

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**FILED  
STATE RECORDS**

**APR 16 2012**

- County  
 City of Newburgh  
 Town  
 Village

Local Law No. 2 of the year 20 12 **DEPARTMENT OF STATE**

A local law imposing a Six Month Moratorium on Permits and Approvals for Adult-Oriented  
(Insert Title)  
Businesses.

Be it enacted by the Town Board of the  
(Name of Legislative Body)

- County  
 City of Newburgh as follows:  
 Town  
 Village

(Delete this line of text and enter text of local law here)

ATTACHED

(If additional space is needed, attach pages the same size as this sheet, and number each.)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 12 of the (County)(City)(Town)(Village) of Newburgh was duly passed by the Town Board on April 4, 20 12, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

~~**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*~~

~~**3. (Final adoption by referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*~~

~~Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.~~

~~**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*~~

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.



~~5. (City local law concerning Charter revision proposed by petition.)~~

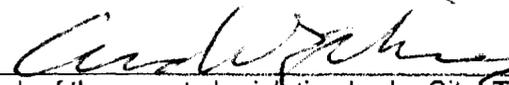
~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.~~

~~6. (County local law concerning adoption of Charter.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

  
\_\_\_\_\_  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body  
Andrew J. Zarutskie, Town Clerk  
Date: APR 11 2012

(Seal)

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF ORANGE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
\_\_\_\_\_  
Signature Mark C. Taylor, Esq.  
Attorney for the Town of Newburgh  
Title

County \_\_\_\_\_  
City of Newburgh  
Town  
Village \_\_\_\_\_

Date: April 11, 2012



## SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Imposing a Six Month Moratorium on Permits and Approvals for Adult-Oriented Businesses”.

## SECTION 2 – LEGISLATIVE FINDINGS, PURPOSE AND AUTHORITY

A. The Town Board of the Town of Newburgh hereby finds that:

(1) the Town does not currently regulate or impose operational requirements related to the establishment and operation of adult-oriented businesses within the Town;

(2) adult-oriented businesses appear to be unavoidably associated with unlawful, unhealthy and detrimental effects secondary to the constitutionally protected speech activities of such businesses;

(3) included among the secondary effects which appear to be associated with adult-oriented businesses are: negatively affecting economic development and revitalization; a tendency to decrease property values, thereby limiting tax revenues; impeding economic activity; encouraging criminal activity, particularly when such businesses are located in concentration; proliferating sex-related criminal enterprises; damaging neighborhood character and the well-being of residents including children; and increasing the cost of maintaining and patrolling areas in which such businesses are located;

(4) further study of the secondary effects of adult-oriented businesses is necessary as a precursor to possibly amending the Zoning Code of the Town of Newburgh and its associated maps and tables to address such effects and is recommended by the adopted Town of Newburgh Comprehensive Plan Update;

(5) the enactment of the moratorium period is necessary to ensure that any possible amendment to the Zoning Code and its associated maps and tables comport with the rights of adult-oriented businesses and their patrons to engage in all constitutionally protected speech activities inherent in such businesses, while protecting against harmful secondary effects to the greatest extent possible consistent with law;

(6) it is desirable to immediately forbid the issuance of any use permit, variance, building permit, business license or other applicable entitlement for the expansion of an existing, or the establishment of a new, adult-oriented business, except within a specified zoning district as hereinafter provided; and

(7) that it is necessary to adopt this moratorium in order to protect the public health, safety, and welfare.



B. The intent of the Town Board in enacting this Local Law is to limit the harmful secondary effects of adult-oriented businesses so that the Board may, in a prompt and orderly fashion, complete its consideration of the studies of such effects conducted by other municipalities and agencies, such studies having been submitted to the Board by the Attorney for the Town on January 31, 2012 (copies of such studies and the Attorney for the Town's covering memorandum are annexed to this Local Law as Appendix "A"), and, if determined by the Town Board to be warranted upon completion of its consideration of the studies, to prepare a possible amendment to the Zoning Code and its associated maps and tables for the purposes of mitigating such effects. The intent of the Board is not to limit constitutionally protected expressive activity and, to this end, this Local Law is not intended to prohibit the continued operation of currently existing adult-oriented businesses or prevent the establishment of new adult-oriented businesses in compliance with the content-neutral, time, place and manner restrictions established by this enactment.

C. This Local Law is enacted under the authority of the New York State Constitution, Article IX, § 2; the New York State Municipal Home Rule Law, Article 2; the relevant provisions of the Town Law for the State of New York; and the general police power vested with the Town of Newburgh to ensure the health, safety and welfare of all the residents and all the property owners within the Town of Newburgh.

### SECTION 3 - DEFINITIONS

. As used in this Local Law, the following terms shall be defined as follows

A. **Adult-Oriented Business:** Use of a building, structure, or property for a business that has adult materials in a section or segment devoted to such materials or as a substantial or significant portion of its stock in trade for the purposes of sale, rental, lease, trade, gift or display of such adult materials. For the purposes of this law adult-oriented businesses shall also mean and include any restaurant, nightclub, bar, tavern, eating and drinking place or establishment, arcade, theater, video store, motel, hotel, or any other establishment that regularly features, for economic gain or other consideration, entertainment in any form which is characterized by nudity or the depiction or display of specified sexual activities or adult materials and any massage establishment.

B. **Adult Materials:** Adult materials shall include but not be limited to any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, DVD's, video cassettes, slides; or other visual representations, mechanical devices, instruments, clothing or any other writings, materials or accessories which are distinguished or characterized by their emphasis on matter depicted described or related to specified sexual activities or specified anatomical areas as defined herein, or an establishment with a segment or section exclusively devoted to the sale, lease, gift, trade, display of such materials.

C. **Specified Sexual Activities:**



- (1) Fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast.
- (2) Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation or sodomy.
- (3) Acts of human masturbation, actual or simulated.
- (4) Excretory function as part of or in connection with any of the activities set forth in (1), (2) or (3) above.

D. Specified Anatomical Areas:

- (1) Less than completely or opaquely covered:
  - (a) Human genitals;
  - (b) Pubic Region;
  - (c) Buttock; or
  - (d) 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.

E. Substantial or Significant Portion: includes a place with only a portion or section of its area set aside for the display, rental, sale of adult materials or an adult oriented business defined above in this section, except that any place otherwise included in this section that can prove that not more than then (10) percent of its square footage (of space of the interior which is open to the general public) is devoted to display of or sale of materials listed for the foregoing definitions shall be exempt from the provisions of this article so long as such material is kept out of the reach and visibility of minors.

F. Nudity: Nudity means the showing of the human male or female genitals, public areas, buttocks, or anus, any part of the nipple or any part of a female breast below a point immediately above the top of the areola with less than a fully opaque covering.

G. Massage Establishment: Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. The definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist, occupational therapist, or duly licensed massage therapist, or barber shops, beauty salons or nail salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs which have facilities for physical



exercise, such as tennis courts, racquet ball courts, ice skating rinks, or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

#### SECTION 4 - SCOPE OF TEMPORARY MORATORIUM

A. The moratorium period will commence on the date on which this Local Law is filed in the Office of the New York State Secretary of State and shall end six months from such date of filing.

B. The Town Clerk shall post in a conspicuous location open to the public at the Town of Newburgh, Town Hall, located at 1496 Route 300, Newburgh, New York 12550, the commencement and ending dates of the moratorium period, post such dates on the Town's website and shall provide such information to any member of the public requesting same.

C. During the moratorium period, no applications will be accepted or processed nor a permit or approval issued for a preliminary or final site plan or amended site plan, special use permit, area or use variance, interpretation, building permit, certificate of occupancy or other applicable entitlement which would authorize the expansion or alteration of an adult-oriented business existing and operating within the Town of Newburgh as of the effective date of this Local Law #2 of 2012 nor which would authorize the establishment of a new adult-oriented business which was not existing and operating as of the date of enactment of this Local Law #2 of 2012 except as provided in Subsection D below.<sup>1</sup>

D. During the moratorium period, applications will be accepted and processed and permits or approvals may be issued, for a preliminary or final site plan, amended site plan, special use permit, area or use variance, interpretation, building permit, certificate of occupancy or other applicable entitlement for an adult-oriented business, provided that such proposed adult-oriented business is:

(1) situated within the B, IB or I Districts as shown on the August 19, 1974, Zoning Map, Town of Newburgh, last amended June 7, 2010, which accompanies and which, with all explanatory matter thereon, is hereby adopted and made a part of this local law. The exact location of each zoning district boundary is recorded on the Official Zoning Map in the office of the Town Clerk in accordance with § 264 of Town Law and § 185-5 of the Town's Zoning Law; and

(2) not located within 1,000 feet of any boundaries of the RR, AR, R1, R2 or R3 residential zoning districts, a church, synagogue, mosque or other place of worship, school, nursery or day-care center, public or semi public park, playground or recreational facility; and

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<sup>1</sup> Subject to exemption for applicants who have obtained vested rights for the expansion, alteration or new adult-oriented business, or who have not obtained decision on their applications within applicable time periods.



(3) is a permitted use or use subject to site plan review within the applicable Zoning District.

For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the adult oriented business is or will be located to the nearest property line of any land use, land use district, or zone described in subsection D(2) of this section, or to the nearest point of the building or structure or part thereof occupied or leased by the adult oriented business if less than the entire structure is occupied by or proposed to be occupied by an adult oriented business.

#### SECTION 5 - JUDICIAL REVIEW

Those wishing to challenge the validity of this Article are advised that judicial review of same is available under, *inter alia*, 42 U.S.C. §1983 and Article 78 of the New York Civil Practice Law and Rules.

#### SECTION 6 - SUPERCESSION

This Local Law restricts the authority of the Planning Board, Zoning Board of Appeals, and Code Compliance Supervisor/Building Inspector to review and approve site plans, grant special use permits, grant use and/or area variances, make interpretations, and issue any permits, certificates or approvals with respect to adult oriented uses. Pursuant to Section 10(1)ii(a) 11, 12 and 14 and (d)3, and Section 10(2) of the Municipal Home Rule Law of the State of New York, this local law is intended to supercede the provisions contained in Article 16 of the Town Law of the State of New York which require action within specified time periods by the Planning Board and/or the Zoning Board of Appeals on special use permit and/or site plan applications for residential uses elsewhere prohibited by this local law and which may also require related actions by the Zoning Board of Appeals regarding variance applications. This local law also supercedes Town Law Sections 274-a and 274-b as those sections apply to the approval of special use permits and/or site plan approval otherwise prohibited herein. Additionally, this local law supercedes Town Law Sections 267, 267-a, 267-b and 267-c as those sections apply to an appeal and/or variance applications for a special use permit or site plan elsewhere prohibited by this moratorium that may be filed with the Zoning Board of Appeals in connection with any of the provisions of the Zoning Law of the Town of Newburgh including, without limitation, the provisions of this local law.

