live entertainment in that location. Example of activities that fall under Live Entertainment are theatrical productions, concerts, circuses, dancing, artists, fashion shows, DJ's, etc. Adult Live Entertainment is its own category and is also subject to the Mayoralty Permit.

Chapter 54 – Criminal Code

In addition, the Criminal Chapter of the City Code has rules that apply specifically to Adult Live Performance Venues by regulating sexual immorality. These also include bans on prostitution, loitering, soliciting, lewd conduct, and public display, sale or distribution of explicit sexual material harmful to minors.

All these standards already govern the operation, permitting, and enforcement of Adult Live Performance Venues

Comparison of Adult Live Performance Venue Definitions

The current adult live performance venue definition in the Comprehensive Zoning Ordinance has been updated to include an establishment that features dancers, go-go dancers, exotic dancers, or similar entertainers or live entertainment, where persons regularly appear in a state of nudity, or where live performances are characterized by the exposure of specified anatomical areas or by specified sexual activities as defined below. Such establishments specifically exclude minors, or minors are specifically prohibited by statute or ordinance, regardless of whether or not any such business is licensed to sell alcoholic beverages.

However the terms used in the licensing and alcoholic beverage control codes are deficient because it still refers to night clubs and cabarets, which does not accurately describe the use.

The current definition of cabaret and night clubs in the Municipal Code (Chapter 10, Alcoholic Beverages) is any room, place or space in the city in which any musical entertainment, singing or dancing, or other similar amusement is permitted in connection with the business of directly or

[98] "Employee of a cabaret or night club means a person employed in any capacity or title in connection with a cabaret or night club, including the licensee and any/or all persons responsible for the control or management thereof. It shall also include a concessionaire and each person employed by such concessionaire."

indirectly selling to the public alcoholic beverages. The term "musical entertainment" shall not include recorded music, reproduced through a coin operated device or otherwise, nor shall it include television or radio entertainment.

This definition, by default includes what should be called Adult Live Performance Venues, but because this term does not exist in the licensing and Alcoholic Beverage Code, it has created numerous inconsistencies in the way Adult Live Performance Venues have been labeled when getting licensed.

The use name should be updated in both the licensing code and Alcoholic Beverage code in order to match the Comprehensive Zoning Ordinance use category.

5. Enforcement Analysis

Most of the regulations found in other cities already exist in New Orleans' Municipal Code or in the State of Louisiana State Law but are not enforced. Changes in the Licensing structure, and amendments to the Alcoholic Beverage Control code, would facilitate a better enforcement of current rules.

There is sufficient regulation in the Municipal Code and Louisiana State Law addressing health, safety and crime such as human trafficking, prostitution, drug dealing and other types of crimes. Louisiana State Law includes a three feet distance requirement between performers and patrons, and a requirement to display trafficking awareness posters inside the premises. Additionally, the Municipal Code prohibits solicitors and contains regulations specific to Adult Live Performance Venues including a 21 year old age requirement for performers, and an 18 inches high stage requirement. Both the stage and distance requirements technically forbid lap dances.

The Municipal Code also requires that the Police Department issue "cabaret" and "night club" employee cards for any persons working in these establishments (including contractors). Even though the terms of cabaret and night clubs are outdated (since they were used before the adult live performance venue use was created), their definitions found in the Alcoholic Beverage Section of the Municipal Code (Chapter 10) include Adult Live Performance Venues.[99] Enforcing the employee identification card requirement might create an unnecessary burden on dancers, rather than business owners, but it would be a way to effectively enforce the 21 year old minimum age requirement.

Currently operational standards for Adult Live Performance Venues are all located within the Alcoholic Beverages Code. Even though the language in the Alcoholic Beverages Code refers to cabarets and night clubs being subject to these standards, it is unclear if these provisions would apply to an establishment that was not serving alcoholic beverages. The only use standard contained in the Comprehensive Zoning Ordinance applies to all adult uses. It states that adult

[99] "Cabarets and night club mean any room, place or space in the city in which any musical entertainment, singing or dancing, or other similar amusement is permitted in connection with the business of directly or indirectly selling to the public alcoholic beverages. The term "musical entertainment" shall not include recorded music, reproduced through a coin operated device or otherwise, nor shall it include television or radio entertainment. Employee of a cabaret or night club means a person employed in any capacity or title in connection with a cabaret or night club, including the licensee and any/or all persons responsible for the control or management thereof. It shall also include a concessionaire and each person employed by such concessionaire."

uses are prohibited within one thousand feet of any residential district, place of worship, educational facility, and park or playground. This regulation does not apply to adult uses in the Vieux Carré Entertainment District where adult uses are allowed.

