



CITY OF MANITOWOC

WISCONSIN, USA
www.manitowoc.org

June 28, 2023

TO: Members of the Finance Committee
FROM: Eric Nycz, Interim City Attorney
Re: Proposed Revision to MMC 11.030

Issue Presented

Over the last 8 years, Exotica's (an adult entertainment tavern) alternated between being the first or second most active location in the city for police calls and criminal (and related) activity. (See attached incident summary prepared by Deputy Chief Corie Pusel). Based on additional research by this Office, that result is unsurprising. Adult entertainment taverns tend to further the increase of criminal and other offensive activity, to say nothing for how they depreciate the value of real property in the areas where they are located and the disruption of peace and order. However, some of the activities that occur within adult entertainment taverns are protected as expression under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution, and rightly so. Therefore, municipalities sometime struggle with how to properly regulate these entities while balancing the interests of protecting the public health, safety and general welfare of their citizens with the rights of expression by performers operating at these entities. Fortunately, a 1986 Supreme Court case, *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, laid the groundwork for municipalities to understand how to balance the substantial government interest in protecting the public health, safety and general welfare of its citizens with constitutionally protected freedom of expression.

City of Renton v. Playtime Theatres, Inc.

Renton, a city of 32,000 located just south of Seattle, adopted an ordinance requiring adult theaters to be located at least 1,000 feet from any residential zone, residence, church, park, or school. The effect of this was to leave only 520 acres, about 5 percent of the city's land area, available for use by adult theaters.

Justice Renquist, writing for a six-member majority of the Court, held that Renton's ordinance should be reviewed as a content neutral time, place, and manner restriction on free speech. The ordinance was deemed to be "content neutral" even though there was differential treatment of theaters based on the type of films being shown. The court reasoned that the content of the films was not the basis of the ordinance because the city council's "predominate concern" in adopting it was the secondary effects of adult theaters on the surrounding neighborhood. The court held that the critical inquiry in determining the validity of a restriction on the location of premises for adult uses is whether the ordinance "is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication."

There are several particularly notable aspects of the *Renton* decision.



First, the Court did not impose particularly stringent requirements on the degree of effort a local government must undertake to demonstrate the need for regulation of adult businesses. In *Renton*, the governing board's findings relative to secondary impacts, which formed the basis for establishing the city's requisite substantial interest, were added to the ordinance after litigation was commenced. Also, the city was allowed to rely on studies prepared by neighboring Seattle, rather than having to document any negative secondary impacts of adult theaters in Renton itself. The court held studies from other locations could be the basis of the restriction "so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem the city addresses."

Second, the court allowed the regulations to be imposed as a preventive rather than a corrective measure; there were no adult establishments at all present in Renton when the ordinance was adopted.

Third, the court allowed a substantial restriction, but not total exclusion, on the availability of permissible sites for adult entertainment. The court held that leaving 5 percent of the city's land area potentially open to adult uses allowed "reasonable alternative avenues" for protected speech. The court noted that while the city could not effectively deny the opportunity to open and operate an adult theater within the entire city, the adult entertainment operators would have to fend for themselves in the real estate market. The city has no obligation to assure that sites are readily available at bargain prices.

Further caselaw, including *City of L.A. v. Alameda Books*, 535 U.S. 425 (2002), have expanded the state's authority to regulate this area by making the analogy that newspaper factories might cause pollution absent regulation. Such a company certainly has the right to print newspapers; however, newspaper companies must succumb to environmental laws. The same general idea applies here. The right of expression exists, but the state has the authority to (and mandate) to reduce crime and protect the health, safety, and welfare of its citizens.

Literature Review

Deputy Chief Pusel's findings are consistent with the literature that staff reviewed; adult entertainment businesses, generally, and adult entertainment taverns specifically, increase crime. They also reduce surrounding property values and contribute to blight. The following citations are provided should any member of the Common Council wish to review the literature supporting Deputy Chief Pusel's local findings.

- Survey of DFW Appraisers: Land Use Effects on Property Values, Cooper/Kelly, DFW, TX, 2004
- Do Peep Shows 'Cause' Crime?" McCleary/Meeker. *Journal of Sex Research*, 43:194-196, 2006.
- "Rural Hotspots: The Case of Adult Businesses," McCleary, *Criminal Justice Policy Review*, 19:153-163; 2008.
- "Summaries of SOB Land Use Studies," National Law Center for Children and Families, 2005.
- "Police Report and Citizens Report regarding Adult Entertainment Ord.," Tucson, AZ, 1990.
- "Survey of Florida Appraisers: Effects of Land Uses on Surrounding Property Values," prepared by Duncan Associates and Cooper Consulting for Palm Beach County, May 2008



- Kansas City, MO: “Adult Use Study: Summary and Recommendations,” prepared by Eric Damian Kelly and Connie B. Cooper for the City of Kansas City, April 1998.

Recommendations

After an extensive jurisdictional and literature review, it is the recommendation of this Office that the City of Manitowoc update its licensure ordinance for adult entertainment taverns to restrict licensees from operating near areas where children are likely to be present. The vast majority of Wisconsin municipalities have similar provisions in their ordinances, including the following similarly-sized cities:

- Brookfield
- Caledonia
- De Pere
- Fitchburg
- Fond du Lac
- Franklin
- Germantown
- Howard
- La Crosse
- Menomonee Falls
- Middleton
- Muskego
- Neenah
- Oak Creek
- Onalaska
- Oshkosh
- Pleasant Prairie
- Sheboygan
- South Milwaukee
- Stevens Point
- Superior
- Wauwatosa
- West Allis
- West Bend

It is further recommended that the ordinance prevent operations near other establishments licensed to sell intoxicating liquor for consumption on premises. The literature supports a “multiplier” effect, which we found was present with Exotica’s (Legend Larry’s, a tavern, was located on the same block, etc.). Numerous other municipalities have this legal restriction as well. Both restrictions as drafted in the attached draft ordinance would serve to protect the public health, safety and general welfare of Manitowoc’s citizens, and thanks to the excellent work of City GIS Coordinator Jeremy Du Chateau, staff has determined that the proposed revisions do not impermissibly infringe upon the constitutional rights of expression of anyone seeking an adult entertainment tavern license.

Therefore, staff recommends that the Committee endorse these revisions and advise the Common Council to adopt the attached ordinance at the next Common Council meeting. Thank you for your consideration.

A23-00151 Adult Entertainment Ordinance Revision

From: Eric Nycz (enycz@manitowoc.org)

To: jthuermer@aol.com

Date: Monday, October 16, 2023 at 04:10 PM CDT

Hi Joe – here's the memo. Renton had 5%, City of Alameda might have had less. I looked at a lot of cases but the bottom line is that at 2% you are safe. (ie – these regulations are consistently upheld in 2% or more open space).

**** Attached file(s):**

Memo to Common Council re Proposed Revision to MMC 11.030.DOCX



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122.2kB

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