Pursuant to Section 10(1)ii(a) 11, 12 and 14 and (d)3 and Section 10(2) of the Municipal Home Rule Law of the State of New York, this local law is intended to supercede the provisions contained in Article 8, Section 8-0109, subsections (4) and (5) of the NYS Environmental Conservation Law and the regulations thereunder (6 NYCRR Part 617) to the extent that such provisions require that the Planning Board or any lead agency determine the environmental significance of an application for all special use or site plan approval otherwise prohibited herein within certain specified time frames.



Pursuant to Section 10(1)ii(a) 11, 12 and 14 and (d)3 and Section 10(2) of the Municipal Home Rule Law of the State of New York, this local law is intended to supercede the various provisions of the Zoning Law and Building Construction Code of the Town of Newburgh to the extent that such provisions require that the Planning Board, Code Compliance Department, or Zoning Board of Appeals of the Town of Newburgh receive, review and decide special use permit, site plan, building permit or certificate of occupancy applications otherwise prohibited herein within specified time frames. The relevant sections of the Zoning Law, Chapter 185 of the Municipal Code of the Town of Newburgh, that are superceded by this local law regarding such site plan applications include the following: Articles VII (Enforcement and Penalties), VIII (Board of Appeals), IX (Site Plan Review) and XII (Master Plan) . Additionally, Article III (Building Permits and Certificates of Occupancy) of Chapter 71, Building Construction, of the Municipal Code of the Town of Newburgh, likewise, is superceded to the extent that such Article requires receipt, review, processing and deciding building permit and certificate of occupancy applications otherwise prohibited herein within certain specified time frames.

#### SECTION 7 - VALIDITY

If any clause, sentence, paragraph, word, section or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

#### SECTION 8 – PENALTIES

A. After the fifth day following written notice served by personal service by the Building and Code Enforcement Officer to the effect that an adult-oriented business is operating or has been established in violation of any of the provisions of this local law, for each and every such violation any person who commits, takes part in, or assists in such violation, or who maintains any building or premises in which any such violation shall exist, shall be guilty of an offense. Upon conviction thereof, the person violating the same shall be subject to a fine of not more than \$350 or imprisonment for not more than six months, or both, for conviction of a first offense; a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both, for conviction of a second offense committed within a period of five years of the committing of the first offense; and a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both, for conviction of a third or subsequent offense, all of which were committed within a period of five years. Each week's continued violation shall constitute a separate additional violation. No notice shall be required for a violation which is a continued or a recurring violation for which an original notice has already been given.

B. A person who commits, takes part or assists in violation of any provision of this local law or who maintains a building or premises in which any such violation shall exist



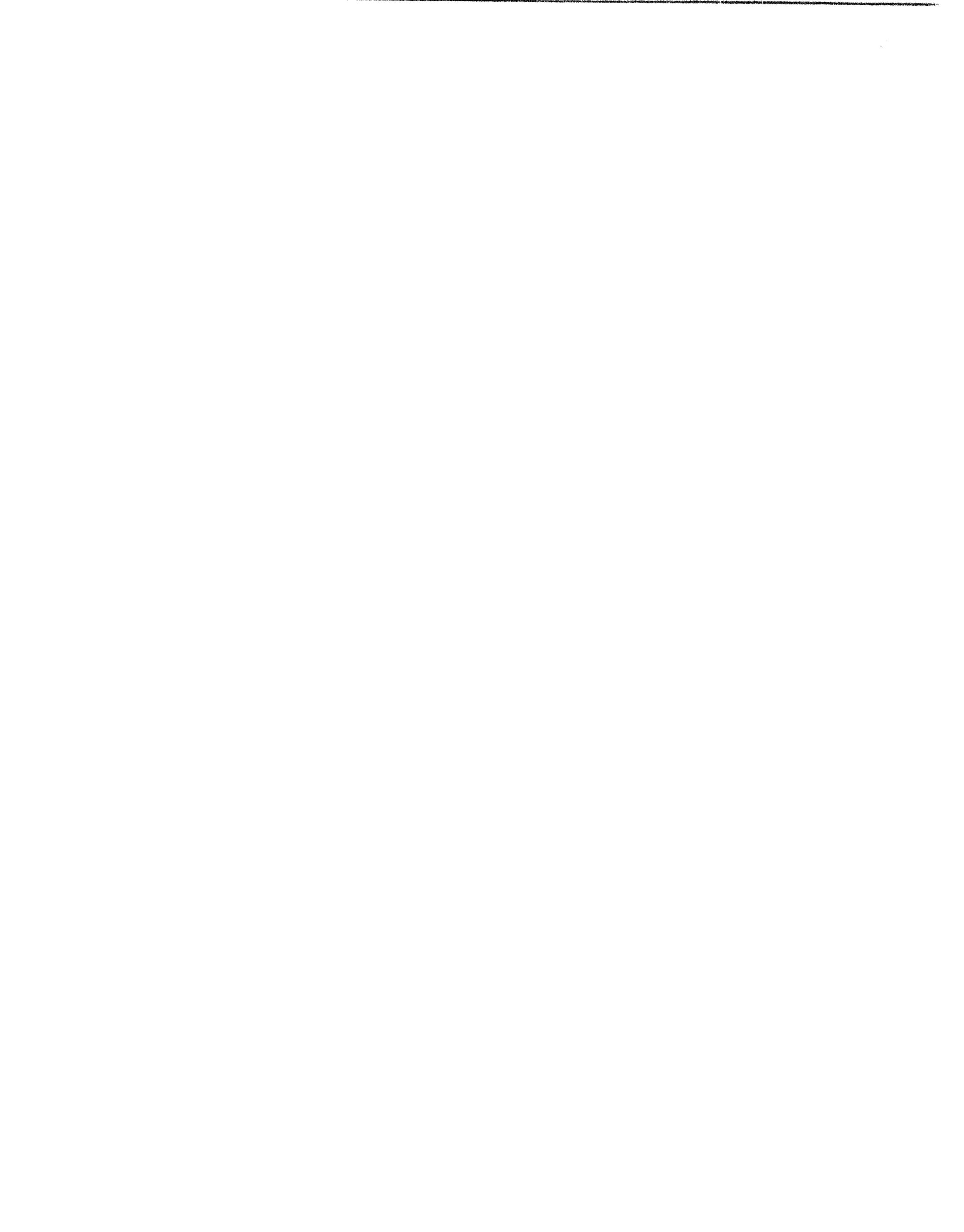
shall be subject to monetary civil penalties not exceeding \$350 for the first violation; not less than \$350 nor more than \$700 for the second violation occurring within a period of five years; and not less than \$700 nor more than \$1,000 for a third or subsequent violation occurring within a period of five years. Each week's continued violation shall constitute a separate additional violation. No notice shall be required for a violation which is a continued or a recurring violation for which an original notice has already been given.

C. The Justice Court of the Town of Newburgh shall have original and trial jurisdiction over summonses and appearance tickets served and informations filed charging violations of this local law. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors, and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation. No notice shall be required for a violation which is a continued or a recurring violation for which an original notice has already been given.

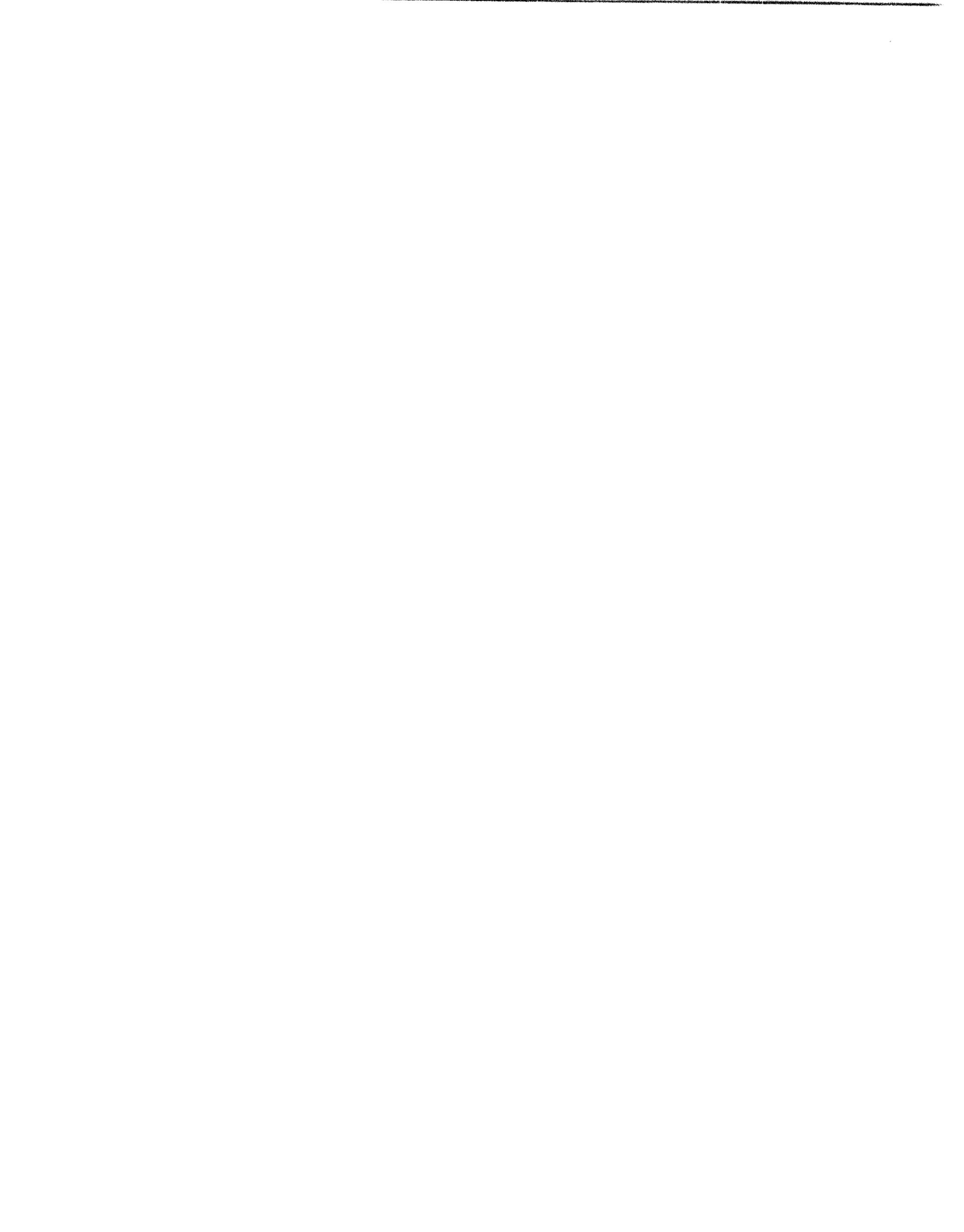
D. In case any adult-oriented business is operating or has been established in violation of this local law or any regulations made under authority conferred hereby, the Town Board or, with its approval, the Building and Code Enforcement Officer or other proper official, in addition to other remedies, may institute any appropriate action or proceedings to prevent, correct or abate such violation.

#### SECTION 9 - EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.



APPENDIX "A"



APPENDIX "A"

RIDER, WEINER & FRANKEL, P.C.