6. Analysis on the Alternative Reduction Methods.

The Planning Commission staff analyzed nine (9) options [(no change, 1 per block Face, 1 between intersecting streets, 1 per 150 feet, 1 per 250 feet, 1 per 300 feet, 1 per 500 feet, 1 per 1,000 feet, and another option which freezes the total number of ALPV's in the VCE District at its current number of fourteen (14)] when determining which option/s would accomplish the Council's objective to possible reduce the number of Adult Live Performance Venues in the Vieux Carré Entertainment District (see Table 8). The staff implemented two (2) methods when analyzing all nine (9) alternatives. The first method (Cap Method) capped all alternative's results at the current existing number of ALPV's (14) in the VCE District when determining total possible ALPVs allowed through attrition (see column 4 in Table 8). The second method (No Cap Method) did not cap an alternative's result when determining total possible ALPVs allowed through attrition (see column 5 in Table 8).

Table 8. Comparison of Alternatives Considering the Existing Adult Live Performance Venues in the VCE

1	2	3	4	5
Alternatives	**Alternative Description**	**EXISTING NUMBER of ALPVs**	**Total ALPVs through Attrition (CAP at Existing Number of ALPVs)**	**Total ALPVs through Attrition (No CAP at Existing Number of ALPVs)**
1	No Change	14	NA	Unknown
2	1 Per Block Face	14	14	20
3	**1 Between Intersecting Streets.**	**14**	****7**	15
4	1 Per 150 Feet	14	14	15
5	**1 Per 250 Feet**	**14**	****9**	****9**
6	**1 Per 500 Feet**	**14**	****5**	****5**
7	**1 Per 1,000 Feet**	**14**	****3**	****3**
8	**1 Per 300 Feet**	**14**	****8**	****8**
9	Freeze at Current Number	14	14	14

* ALPV = Adult Live Performance Venue

** The total existing number of ALPVs can decrease over time if a current legally operating venue/establishment loses their use license for more than 6 months.

*** Increase or decrease in number can depend on if the ALPV use is classified as Permitted or Conditional.

**** Attrition occurs when an existing ALPV closes for more than 6 months.

Considering the Cap Method, Alternatives 1, 2, 4 and 9 results would not decrease the number of ALPVs in the VCE with attrition, but Alternatives 3, 5, 7, and 8 would (see column 4 in Table 8). Considering the No Cap Method, Alternatives 1, 2, 4 and 9, in addition to Alternative 3, would either be unknown or not decrease the number of ALPV's upon attrition while Alternative 5, 7, and 8 would (see column 5 in Table 8). Based on the scope of the study, the Cap Method provides more alternatives to reduce the number of ALPVs in the VCE District through attrition.

Although the study did not establish a direct connection between specific ALPVs in the VCE District and types of crime, the study found that other cities determined there were negative secondary effects associated with adult uses. The staff also found that such a correlation allows cities to further regulate said use when trying to reduce negative secondary effects.

The staff considered alternatives that did not allow for an increase in ALPVs under the Cap Method. Implementing an alternative that uses distance regulations on similar uses (alternative 5, 6, 7 and 8) versus an alternative that allows one (1) ALPV between intersecting streets (alternative 3), would restrict the location on a block where an ALPV could occur. However, distance regulations could lead to an increase in property prices within those set distances giving the owners of certain properties an unintentional advantage over other land owners similarly situated in the same district.

The staff found that using the one (1) ALPV per two intersecting streets (alternative 3) allows for a reduction in ALPVs through attrition while allowing for the best opportunity for the use to occur on blocks within the VCE District. Therefore, in response to the request to possibly reduce the number of ALPVs, on the theory that reducing the number of ALPVs in the VCE would assist in reducing the negative secondary effects, the staff recommends "one (1) between intersecting streets" (alternative 3) under the Cap Method. This alternative allows for a maximum of 7 ALPVs in the VCE District which could ultimately be reached through attrition.

7. Recommendations

With Adult Live Performance Venues, there are many concerns about crime and morality. The most significant problems that exist are more related to criminal enforcement issues rather than land use regulation issues. Even with stricter land use regulations in place, reducing the secondary effects of Adult Live Performance Venues is going to depend on the efforts of criminal enforcement.