ATTORNEYS & COUNSELLORS AT LAW

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**MEMORANDUM**

M. J. RIDER (1906-1968)  
ELLIOTT M. WEINER (1915-1990)

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BRUCE C. DUNN, SR.  
COUNSEL

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WAPPINGERS FALLS, NY 12590  
(845) 632-6094

TO: HON. WAYNE C. BOOTH, SUPERVISOR  
TOWN BOARD MEMBERS

FROM: JEFFREY S. SCULLEY, ASSISTANT ATTORNEY FOR THE TOWN

RE: SECONDARY EFFECTS STUDIES AND THE POTENTIAL USE OF  
SAME, IF WARRANTED, AS BASIS TO REGULATE POSSIBLE  
HARMFUL SECONDARY EFFECTS OF ADULT OR SEXUALLY  
ORIENTED USES IN THE TOWN OF NEWBURGH, NEW YORK  
OUR FILE NO. 800.1(B)(2)(2012)

DATE: JANUARY 31, 2012

The adopted Town of Newburgh Comprehensive Plan Update includes an Action Plan for planning and zoning that lists over thirty items. Among those listed action items is a recommendation that the possible "negative secondary effects" of "adult uses" should be examined and, if warranted, that zoning definitions and regulations be established. The purpose of this memorandum is to provide legal guidance to the Town Board with regard to the conduct of the recommended examination.

Adult or sexually oriented uses ("SOUs"), such as adult book/video stores and establishments providing adult entertainment are constitutionally protected under the first and fourteenth amendments to the federal constitution, as well as the New York State constitution, because the owners and customers of SOUs are engaged in protected free expression. As such, governments may not regulate SOUs based on the content or viewpoint of the speech activities engaged by the owners and their patrons.

However, the Supreme Court has held that a municipality may via its zoning ordinance or local law attempt to mitigate harmful secondary effects which the municipality's governing body may determine are caused by SOUs. These secondary effects include increased crime, reduced property values and diminished quality of life. In other words, a municipality may enact a zoning ordinance restricting, although not banning, SOUs to certain locations provided the sole purpose of such restrictions is



January 31, 2011

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mitigation of secondary effects. Such an ordinance or local law must be a valid regulation on the time, place and manner in which an SOU operates rather than a restriction on the content or viewpoint of the SOUs or their customers.

Although optimal, it is not constitutionally required that a municipality conduct or commission its own study or generate its own evidence that SOUs cause harmful secondary effects. Rather, a municipality may rely on studies and evidence prepared and collected by other governmental bodies, provided that the municipality “reasonably believed” that such studies or evidence were relevant to the problem it sought to address. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986).

We have reviewed numerous secondary effects studies and have attached several for the Board’s consideration. The attached studies have been forwarded for the Board for several reasons. First, we believe an argument can be made that each is sufficiently similar to the Town’s situation as to make the studies appropriate for the Board to rely on if it decides to regulate SOUs by amending the Town Code. Second, many of the studies have served as bases for other municipality’s zoning amendments which have survived court-challenge. This increases the likelihood that such studies will provide a sufficient basis to support a decision to amend the Town Code, should the Board ultimately decide to do so. Third, the studies are based on the collection of new data, rather than being a simple restatement and summary of prior studies. Fourth, the annexed studies are based on several different types of data, including, crime incident reports, surveys of real estate appraisal professionals and opinion polling data of municipal residents. Fifth, we have included only those studies which employ what we judge to be methodologically sound design (we have excluded, for example, those studies based on anecdotal evidence, which fail to support their conclusions with specific statistical evidence or utilize study and control groups).

Please note, depending on the nature of any possible zoning amendment entertained by the Board, additional studies may be forwarded for the members’ consideration.

Massage parlors and spas providing unlicensed services to patrons, collectively, adult physical culture establishment (“APCE”), may also be regulated as part of a comprehensive amendment to the Town Code designed to mitigate the secondary effects of SOUs. However, the regulation of APCEs does not implicate free expression concerns. Indeed, municipal ordinances which amortize and terminate operating APCEs and prohibit such uses in the future have been upheld. See, *e.g.*, *Wigginess Inc. v. Fruchtman*, 482 F.Supp. 681 (S.D.N.Y. 1979), *affirmed*, 628 F.2d 1346 (2<sup>nd</sup> Cir. 1980), *cert. den.* 449 U.S. 842 (1980). Consequently, the Town may include APCEs in a potential amendment designed to address the possible harmful secondary effects of SOUs, but, unlike SOUs, the Town may also proscribe future APCEs and provide for the amortization of such existing uses.



January 31, 2012

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The Board members should each familiarize themselves with the attached studies. This is essential so that the members may have a factual basis on which to form a possible "reasonable belief" that the studies are relevant to the issues confronting the Town due to SOUs. Although perhaps tedious, I advise that each Board member and the Supervisor review the studies personally. If a potential zoning amendment is ultimately challenged, the Town's position will be strengthened when discovery reveals that the Board did not simply rely on the advice of counsel in making the legislative findings supporting the amendment, but that they actually read and considered the annexed studies. I suggest that each member note on the studies memorializing when they reviewed each. I also suggest a session where the Board and the Supervisor may discuss the studies with, and question, counsel.

There is no way to "bullet-proof" an ordinance regulating SOUs. It is possible to minimize the risk of a SOU successful challenging and invalidating such an ordinance. This starts with the Board's review of the studies which it will have to consider and, perhaps, ultimately, rely upon, in order to regulate the potential harmful secondary effects of SOUs. In considering these studies, the members should always bear in mind that the goal of any regulation of SOUs is not to limit the constitutionally protected speech engaged in by such entities and individuals, but mitigating the harmful secondary effects of such uses.

cc: Hon. Andrew J. Zarutskie, Town Clerk  
John P. Ewasutyn, Planning Board Chairman  
Grace Cardone, Zoning Board of Appeals Chairwoman  
Gerald Canfield, Code Compliance Supervisor  
David Smith, AICP, VHB Engineering, Surveying and Landscape Architecture, P.C.



INDEX OF SECONDARY EFFECTS STUDIES  
 SUBMITTED TO THE TOWN BOARD  
 OF THE TOWN OF NEWBURGH  
 JANUARY 31, 2011

STUDY	DATE REVIEWED	TOWN BOARD MEMBER'S INITIALS
REPORT ON THE SECONDARY EFFECTS OF THE CONCENTRATION OF ADULT USE ESTABLISHMENTS IN THE TIMES SQUARE AREA	_____	_____
STUDY OF POLICE ACTIVITY MILFORD: TESTING FOR NEGATIVE SECONDARY EFFECTS OF ADULT BUSINESS	_____	_____
ADULT BUSINESS – STUDY (PLANNING DEPARTMENT, CITY OF PHOENIX)	_____	_____
ADULT USE STUDY (NEWPORT NEWS DEPARTMENT OF PLANNING AND DEVELOPMENT)	_____	_____
RURAL HOT SPOTS: THE CASE OF ADULT BUSINESSES (BY RICHARD McCLEARY)	_____	_____
ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS AN ANALYSIS	_____	_____
REPORT ON ADULT ORIENTED BUSINESSES IN AUSTIN (OFFICE OF LAND DEVELOPMENT SERVICES)	_____	_____
SURVEY OF FLORIDA APPRAISERS: EFFECT OF LAND USES ON MARKET VALUES	_____	_____
ADULT ENTERTAINMENT STUDY (DEPARTMENT OF CITY PLANNING CITY OF NEW YORK)	_____	_____
EFFECTS OF ADULT ENTERTAINMENT BUSINESSES ON RESIDENTIAL NEIGHBORHOODS (OFFICE OF THE CITY ATTORNEY, CITY OF EL PASO)	_____	_____



SURVEY OF TEXAS APPRAISERS  
SECONDARY EFFECTS OF  
SEXUALLY-ORIENTED  
BUSINESSES ON  
MARKET VALUES

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**REPORT ON THE  
SECONDARY EFFECTS OF THE  
CONCENTRATION OF ADULT USE  
ESTABLISHMENTS IN THE  
TIMES SQUARE AREA**

**April 1994**

**PREPARED BY INSIGHT ASSOCIATES**

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SECONDARY EFFECTS OF THE  
CONCENTRATION OF ADULT USE  
ESTABLISHMENTS IN THE  
TIMES SQUARE AREA**

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# EXECUTIVE SUMMARY

## BACKGROUND

After a dramatic decline in the number of adult use businesses in Times Square from an all-time high of approximately 140 in the late 1970s to 36 in June, 1993, the business and adjacent residential communities view with concern the increase to 43 in the last few months. The area of concentration of these businesses has shrunk and shifted from Broadway and Seventh Avenue to Eighth Avenue and the western edge of 42nd Street block between Seventh and Eighth Avenues. This summer the City and State will begin condemnation procedures against the remaining private parcels on the northeast corner of 42nd Street and Eighth Avenue. This action will reduce the overall number but displacement onto Eighth Avenue is possible.

Times Square is one of the City's most eclectic and vibrant commercial areas, producing extraordinary economic fuel and firing the imaginations of millions worldwide as the international icon of vitality and vibrancy. Times Square is home to some of the City's major corporations with more than 30 million square feet of office space. The BID represents approximately 400 property owners and 5,000 businesses including giant entertainment companies, international security firms, large law firms, theatrical agents and publishers. Times Square has a daily pedestrian count of 1.5 million people.

It is the capital of legitimate theater for the nation with 37 Broadway theaters and a total of 25,000 seats. These theaters together sell some 8 million tickets annually, pumping \$2.3 billion into the New York City economy annually.

Approximately 20 hotels with 12,500 hotel rooms (one-fifth of all hotel rooms in Manhattan) house some five million visitors a year and more than 200 restaurants, the largest concentration in any City neighborhood, serve them and local patrons. The Convention and Visitors' Bureau estimates 20 million tourists come to Times Square annually.

But Times Square is also home for thousands of residents who live within its heart or immediately

adjacent to it. The BID alone has six churches within its boundaries. Among the 25,651 people who live in six census tracts which include 42nd to 54th from Sixth to Tenth Avenues, 15.4% are 62 years or older which is similar to Manhattan as a whole and to the two community districts (CB4 and CB5) in which Times Square exists. In 1990 nearly 2,000 children under the age of 14 lived in this area, too. Both old and young are generally circumscribed by their immediate community. The Census data also show that 48% of these residents work within less than half an hour from their homes and walk to work, spending both their working and off-hours in the Times Square area. This percentage is higher than the percentage for the borough as a whole and is much higher than the percentage of those in the other four boroughs.

Crime has plummeted over the past several years in Times Square with an estimated reduction by 60% on West 42nd Street alone. This reduction came in part from the closing of many adult use establishments on 42nd Street between 7th and 8th Avenues and the close coordination between the NY Police Department and the Times Square BID. The BID with its 40 public safety officers has witnessed an overall reduction of street crime within its boundaries by 19%, comparing 1992 to 1993, including an impressive reduction of 38% in grand larceny from the person. BID statistics also reveal that three card monte games have been reduced by some 57% over the past year.