Enforcement

The staff's recommendation to overhaul the permitting and licensing system suggested periodic inspections of Adult Live Performance Venues to ensure the venues comply with the applicable regulations. This is one part of a strengthened enforcement structure that should be in place to properly regulate Adult Live Performance Venues. The staff found that many of the existing regulations for Adult Live Performance Venues located in Chapter 10 Alcoholic Beverage Code of the City Code align with best practices of communities across the country and the enforcement of these provisions was missing. Chapter 10 of the City Code currently requires performers to be a minimum age of 21 years old, requires that performances be on a stage with a minimum height of 18 inches, and requires that all employees of an adult live performance venue obtain a cabaret or night club employee's identification card issued by the New Orleans Police Department. The enforcement of these requirements would eliminate many of the private booths that were observed during field visits to multiple venues. This would also reduce the contact between patrons and performers. Much like the recommendations for licensing, criminal enforcement efforts should be coordinated, strategic, and visible. Operation Trick or Treat in October 2015, was a great example of cooperation between local and state agencies. These types of efforts aimed to curb illegal activities within the venues, coupled with periodic inspections for compliance with applicable codes will be essential in ensuring that Adult Live Performance

Venues are operating in a manner that is legal and within the operational parameters already set by the City.

Permitting System

Some of the terminology used in the Department of Revenue's permitting and licensing system is inconsistent with the uses defined by the Comprehensive Zoning Ordinances. The occupational licenses issued by the Department of Revenue refer to an array of different use classifications such as bar, bar with live entertainment, bar with adult entertainment, or restaurant with live entertainment. Applicants do not have the option to select 'Adult Live Performance Venue' as a use type on the application, but rather are expected to select "Amusement Permit." Additionally, though a Mayoralty Permit is required of Adult Live Performance Venues, only five of the venues in New Orleans currently hold a Mayoralty Permit. This suggests that there is confusion during the application process as to what is required in order to operate an Adult Live Performance Venue. One way to improve the clarity of the Mayoralty Permit process would be to create an Adult Live Performance section on the business license application. This simple change could greatly reduce confusion on the part of the applicant as to what category the use is considered.

The staff believes that the current system is also flawed in its renewal process. The current system allows operators to renewal online without any additional information or inspections and has allowed some Adult Live Performance Venues to operate in a manner that does not comply with the requirements of the City Code and the Comprehensive Zoning Ordinance. This type of renewal process sets up a system in which operators know that renewal of the same type of license is guaranteed and no inspection will be required to obtain the renewal. Bad operators could take advantage of this system and run their business in a manner that violates the City Code or Comprehensive Zoning Ordinance. This renewal system has also allowed adult live entertainment venues originally permitted as uses such as bars or bars with live entertainment to operate under those classifications. A process should be created to better link the use definitions of the Comprehensive Zoning Ordinance and the use categories used for licensing. This will reduce the enforcement official's confusion of how a use is licensed to operate. Additionally, should a business be found to be operating in a manner that violates the CZO or the City Code, the renewal of that business license should not be guaranteed. Periodic inspections should be made to ensure compliance with applicable codes, and the renewal of licenses should be dependent upon that compliance.

Reducing the Number of Existing Adult Live Entertainment Venues in the VCE District

This study has reviewed numerous other reports that demonstrate a general link between the presence of ALPVs and crime within the vicinity of such establishments. Due to the nature of Bourbon Street, which includes many intense uses serving alcoholic beverages, the Planning Commission staff could not establish a causal effect between the criminal rate and the number of venues, so it cannot tell how much criminal activity will drop if the number of venues is reduced. Despite the fact that the staff has not found that causality, studies show that less adult live entertainment uses should reduce negative impacts such as crime. Additionally, a reduction in

the number of ALPVs may serve to improve the pedestrian experience, protect neighborhood character, and meet other objectives identified in the study.

The staff believes that ALPVs play a significant role in the City's entertainment economy and concluded that their continued, but reduced presence in the VCE Vieux Carre Entertainment District is appropriate. Attrition and closure through the natural course of business – or through enforcement of regulations on habitual offenders - is the preferred option to eventually reduce the number of ALPVs. A frequently used zoning tool to limit certain types of uses is the limitation per blockface and/or square. While other options may also be appropriate, the staff recommends limiting ALPVs to **one (1) per either blockface between intersecting streets with an overall cap of fourteen (14)** within the VCE Vieux Carre District. This option creates a system where ALPVs may reduce in number over time with no option to increase.

Design Standards

To address the objectives of this study, the staff recommends consideration of all nearby residents and visitors to the Vieux Carre Entertainment District. The pedestrian should not be overwhelmed by the obvious presence of adult uses – especially through the unintended viewing of nudity within ALPVs. The staff recommends exploring ways to minimize the visual impact from the public right-of-way. While this may include enforcing existing provisions against excessive signage, sexually oriented material and lewd or coarse entreaties, it may also include the provision of a vestibule that precedes one's entry and blocks the view into the adult live performance area. Many of the larger venues already provide this feature.