The most recent Mayor's Sanitation Scorecard rated the sidewalks of Times Square at an impressive 93% thanks in large measure to the BID's 45 sanitation workers. In addition, the BID's homeless outreach team has placed many needy people in shelters and services.

During 1993, the City Council introduced legislation that would restrict the locations of adult uses citywide. This proposed legislation, along with similar bills proposed and enacted in cities across the nation, including Detroit, can only be upheld constitutionally, if it can be supported by documentation of negative secondary effects as well as evidence that the establishments could locate somewhere accessible for their patrons.

The Times Square BID commissioned an objective, fact-finding study to determine the effect, if any, these adult use businesses have on one of the City's most commercially vital areas. In this study, as in other secondary effects studies, researchers combined analysis of available data on property values and incidence of crime together with a demographic and commercial profile of the area to show relationships, if any, between the concentration of adult use establishments and negative impacts on businesses and community life. The study also includes, as allowed by Courts, anecdotal evidence from property owners, businesses and community residents and activists of their perceptions of the impact adult establishments have on their area.

## FINDINGS

- o All survey respondents acknowledged the improvements in the area and voiced optimism about the future of Times Square even as they bemoaned the increase of adult establishments on Eighth Avenue. Many respondents felt that some adult establishments could exist in the area, but their growing number and their concentration on Eighth Avenue constitute a threat to the commercial prosperity and residential stability achieved in the past few years.
- o Although the study was unable to obtain data from before the recent increase in adult establishments and, thus, unable to show if there's been an increase in actual complaints, there were, in fact, 118 complaints made on Eighth Avenue between 45th and 48th compared to 50 on the control blocks on Ninth Avenue between 45th and 48th Streets. In addition, the study reveals a reduction in criminal complaints the further one goes north on Eighth Avenue away from the major concentration of these establishments.

- The rate of increase of total assessed values of the Eighth Avenue study blocks increased by 65% between 1985 and 1993 compared to 91% for the control blocks during the same period. Furthermore, acknowledging the many factors that lead to a property's increased value, including greater rents paid by some adult establishments, an assessment of the study blocks reveal that the rates of increases in assessed value for properties with adult establishments is greater than the increase for properties on the same blockfront without adult establishments.
- Many property owners, businesses, experts and officials provided anecdotal evidence that proximity (defined in various degrees) to adult establishments hurts businesses and property values.

## INTRODUCTION

After a dramatic decline in the number of adult use establishments in the Times Square area in the last eight years, Times Square, like other neighborhoods in the city, has experienced a sudden increase, especially along Eighth Avenue. This recent increase of adult businesses must be seen in the context of the current resurgence of Times Square as New York's premier tourist, entertainment, and commercial center. Member organizations of the BID and other concerned citizens have expressed particular concern about the impacts of a dense concentration of these businesses on the commercial life of the area. Thus, this study was commissioned by the Times Square Business Improvement District.

The Times Square Business Improvement District works to make Times Square clean, safe and friendly. The Times Square BID, working collaboratively with city agencies, community organizations and the many individuals and groups with a shared interest in the vitality of Times Square, provides supplemental security and sanitation services, homeless outreach efforts, tourism assistance and special events and marketing.

The BID extends from 40th to 53rd Streets, just west of Sixth Avenue to the west side of Eighth Avenue. Along 46th Street, it stretches to 9th Avenue. Its over four hundred members represent five thousand businesses and organizations in the Times Square area. Supported by mandatory assessments on local property owners, the BID has an annual budget of \$4.6 million. It is an independent not-for-profit organization, with a 46-member Board of Directors representing large property owners, large and small commercial tenants, residential tenants, and social service agencies.

During 1993, legislation was introduced in the City Council that would restrict the placement of adult uses on a city-wide basis. This legislation was spurred in large part by residential neighborhoods that, for the first time, were becoming home to adult establishments.

In the summer of 1993 the BID hired Insight Associates to assess that proposed legislation and its possible impact on Times Square in order to help the BID understand its options and determine an appropriate reaction. That study called attention to wider national experience. Legislation regulating adult uses, in order to pass Constitutional muster and be upheld in the courts, must be backed by documented evidence of secondary effects of such businesses and their concentration.

The Times Square BID decided to initiate its own secondary effects study, to ensure that the Times Square experience is well-represented in any city-wide debate. The BID again hired Insight Associates, with Ethel Sheffer and Marcie Kesner as principal researchers, in September, 1993.

In the same month, the Mayor of the City of New York ordered the Department of City Planning to

undertake a secondary-effects study for the entire city. That study has focused on six neighborhoods in the five boroughs, but not on Times Square. We have continued to exchange data and cooperate with City Planning in the course of our two parallel inquiries (See Appendix: The Department of City Planning Secondary Effects Study).

In addition, the Borough President of Manhattan has established a Task Force on which the BID serves. The Task Force, staffed by her office, has held public hearings and continues to gather information. It will be issuing its own recommendations in the Spring of 1994.

This study, then, seeks to obtain evidence and documentation on the secondary effects, if any, of these adult use businesses in the Times Square Business Improvement District, and of their dense concentrations, especially along 42nd Street and along Eighth Avenue. The BID instructed Insight Associates to follow the models offered by other secondary effects studies. The BID was not seeking an advocacy document, but rather an objective fact-finding study, that would add to the city-wide deliberations and to future attempts to find legal and effective ways to regulate these businesses.

Many people contributed a great deal of time and effort to this work. We want to thank particularly the staff of the Management Information Division of the Department of Finance and of the Crime Analysis Division of the New York Police Department, as well as staff of the Midtown South, Midtown North and Tenth Precincts and the Mayor's Office of Midtown Enforcement. We have not quoted any of our 54 interviewees who work and live in Times Square by name, but we thank them for taking the time from their very busy schedules to participate in our survey. We also are grateful to the many people in the real estate sector, the residents and community leaders in several neighborhoods, and the officials of municipal government in New York and other American cities, who were generous with their time in response to our inquiries.

## **SUMMARY OF LEGAL ISSUES AND THE EXPERIENCE ELSEWHERE**

The concern about the presence of adult businesses in the midst of American cities dates at least from the decades following the Second World War when a recognition of their impact upon surrounding land values and a growing indignation about their effect on communities became widespread. By the early 1990's the regulation of adult use businesses and entertainment establishments had become a serious issue for communities across the United States. This is reflected in a number of studies and public testimony showing a relationship between adult use establishments on the one hand, and declining property values, crime and neighborhood deterioration on the other. It is these "secondary effects" which the Supreme Court and other federal and state courts take into account when ruling on the efforts of communities to regulate these businesses.

The present study is not a legal treatise--though it does review some legal precedents by way of background--but an analysis and documentation of the impacts of a concentration of adult use establishments on the Times Square area.

The major questions on this subject for a court are whether any limitation on adult uses is based on content, or whether it is based on the secondary effects of these uses on the surrounding community. There have been a number of instances in the last years in which federal courts have found adult use zoning restrictions to be acceptable, if they have been motivated by a desire to protect neighborhood quality, as contrasted with an impermissible desire to ban the message purveyed by the adult uses. It appears that courts will accept restrictions if they serve a "substantial government interest," if any

statute is narrowly drawn to achieve that end, and if there are "reasonably available alternative avenues of communication." "Substantial government interest" has been defined to include reasonable attempts by municipalities to reduce urban blight and to preserve neighborhood character. "Alternative avenues of communication" requires that there be enough other places in the city for the relocation of these establishments. The availability of such places needs to be shown in court as a matter of fact.

Some cities have employed a variety of regulatory mechanisms. They have created special use zoning districts; they have required that adult uses be located at specified distances from residences, schools, churches, or business and commercial districts; and they have required operators of regulated establishments to obtain licenses or permits. Some illustrations are:

- **Detroit's** adoption of an "anti-skid row" zoning ordinance to disperse and/or bar from designated areas the establishment of a broad array of designated businesses, including adult uses. These restrictions were supported by studies of secondary effects.
- **Chicago's** requirement that owners or managing agents register and provide specific information related to the nature of their business. Chicago also regulates signs and displays by prohibiting the exterior display of sexual activity and nudity.
- **Renton**, a suburb of Seattle, restricted adult motion picture theatres from locating within 1,000 feet of a residentially zoned area or a house of worship, park, or school. The restrictions were upheld because it was found that approximately five per cent of the city's total land would still remain available for adult uses.
- **Boston's** creation of an Adult Entertainment District on the borders of its downtown center, and has thus concentrated rather than dispersed adult uses. This is a two-block area known as the "Combat Zone."
- **Islip, Long Island's** plan to restrict the location of adult uses to industrial districts, a plan that was upheld by the New York State Court of Appeals.

Zoning has been an especially frequent tool for cities regulating adult uses, since the Supreme Court has held that adult entertainment is a type of land use, like any other, that can be subject to rational scrutiny under equal protection. (Jules B. Gerard, Local Regulation of Adult Businesses, Deerfield, Illinois: Clark Boardman Callaghan, 1992, p.129).

Certain generalizations are seen in the variety of Court rulings in regard to zoning:

- Locational restrictions cannot be so severe as to preclude the present and/or future number of adult uses in a city.
- The more evident and rational the relationship of adult use restrictions to recognized zoning purposes, (e.g. the preservation of neighborhoods, the grouping of compatible uses), the greater the likelihood that the zoning restriction will be upheld.
- The greater the vagueness of a law the more likely it is to be struck down.
- If there is too much administrative discretion a law is likely to be struck down, since government may regulate only with narrow specificity.

### **Other Secondary Effects Studies**

The court decisions supporting and upholding regulatory measures were supported by studies of secondary effects, some of which we summarize below:

**Detroit:** In Young v. American Mini-Theatres, (427 U.S.1976) the Supreme Court affirmed that cities may use zoning to restrict adult entertainment if adult entertainment is shown to have a harmful impact on neighborhoods. The City of Detroit adopted an anti-Skid Row zoning ordinance in 1962 prohibiting certain businesses, such as pool halls, pawn shops, and in an amended version in 1972, adult bookstores, motion picture theatres, and cabarets, from locating within 1,000 feet of any two other "regulated uses" or within 500 feet of a residentially zoned area. The ordinance sustained in Young was based on studies by urban planning experts that showed the adverse environmental effects of permitting certain uses to be concentrated in any given area.

**Mt. Ephraim, New Jersey:** In the next ten years, there were a number of Supreme Court cases which continued to define the limits of employing zoning as a tool for restricting adult entertainment. Although it was recognized that such restrictions were valid, it was also established in Schad v. Borough of Mt. Ephraim (452 U.S. 61, 1981) (though with a plurality decision because of varying interpretations among the justices) that municipalities may not use zoning to prohibit adult entertainment entirely. The deciding judges stated that the borough had not offered sufficient evidence to show the incompatibility of adult uses with other commercial businesses, and also had not provided adequate "alternative avenues of communication" for the location of such businesses.

**Renton, Washington:** In 1986, the U.S. Supreme Court upheld the Renton, Washington regulations (The City of Renton v. Playtime Theatres (475 U.S. 41, 1986), although the city had based its prohibitions upon a study of the secondary effects of adult theatres conducted in neighboring Seattle and other nearby cities. The Supreme Court stated that municipalities could rely on the experiences of other cities. Furthermore, the Court stated that a city must be allowed to experiment with solutions to serious problems and it must be allowed to rely upon the experiences of other municipalities about the deteriorating and blighting effects of adult use establishments.

**Los Angeles:** In June, 1977, the Los Angeles City Planning Department conducted a study of the effects of adult entertainment establishments in several areas within the city. It found "a link between the concentration of such businesses and increased crime in the Hollywood community" (p.1.). The study also concluded, based on its analysis of percentage changes in the assessed value of commercial and residential property between 1970 and 1976, that there was no direct relationship between adult uses and property value changes. But in response to questionnaires, it was shown that appraisers, realtors, bankers, businesspeople, and residents all believed that the concentration of adult entertainment establishments has an adverse economic effect on both businesses and residential property in respect to market value, rental value, and rentability/salability.

It was believed that these effects extend even beyond a 1,000 foot radius, and that they are related to the degree of concentration. In addition, there are adverse effects on the quality of life, including neighborhood appearance, littering, and graffiti.

**Minneapolis-St. Paul:** The Twin Cities have conducted a number of studies over a period of more than ten years. In a 1978 St. Paul study and a 1980 Minneapolis study, statistically significant correlations were seen between location of adult businesses and neighborhood deterioration. It was concluded that adult businesses tend to locate in somewhat deteriorated areas to begin with, but further deterioration follows the arrival of adult businesses.

In these early studies, significantly higher crime rates were associated with an area containing two adult businesses than in an area with only one such business. Significantly lower property value prevailed in an area with three such businesses than in an area with only one.

In 1983, St. Paul examined one neighborhood that had a particularly heavy concentration of adult entertainment establishments. The University-Dale neighborhood had many signs of deterioration and

social distress. While these indicators could not be directly attributable to the presence of the adult establishments, it was stated that there was a relationship between the concentrations of certain types of adult entertainment and street prostitution, especially, as well as other crimes. (40-Acre Study, prepared by the St. Paul Department of Planning and Economic Development, p.19.)

This perception of an unsafe and undesirable neighborhood was documented by a survey conducted by Western State Bank which found its efforts to attract employees and customers being frustrated by people's perceptions of the neighborhood. (Ibid., p.23.)

In a 1987 Memorandum of the St. Paul Planning Department, discussing issues raised during the public review of proposed zoning regulations of adult establishments, it was stated that there is a relationship of prostitution activity to adult entertainment establishments, making for a "sex for sale" image of the neighborhood. The variables affecting the incidence of street prostitution include the character of the neighborhood, the effect of the concentration of adult businesses, and the specific kind of adult businesses associated with other serious land use problems. (Ibid., p.53-54.)

While much of the public testimony and the expert analysis described the negative effects on residential areas, it was also stated that such uses should be prohibited from proximity to commercial areas as well, because the purposes are incompatible. (Ibid., p.60.) If such harmful uses do continue to exist in commercial areas, it was recommended in the study that there be sufficient spacing requirements, so as to minimize the documented negative effects of clusters of establishments.

In the 1988 Supplement to the 40-Acre Study, the City Planning Staff asserted that there is considerable evidence that multifunctional adult entertainment complexes can be the equivalent of the concentration of many single adult businesses. (Supplement to the 1987 Zoning Study, p.6.) These multi-uses not only create multiple negative impacts but may also increase the intensity of the negative impacts. (Ibid., p.7.)

In 1989, the Attorney General of Minnesota, Hubert Humphrey, III, issued a Report based upon the study by the state's Working Group on the Regulation of Sexually Oriented Businesses. It recommended a number of zoning and distancing regulations, as well as licensing regulations, while continuing to document the negative effects of such businesses on communities. It recommended that "Communities should document findings of adverse secondary effects of sexually oriented businesses prior to enacting zoning regulations to control these uses so that such regulations can be upheld if challenged in court. (Attorney General's Report, p. 5.)

**Indianapolis, Indiana, and Phoenix, Arizona:** The Minnesota Attorney General's Working Group summarized these two other studies. In 1983, Indianapolis researched the relationship between adult entertainment and property values at the national level. They took random samples of twenty percent of the national membership of the American Institute of Real Estate Appraisers. Eighty percent of the survey respondents felt that an adult bookstore located in a hypothetical neighborhood would have a negative impact on residential property values of premises located within one block of its site. Seventy-two percent of the respondents felt there would be a detrimental effect on commercial property values within the same one-block radius.

A Phoenix, Arizona Planning Department study, published in 1979, showed arrests for sexual crimes, and locations of adult businesses to be directly related. The study compared three adult use areas with three control areas with no adult use businesses.

**Islip, New York:** In 1980, the town of Islip, Long Island conducted a study of the impacts of adult bookstores on residential and commercial sections of the town. It focused on the impacts of the location of one particular bookstore, and it surveyed and inventoried the impacts of other adult use enterprises on nearby hamlets, including Bayshore and Brentwood in addition to Islip Terrace and Central Islip. This study also reviewed numerous newspaper articles and letters of complaint, in order to gauge public reaction. Further, it analyzed distances, travel time and other factors to support the town's regulations

which confined such uses to industrial zones. This regulation was upheld by the New York State Court of Appeals in Town of Islip v. Caviglia, in 1989. The Court accepted the evidence in the Islip study that the ordinance was designed to reduce the injuries to the neighborhood and that ample space remained elsewhere for the adult uses after the re-zoning.

## **A BRIEF HISTORY OF ADULT ENTERTAINMENT IN TIMES SQUARE**

Times Square has long been known as a place for popular amusements from movies and theatre to flea circuses and video arcades. It has always attracted people of all incomes and tastes. But its history as a place of concentrated sex-related businesses really begins in the late 1960s and 1970s.

The concentration of massage parlors, nude live entertainments, erotic

bookstores, X-rated movies, and peep shows increased at that time to such an extent

that Times Square began to be called "a sinkhole." (The Daily News, August 14,

1975.)

The resulting crimes, assaults, and other violence made Times Square the highest crime area in the city. The numbers of sex-related businesses in Times Square and its environs reached as high, by some estimates, as 140 in the late 1970s and early 1980s.

In the 1970s the commercial and residential communities united to combat this blight by staging demonstrations and rallies, by sponsoring legislation, and, perhaps most important, by organizing themselves into the Mayor's Midtown Citizens' Committee, and in helping to create the Office of Midtown Enforcement.

The negative image of Times Square created by the increasing concentration of adult entertainment uses, coupled with pessimistic economic indicators, all contributed to a sense of decline on 42nd Street and the surrounding blocks.

In 1977, the City Planning Commission attempted to reduce the existing concentration of adult use businesses and to prevent future concentrations. Stimulated in part by the situation in Times Square, the Commission passed new zoning amendments to disperse such concentrations and to regulate their proximity to residential districts. The adverse economic and social effects produced by these concentrations were documented by findings of higher tax arrears on 42nd Street compared to the rest of midtown, declining sales tax revenue, and increases in criminal activity in Times Square. This zoning attempt failed at the last minute at the Board of Estimate.

But in the early 80s, several factors converged to stimulate a dramatic reduction in adult use establishments on 42nd Street and throughout Times Square. The State declared 42nd Street a "blighted area," and announced its intention to condemn numerous properties, including pornography shops, in order to stage the Urban Development Corporation's 42nd Street Development Project. Although litigation slowed down the project, most of the street has now been condemned and emptied of all uses.

Meanwhile, there was increased police activity throughout the area and the Mayor's Office of Midtown Enforcement coordinated action against illegal businesses including massage parlors. The commencement of the AIDS epidemic had a sobering effect on live sex establishments and many disappeared. And private developers assembled Times Square parcels, removing existing adult uses.

In June 1993 when Insight Associates completed the review for the Times Square BID of City Council legislation there were 36 adult use establishments within the Times Square area, a dramatic decline from the all time high of 140 in the late 70s. In addition, the area of concentration had shrunk and shifted. No longer were sex shops lining Broadway and Seventh Avenue to the same degree, but rather they were beginning to cluster along Eighth Avenue. Now, nine months later, there are 43 adult establishments, with most of the new stores on 42nd Street lying outside of the UDC's project and along Eighth Avenue.

Amidst the refurbishing, upgrading and improvement of a once sorely deteriorated Times Square, there is now new concern about the recent sudden proliferation.

## APPROACH AND METHODOLOGY

This study focuses on the Times Square Business Improvement District, but the study concentrates more closely on the areas of adult use business concentration, that is, 42nd Street from Seventh to Eighth Avenues, and Eighth Avenue from 42nd Street to 50th Streets, because more than half of all the District's adult use businesses are located on these blocks.

Following secondary effects studies in other cities, we combined available data on property values and incidence of crime, plus in-person and telephone interviews with a broad range of diverse business and real estate enterprises, including major corporations, smaller retail stores, restaurants, theatres and hotels, as well as with Community Boards, block associations, activists and advocates, churches, schools and social service agencies.

### Gathering Data on Assessed Property Values

To measure the possible impact of adult use businesses and the concentration of such businesses in our study blocks, we sought data on the overall and specific changes in assessed valuation of property from the tax period 1985-1986 to the most recent 1993-1994 tax year. This, we felt, would give enough of a spread across real estate cycles. The 1985-1986 data were the earliest computerized data available to us from the Department of Finance records.

The Department of Finance, however, could not provide reliable data on market value, as opposed to assessed valuation. We were able to get, and have used, the actual, not the billable, assessed values. The data contained information on tax block and lot, building class, and street address. We aggregated the actual valuation figures by individual tax lots for Study and Control blockfronts for 1985 and 1986, and for 1993 and 1994. From this we derived the percentage of change between the two benchmark years.

For this part of the study, we narrowed our focus to four Study Blocks: three blocks along Eighth Avenue, from 45th to 48th Street, and the 42nd Street Block between Seventh and Eighth Avenues. As contrasting control blocks where no adult use establishments exist, we chose the equivalent three blocks along Ninth Avenue, and 42nd Street between Eighth and Ninth Avenues. We then compared

both the Study and Control blocks' data to similar statistics for all of Manhattan, and for all of New York City, as well as for the BID and the wider Times Square area.

In choosing Control Blocks, we realized that there is no block like 42nd Street between Seventh and Eighth Avenues--our study block--anywhere. But we felt that by shifting our focus just one block to the west, we would have a block with no adult establishments but with similar uses and traffic patterns (though it does have the Port Authority Bus Terminal on its corner). As controls for our Eighth Avenue Study Blocks, we took the similar parallel blocks on Ninth Avenue, which, although residential, have comparable though not identical land uses and traffic patterns.

Tax arrears data were obtained for the years 1988, 1989, 1992 and 1993, the most recent year available through the New York City MISLAND system. We compared the data for our control and study blocks with aggregated data by census tracts that roughly approximated the boundaries of the Times Square Business Improvement District, and with Manhattan and New York City as a whole as well. No significant or consistent findings were obtained from this exercise.

### **Gathering Crime Data**

Working closely with the Crime Analysis Division of the NYPD, we requested crime data for the Study Blocks of 42nd Street, Seventh to Eighth Avenues, and Eighth Avenue, from 45th through 48th Streets, for a period of one year. This amount of data proved too difficult for the Crime Analysis Division to obtain, and we were ultimately given these data for only a three month time period, from June through August, 1993. The same information was also supplied for our Control Blocks, which, for this subject, were slightly different: instead of the 42nd Street block between Eighth and Ninth Avenues which includes the Port Authority Bus Terminal, the next block west, between Ninth and Tenth Avenues was used.

### **Selecting the Interviewees**

We initially obtained a listing of BID property owners for interview, by taking every fifth name on the BID's 404 owners' list. When an individual or corporation owned several properties, the name was used only once. We also eliminated the owners of adult use establishments (though later we did talk to one owner and operator of a number of such establishments in the area). We also deleted the many 42nd Street properties now owned by the State or City of New York or the New York State Urban Development Corporation. Similarly, we disregarded owners with telephone numbers outside the tri-state area, or those without listed telephone numbers. Banks and hotels were omitted from this first list.

This effort yielded a sample of 37 potential interviewees, of whom 20 were ultimately interviewed. The 20 included some of the largest developers and managers in Times Square and in New York City, with multiple holdings, as well as smaller residential and commercial property owners. It included as well the three major theatre-owning organizations which control almost all the legitimate Broadway houses, as well as a major nonprofit theatre. Two major communications companies were on this list.

This group of potential interviewees was then supplemented by selections from a listing of restaurants and hotels of different price levels. We interviewed seven restaurant owners or managers, representing eight restaurants in the Times Square area, including major chains, smaller coffee shops, and well known eateries. Two of these interviewees are also owners of the properties in which their operations stand. We interviewed four hotel owners or operators in three hotels along Eighth Avenue. Five retail establishment owners along Eighth Avenue were also interviewed.

Community group interviews included six churches, three social service agencies (plus one more

informal interview with a fourth, serving the homeless), five block associations, the District Manager and Assistant District Manager of Community Boards Four and Five, respectively, and the Co-Chairs of each Board's Public Safety Committee. The principals of two public schools in the area were seen as well. In sum, 53 formal interviews were carried out, plus one less formal discussion with an owner and operator of several porn establishments.

For these interviews, we constructed a Survey Schedule questionnaire, which was modeled to some degree on the one being utilized by the City Planning Department's city-wide study of adult uses underway at the same time.

## TIMES SQUARE: ITS PROMINENCE AND ITS PEOPLE

The Times Square and Clinton communities, which the Business Improvement District encompasses or abuts, are dynamic and diverse neighborhoods. The area is home to some of the city's major corporations and there are more than 30 million square feet of office space. The BID has more than four hundred property owners, representing five thousand businesses in its membership. More than 250,000 employees work at enterprises that range from giant recording companies to international security firms to one-person theatrical agencies. Among the major corporations now making their home in Times Square are Morgan Stanley, Bertelsmann, Viacom, and many more. And of course, Times Square contains the highest concentration of legitimate theatres anywhere in the world, thirty-seven theatres, with as many as 25,000 seats to be filled on each performance day.

Times Square has a daily pedestrian count of 1.5 million persons. There are approximately twenty hotels, with 12,500 hotel rooms, in the Times Square area, one-fifth of all hotel rooms in Manhattan. Twenty million tourists and five million overnight visitors arrive annually. There are more than two hundred restaurants in the Times Square area. It is indeed New York City's center for commerce and the performing arts, business and tourism.

But the area is also a home for thousands of residents who live adjacent to and in the midst of this vibrant midtown commercial core. The area is replete with churches, block associations, civic associations, business organizations and theatre related organizations. The Times Square BID knows--and works with--some 35 social service agencies in the greater Times Square area.

It also has the largest concentration of pornography establishments in the city. The number of such businesses reached a high of about 140 establishments in the 1970s and early 1980s, and declined thereafter to approximately forty. There is some indication that the number has increased somewhat in the Times Square area and on its periphery, particularly on Eighth Avenue, in the past months.

### Demographics and Housing

In order to draw detailed demographic information from the 1990 Census, we aggregated data by the census tracts that most closely approximated the area of the Times Square BID. By using data from six census tracts that cover the area between Sixth and Tenth Avenues to the east and west, and 42nd and 54th Streets to the south and north, we have covered the entire BID, as well as additional blocks. Thus, data from these six tracts, which we will call the *Times Square Neighborhood* to avoid confusion with the Times Square BID, will reflect the demographics within the BID as well as the directly adjacent neighborhood. The map on the following page depicts the census tracts for this section of west midtown. As one can see, the Times Square BID falls within the boundaries of census tracts 119, 121,

125, 127, 131, and 133.

Broadly speaking, the eastern blocks of this area, particularly as one approaches Sixth Avenue, are commercial in character, with stores, restaurants, offices, and other commercial establishments. In comparison, the mid-blocks between Ninth and Tenth Avenues have a higher preponderance of housing; they constitute the eastern edge of the Clinton neighborhood.

Therefore, in reviewing the following census data, the reader must be aware that there will be a larger number of residents and housing units than those who actually reside within the official borders of the Times Square Business Improvement District. For example, our Census data show more than 25,000 residents in these tracts; the BID estimates 5,000 residents within its narrower boundaries. However, these 20,000 residents are, in fact, part of the Times Square community and view themselves as being affected by the adult use establishments (those along Eighth Avenue in particular).

### Total Population

In 1990, the total population for the Times Square Neighborhood was 25,651, which was slightly higher than the previous decade. The racial characteristics are depicted below. In general, over half of the population was White (higher than the Manhattan percentage); 11% was Black/Non-Hispanic, and 24% were Hispanic. During the decade from 1980 to 1990, the Hispanic population declined slightly, while the Asian (particularly the non-Chinese Asian) population increased to approximately the same as that of the borough of Manhattan, or 7%.

**TABLE I**  
**POPULATION CHARACTERISTICS, 1990**  
**TIMES SQUARE NEIGHBORHOOD\***

	1980 Number	1980 %	1990 Number	1990 %
White	14,251	57.9	14,807	57.7
Black, Non-Hispanic	2,252	9.2	2,785	10.9
Hispanic	6,793	27.6	6,099	23.8
Asian	1,117	4.5	1,761	6.9
Other	199	0.8	199	0.8
<b>TOTAL</b>	<b>24,612</b>	<b>100.0</b>	<b>25,651</b>	<b>100.0</b>

*Source: U.S. Bureau of the Census, 1980 and 1990 Censuses of Population and Housing Characteristics, and Social and Economic Characteristics.*

\* Despite the image of Times Square as a solely commercial area, it is a place where many people raise their children. In 1990, there were 3,690 families with children under the age of 18 living in the six census tracts.

### Housing Units

In 1990, there were over 18,000 housing units in the neighborhood, of which 75% were rental units and 49% were in large buildings of over 50 units. In a borough in which less than 10% of the units were vacant, 20.5% were vacant in Times Square.

The size of housing units within the six census tracts is smaller than elsewhere in the borough. While the median number of rooms per unit is 3 for Manhattan, it is 2.2 for the Times Square Neighborhood and 1 for the one census tract bounded by 42nd and 45th Streets, Sixth to Eighth Avenues.

In addition to these permanent housing units, there are also a considerable number of hotel rooms in Times Square. The Times Square BID estimates that over 12,500 hotel units are located within its boundaries. The large number of hotel rooms reflects Times Square's importance in the City's tourism industry. The number of tourists constitutes, from one point of view, a large group of potential customers for adult use establishments. But from another standpoint, as documented in our surveys with hotel operators, restaurateurs, and theatre owners, the concentration of adult use establishments is seen to be offensive to this stream of visitors and travelers.

## Age

The population of the Times Square Neighborhood is similar in percentage of population age 62 and over to that of the borough or of the two Community Districts in which it falls: CD 4 and CD 5. In addition, in 1990 there were close to 2,000 children under the age of 14 living in the Times Square Neighborhood. Both the elderly and young, whose lives are generally circumscribed by their immediate community, are impacted by the types of businesses and uses that occur in the Times Square area, including the adult use establishments.

**TABLE II**  
**AGE CHARACTERISTICS, 1990**  
**TIMES SQUARE NEIGHBORHOOD**

	Times Square	CD4	CD5	Manhattan
TOTAL POP.	25,651	84,431	43,507	1,487,536
% UNDER 14	7.4	8.2	5.2	13.2
% OVER 62	15.4	15.9	15.3	15.9
MEDIAN AGE (years)	36.63	37.2	37.2	35.9

*Source: U.S. Bureau of the Census, 1980 and 1990 Censuses of Population and Housing Characteristics, and Social and Economic Characteristics.*

## Employment Characteristics

Traditionally, a large percentage of Clinton residents have worked in the Times Square area, particularly in the theater and music industries as technicians, actors, and performers. This is borne out by the census data, which show a very high percentage of residents working within less than half an hour of their homes and walking to work. The percentage of workers in the Times Square Neighborhood who

walk to work is higher than the percentage for the borough as a whole and is much higher than the percentage of those in the other four boroughs.

In 1990, approximately two-thirds of the population of the Times Square Neighborhood above the age of 16 were employed. The Bureau of the Census estimated that 95% of these workers worked in New York City and 88% worked in Manhattan. This is similar to Manhattan's residents in general, of whom 94% worked in the City and 84% in the borough. Compare this to, for example, the Queens workforce, of which only 40% work in their home borough.

Similarly, while the mean travel time to work for Manhattan residents was 29 minutes (and that of the other four boroughs was approximately 40 minutes), the mean travel time to work for residents in these six census tracts was 23.16 minutes. Of the Times Square residents who traveled to work, 48%, or almost half, walked. Compare this to 29% of the Manhattan workforce and less than 10% in the other boroughs. Times Square, therefore, has a considerable segment of the population who spend both their working hours and off-time in the Times Square Neighborhood.

## **TIMES SQUARE NEIGHBORHOOD: ITS ZONING AND ITS USES**

### **Zoning**

The Times Square neighborhood is zoned for General Central Commercial uses, reflecting the importance of Times Square as a central core for the City and region. These C6 zones vary: while Broadway, Sixth and Seventh Avenues are zoned C6-6 (15 FAR), the midblocks and Eighth Avenue are zoned C6-5 or C6-4, for a lower FAR of 10. Uses permitted in C6 districts typically include all residential uses as well as commercial and wholesale uses.

To the west of Eighth Avenue the predominant zoning is R8, with a C1-5 overlay along 9 Avenue for our control blocks. R8 permits general residential uses of a 4.8-6.0 FAR. C1-5 commercial districts permit local neighborhood commercial uses at a FAR of 2.0.

### **Special Districts**

#### **Special Midtown District**

Times Square lies within one special zoning district and directly abuts another. In fact, the eastern boundary of one of these districts and the western boundary of the other meet in the center of Eighth Avenue.

Eighth Avenue can thus be viewed as the transition between two special districts: one encouraging commercial development and the other attempting to preserve a low-scale residential community. That duality is reflected in the opinions of residents and businesses about the status and future of the Eighth Avenue strip.

There are those who view Eighth Avenue as a development corridor, which began to be such with the building of Worldwide Plaza but which remains under-built, with a number of vacant buildings and parking lots. There are others who see the area as one that can and should continue to serve the

economic development needs of the theatre and entertainment industries as well as other related needs of the city. Still others think it can and should be enhanced as a residential avenue. Whatever their perspective, few see the concentration of adult use establishments as being beneficial to either the preservation or the development of the area.

The area of the Times Square Business Improvement District lies almost entirely within the boundaries of the Special Midtown District (Sect. 81 of the NYC *Zoning Resolution*). Within that, a large proportion of the BID is included within the Theater Sub-District, and the even more restrictive Theater Sub District Core, which extends from 43rd to 50th Streets, and from 100 feet east of Eighth Avenue to 200 feet west of Sixth Avenue.

In general, the goals of the Special Midtown District include the strengthening of Midtown's business core, while directing and encouraging development and preserving the "scale and character" of Times Square. Within the overall Special District, the purpose of the Theater Sub-District is to protect the cultural and theatrical and ancillary uses (i.e., shops and restaurants) in Times Square. This sub-district provides additional incentives and controls to encourage preservation of theaters, special development rights transfers, and separate requirements for ground floor uses.

### **Special Clinton District**

Directly to the west of the Midtown Special District--and thus, of the Times Square area--is the Clinton Special District, whose purpose is the preservation of the residential character of the Clinton community (Sect. 96). The west side of Eighth Avenue falls within the Perimeter Area of the Special Clinton District. It is a transition between the tourism area of the Midtown District and the low-rise residential neighborhood immediately to the west, and the manufacturing district further west. Community residents characterize Eighth Avenue as "The Front Door to Clinton."

The Special Clinton District regulations contain provisions regarding demolition of residential buildings and relocation of tenants that are stringent and designed to preserve the neighborhood's residential character.

Our Ninth Avenue control block falls not within the Perimeter Area, but rather in the more restrictive Preservation Area; the one exception is the block on which Worldwide Plaza is located, which is excluded from the Special District. Within the Preservation Area, there are also tough provisions in regard to demolition and relocation of residents.

### **Land Uses: Control and Study Blocks**

In general, the land uses in this neighborhood are diverse and eclectic. We provide a detailed picture of this diversity below.

#### **42nd Street Study Block Land Uses**

The present land uses along 42nd Street reflect the general commercial nature of the block. The north side of 42nd Street between Seventh and Eighth Avenues has a significant number of now vacant theaters, awaiting redevelopment through the 42nd Street Development Project. In addition there are clothing, sporting goods, tobacco, and camera stores, as well as delicatessens and a fast food establishment on the corner at Eighth Avenue. As one approaches the northeastern corner of the intersection at Eighth Avenue, one can see a concentration of adult use establishments on the still privately owned portion of that block. (The State will soon begin condemnation of these buildings.)

Along the south side of the 42nd Street Study block there are also a number of now-vacant retail establishments and theaters, as well as the Candler office building. Retail establishments that are open along the south side of the Study block include electronics, novelties, sporting goods and shoe stores, as well as one first-run movie theater.

There are approximately six adult use establishments on the north side of the 42nd Street Study Block, and nine adult use establishments on the south side, for a total of 14. (Some of these stores are divided with more than one entrance and level).

### **42nd Street Control Block**

The land uses along the north side of the 42nd Street Control Block between Eighth and Ninth Avenues include the following uses: a bar, two parking lots, a church and its rectory, office supply and gift stores, a deli, an entry to an apartment house, and the entrance to an adult use establishment whose main entrance is on Eighth Avenue.

The south side of the control block is most notable for the Port Authority Bus Terminal, which takes up approximately two-thirds of the blockfront. Additional uses to the west of the Bus Terminal include: a pizzeria, a parking lot, a hotel entry, an appliance servicing establishment, offices, and the US Post Office's Times Square Station.

Other than the side entry to the Eighth Avenue adult use establishment, there are no adult use establishments actually on the control block.

### **Eighth Avenue Study Block**

The Eighth Avenue Study blockfront extends three blocks from 45th to 48th Streets. The mixture of uses is not reflective of the General Commercial Core aspect of the location. Instead, the uses are a mixture of local retail including novelty shops and souvenir stands, as well as delis, drugstores, and liquor stores, parking lots, vacant properties, and restaurants and other eating and drinking establishments. There are some uses which serve the theatre industry to the east; for example, the hardware store between 47th and 48th Street.

The study blocks are flanked by the Milford Plaza Hotel, between 44th and 45th Streets, the Days Inn between 48th and 49th Streets, and Worldwide Plaza between 49th and 50th Streets. Along this strip of three blocks there are eight adult use establishments: six movie theaters and two video stores.

### **Ninth Avenue Control Block**

The building stock on Ninth Avenue resembles that on the Eighth Avenue study block: predominantly older, two to four-story buildings, often with apartments above the retail places. The uses on Ninth Avenue are more reflective of the area's zoning for local retail uses, with food markets, barbers, locksmiths, fast foods, and florists, for example. Also noteworthy are the numerous restaurants along Ninth Avenue serving primarily locals.

There are no adult use establishments along Ninth Avenue, either in our threeblock control blockfront between 45th and 48th Streets, or for the entire stretch from 42nd Street up to 50th Street.

A map of all land uses as of March, 1994 along 42nd Street between Seventh and Ninth Avenue between 42nd and 50th Streets is attached at the end of this report.

## ADULT USE ESTABLISHMENTS AND PROPERTY VALUES

### Total Assessed Value

We attempted to compare total assessed value over time, and the rate of change, for our study and control blocks. We analyzed and compared the years 1985-1986 to 1993-1994. In addition, we compared our Study and Control blocks' assessed valuation to that of 1) the aggregated tax blocks falling within the boundaries of the Times Square Business Improvement District; 2) the entire Borough of Manhattan; and 3) the City as a whole. Our findings are summarized in Table III.

The Table shows that the rate of increase of the total actual assessed values of the Eighth Avenue Study Blocks was less than the rate of increase for the Control Blocks along Ninth Avenue on which no adult use establishments are or were located. To a lesser extent, the rate of increase of the actual total assessed value of the 42nd Street Study Block is less than that of the 42nd Street Control Block.

**TABLE III**

### ACTUAL ASSESSED VALUES

#### CHANGES FROM 1985-1993 FOR SELECTED BLOCKFRONTS

BLOCKS	ACTUAL ASSESSED VALUE 1985-1986 (millions)	ACTUAL ASSESSED VALUE 1993-1994 (millions)	PERCENTAGE CHANGE 1985-1993
8 <sup>TH</sup> AVE. STUDY BLOCKS (45-48 STS.)	11.22	18.55	65
9 <sup>TH</sup> AVE. CONTROL BLOCKS (45-48 STS.)	4.52	8.65	91
42 ST. STUDY BLOCKS (7-8 AVES.)	34.89	51.63	48
42 ST. CONTROL BLOCKS (8-9 AVES.)	88.31	136.65	55
TSBID (ESTIMATED)*	2,034.7	3,252.3	60
MANHATTAN	29,462.7	47,229.4	61
CITYWIDE	53,589.8	81,714.6	52

Sources: NYC Department of Finance; Insight Associates.

\* The estimated BID total assessed value was determined by adding all 36 tax blocks that fall entirely or partially within the boundaries of the Times Square Business Improvement District.

**Changes on Individual Properties**

After determining that the rate of increase of the total actual assessed values of the Eighth Avenue Study Blocks was less than the rate of increase for the Control Blocks, we zeroed in to compare more closely the rates of change for the lots themselves. After detailing each block, property by property, an overall figure for the "social block" or the avenue considered with both its east and west sides, is noted.

The assessed values of the tax lots on the Eighth Avenue Control Blocks were analyzed in terms of proximity to the location of adult use establishments; the purpose of the exercise was to see if there were any patterns regarding the location of establishments and the rates of change.

The findings are shown below. In most cases, the rate of changes for other lots on the blocks were less than those with adult use establishments. Note that the tax lots which have adult use establishments are indicated by bald type.

When there is a decline in the assessed value, and the Department of Finance records indicate no change in the building class or size, we can assume that the property owner had at some point filed for and been granted a reduction in the property's assessed value through a certiorari proceeding.

There may be many reasons for a property's assessed value to have changed at a rate different than those of the rest of the block, or the general area. One cannot automatically assume any one reason, such as the proximity of adult use establishments. For example, the physical condition of the property may have deteriorated, or the property may be at a location undesirable from the point of view of potential retailers.

While it may well be that the concentration of adult use establishments has a generally depressive effect on the adjoining properties, as a statistical matter we do not have sufficient data to prove or disprove this thesis. It may also be that simply the presence of adult use establishments is subjectively viewed by assessors as a factor that necessarily reduces the value of a property. In short, assumptions may influence assessment.

Also included in the lists below are the actual uses--the types of stores or restaurants, for example--for each property along the Eighth Avenue Study blockfronts, from 45th through 48th Streets. We have tried to see if there is any pattern in which uses that one might consider to be more compatible with an adult use reveal a different rate of change in assessed value than other, less compatible uses.

**TABLE IV**  
**BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION ALONG**  
**EIGHTH AVENUE STUDY BLOCKS**  
**(45-46 STREET)**

LOCATION  (on Eighth  Avenue)	BLOCK/LOT	ADDRESS	LAND USES	% CHANGE IN  ASSESSED  VALUE
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				(1985/6 - 1993/4)
West	1036/36	731-727	Pizzeria Grocer/Deli Vacant Deli	50%
West	1036/33	725	Pawn Shop	9%
West	1036/29	712	Photo lab Army/Navy Hair/Nails Restaurant Restaurant	33%
East	1017/61	740	Hotel entrance Liquor Novelty Bar Novelty	136%
East	1017/63	738	Adult Use (Capri)	138%
East	1017/58		Parking lot	61%
East	1017/4	732	Adult Use (Eros I)	166%
East	1017/3	730	Bar	84%
East	1017/2	728	Adult Use (Venus)	94%
East	1017/101	726	Deli	43%
East	1017/1	724	Souvenir/ T-shirts	275%

Social Block Change: 61%

In the 45th to 46th Street study block, the parcels across the avenue from a concentration of three adult theaters show a rate of increase much lower than the average for the entire blockfront. The parcels on

the same (east) side of the street from the theaters tended to show lower rates of increase in assessed value, except for 1017/1, whose owner is listed by the Department of Finance as that of an adult use establishment located at 265 W. 47 St., and 1017/61, which is a mixed use property comprising a hotel with retail uses below.

**TABLE IVa**  
**BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION ALONG**  
**EIGHTH AVENUE STUDY BLOCKS**  
**(46-47 STREET)**

LOCATION (on Eighth Avenue)	BLOCK/LOT	ADDRESS	LAND USES	% CHANGE IN ASSESSED VALUE (1985/6 - 1993/4)
West	1037/36	767	Restaurant Fast Food	55%
West	1037/35	765	Hotel Entrance	-26%
West	1037/34	763	Adult Video	395%
West	1037/33	741-743	Travel Agency (entrance)  Bar  Restaurant	199%
West	1037/30	733-39	Pastry shop  (formerly adult video)  Novelty/Gift  Electronics  Bar  Grocery  Adult Video  (Pleasure	125%

			Palace)	
East	1018/61	760	Liquor store Pharmacy Deli Restaurant Union office (entrance)	55%
East	1018/3	754	Parking lot	121%
East	1018/1	750	Souvenirs Deli Bar	123%

Social Block Change: 73%

There are no readily defined patterns for the properties located on the west side of Eighth Avenue on Block 1018. The parcels at 754 and 750 generally appreciated by over 120%, while the remaining parcel increased only by half.

However, on the west side of Eighth Avenue, on which there are two X-rated videos, located at 763 and 739, the properties not owned by the owner of the video establishments evidenced a lower rate of increase. The assessed value of the property at 765, adjacent to the Adult Video, actually declined by over 25%.

**TABLE IVb**  
**BLOCK BY BLOCK CHANGES IN ASSESSED VALUATION ALONG**  
**EIGHTH AVENUE STUDY BLOCKS**  
**(47-48 STREET)**

<b>LOCATION</b> <b>(on Eighth</b> <b>Avenue)</b>	<b>BLOCK/LOT</b>	<b>ADDRESS</b>	<b>LAND USES</b>	<b>% CHANGE IN</b> <b>ASSESSED</b> <b>VALUE</b> <b>(1985/6 -</b> <b>1993/4)</b>
West	1038/36	787	Coffee shop Pizzeria	30%

West	1038/35	785	Hardware store	51%
West	1038/34	783	Restaurant	180%
West	1038/33	781	Lighting store	162%
West	1038/31	777	Adult Movie (Hollywood Twin)	120%
West	1038/29	771	Restaurant	136%
East	1019/61	782	Firehouse	48%
East	1019/63	780	Adult Use	59%
East	1019/64	778	Souvenirs	59%
East	1019/3	776	Adult Videos	59%
East	1019/2	772	Vacant, sealed building	107%
East	1019/1	770	Frame store  (entrance on 47 St.)	-4%

Social Block Change: 66%

It is difficult to see a strong pattern on the west side of Eighth Avenue, although the assessed values of the two properties located at 787 and 785 increased by far less than the other four, including 777, which houses the Hollywood Twin, and 771, which is owned by an individual listed as owner of other adult use establishments in the area.

On the east side of Eighth Avenue, the two adult establishments and the property between them enjoy a common ownership; the three tax lots all increased in assessed value by precisely the same percentage--59%. On that block front there is also a NYC Fire House and an vacant and sealed building that is listed by the Department of Finance in 1993 as City-owned. The one remaining parcel on that blockfront--a framing store--experienced a decline in assessed valuation for the period.

A similar review of tax lots was not conducted for the other area of concentration, the 42nd St. Control Block. This was because it is felt that the many other trends and government actions along that strip, including public condemnation of the parcels and numerous lawsuits, would further complicate the analysis, and would prove fruitless.

### Department of Finance Assumptions

In addition to the detailed analysis described above, we spoke to a high official in the Department of Finance to obtain his expert opinion on the relationships and effects, if any, of adult use establishments on neighboring properties. He stated that "there is no doubt in my mind that they [adult use establishments] adversely affect other properties." Their presence, he indicated, is factored into the locational aspect of the appraisal formula, though, he acknowledged that appraising is not itself an

exact science. A commercial building may be obtaining a reasonable rate of return, but if that building were located near an adult use establishment, the assessor would tend to use a higher capitalization rate, which would therefore produce a lower value. The further away a property is from the adult uses, he explained, the lower the effect on its value.

## ADULT USE ESTABLISHMENTS AND CRIMINAL ACTIVITY

### General Crime Statistics

Over the past five years, according to the Office of Midtown Enforcement, police statistics show an estimated 54% decrease in crime in the Times Square area. This decrease parallels the decrease in adult use establishments, and although we cannot claim direct causality it is interesting to note that there is both the perception and the reality that Times Square is a safer place than it was years ago. While we were not able to collect crime statistics over a broad range of time, we were able to obtain information from the New York City Police Department for our Study and Control Blocks for a three-month period in 1993.

In addition, data on control blockfronts with no adult use establishments were requested for Ninth Avenue between 45th and 48th Streets, and for 42nd Street between Ninth and Tenth Avenues. The latter was selected as the control block for this purpose, rather than the block between Eighth Avenue and Ninth Avenue that had been used in analyzing property tax data, (see p.25-30), because it was felt that encompassing the Port Authority Bus Terminal, with its unrelated associated crime statistics, would not provide a meaningful basis of comparison to the study block.

The crime data reports were prepared by the Precincts in which these blockfronts are located: Midtown South, Midtown North, and the Tenth Precinct. The reports generated by these precincts do not include complaints for prostitution or drugs (other than criminal possession of a controlled substance), as these crimes are reported in an incompatible format. (We did, however obtain some information on prostitution activity from other sources, which will be described below.) In addition, certain desired data, such as known locations for drug-dealing, are part of on-going investigations and prosecutions, and thus not available to us. The data we have used reflect the numbers of criminal complaints, not arrests, for known addresses or locations along the block fronts under study.

Actual complaints were listed for a wide range of crime categories, including Grand and Petit Larceny, Grand and Petit Larceny from an Auto; Criminal Possession of Controlled Substance; Criminal Harassment; Assault, Robbery, and Fraudulent Accosting. Each precinct used slightly different categories in preparing its reports for this study, but in general, the major categories were similar. Certain crimes were more prevalent in specific locations. For example, a larger number of complaints of Grand and Petit Larceny from an Auto were noted along Eighth Avenue between 45th and 48th Streets; this may reflect the presence there of parking lots.

Despite the many limitations on these data, there were certain significant patterns that did appear. In general, as seen in Table II, criminal complaints were higher for the 42nd Street study block than for the 42nd Street control block two blocks to the west. During the three month period of July through September, 1993, there were 45 criminal complaints on the Ninth to Tenth Avenue block of 42nd Street, and 88 on the Seventh to Eighth Avenue blockfront. Similarly, there were 118 criminal complaints on Eighth Avenue between 45th and 48th Streets, and only 50 for the same three blocks along Ninth Avenue.

One cannot assert that there is a direct correlation between these statistics and the concentration of adult use establishments on 42nd Street between Seventh and Eighth Avenue, or along Eighth Avenue between 45th and 48th Streets. But there is very definitely a pointed difference in the number of crime complaints between these study blocks and their controls.

It appears that there was a continuing reduction in crimes along Eighth Avenue the further away from 42nd Street, with its concentration of adult use establishments. While there were 135 complaints on Eighth Avenue between 42nd and 43rd Streets, there were only 80 on the block between 44th and 45th Streets. For the three blocks between 45th and 48th Streets, there were a total 118 complaints for the same period. These complaint statistics are summarized in Table V.

**TABLE V**  
**CRIMINAL COMPLAINTS FOR SELECTED BLOCKFRONTS**  
**JUNE, JULY & AUGUST 1993**

BLOCKFRONT	JUNE	JULY	AUGUST	TOTAL
8 Ave. between 42-43 Sts.	34	45	56	135
8 Ave. between 44-45 Sts.	38	21	21	80
8 Ave. between 45-48 Sts.	40	45	33	118
9 Ave. between 45-48 Sts.	16	13	21	50
42 St. between 7-8 Aves.	29	36	23	88
42 St. between 9-10 Aves.	16	16	13	45

*Source: New York City Police Department; Insight Associates.*

### **Criminal Activities: Drugs and Prostitution Arrests**

As can be seen in the responses to our survey, one of the most frequently made assertions is that adult use establishments attract criminal activities, particularly drug dealing and prostitution. Working closely with the NYPD Crime Analysis Unit, we attempted to obtain data concerning arrests or complaints for these two types of criminal activities, in order to enhance the criminal complaint data discussed above.

Prostitution and drug complaints are not collected by the precincts in the same way as other criminal complaint data. Drug complaints and drug arrests are not maintained on the precinct level and are

considered confidential, due to on-going criminal investigations. Thus, we were not able to obtain data on this type of criminal activity. With the cooperation of the Crime Analysis Unit, however, we were able to obtain information concerning prostitution arrests along Eighth Avenue from 42nd Street to 48th Street.

In a three month period from July through September, 1993, in the Midtown South Precinct, there were 19 arrests made on Eighth Avenue between 42nd and 45th Streets, compared to no arrests on Ninth Avenue between 42nd and 45th Streets. Further north on Eighth Avenue, between 45th and 48th Streets, the Midtown North Precinct reported 9 arrests for prostitution, compared to 14 arrests along Ninth Avenue for the same three blocks during the same three month period. Thus, the heaviest incidence of prostitution arrests occurred in the three block study area of dense concentration of adult use establishments, during this time period. Those findings are summarized in Table VI.

**TABLE VI**  
**PROSTITUTION AND RELATED ARRESTS**  
**FOR SELECTED BLOCKFRONTS**  
**JUNE, JULY, & AUGUST 1993**

BLOCKFRONT	JUNE	JULY	AUGUST	TOTAL
8 AVENUE (42-45 Streets)	7	7	5	19
9 AVENUE (42-45 Streets)	0	0	0	0
8 AVENUE (45-48 Streets)	7	1	1	9
9 AVENUE (45-48 Streets)	3	10	1*	14

Source: New York City Police Department; Insight Associates.

\* In addition, there were 7 arrests for Patronizing a Prostitute for this month.

In addition, we were able to obtain from the Midtown Community Court a list of locations for prostitution arrests appearing before that court for the period from October 12, 1993 through February 28, 1994. The Midtown Community Court sampled 60% of its prostitution arrests for this 4 1/2-month period, looking at the frequency of arrests on Eighth Avenue between 42nd and 48th Streets, as compared to those along Ninth Avenue between the same streets.

The number of prostitution arrests on Eighth Avenue was 20 for that period, compared to 5 for Ninth Avenue. However, higher than that was the number--24--for the area west of Ninth Avenue. This may reflect the well-known concentration of prostitution activity along the westernmost stretches of West Midtown, particularly along Tenth and Eleventh Avenues.

What is interesting, however, is that during this 4 1/2-month period, the location for the majority of

prostitution arrests shifted dramatically eastward, from west of Ninth Avenue to Eighth Avenue itself. This change may have been a function of police activity and sweeps or may be related to other factors.

Nevertheless, the more recent level of prostitution activity, while higher in the west, dropped along Ninth Avenue but increased again along Eighth Ave. This concentration of arrests along Eighth Avenue may be related to presence of adult use establishments along Eighth Avenue, but may also be related to traffic and pedestrian patterns, proximity to the Port Authority Bus Terminal, and proximity to Times Square itself. It should be noted that according to the Midtown Community Court's records, the most frequent locations for prostitution arrests in their sample were in the West 20s along Tenth and Eleventh Avenues and in the upper 50s on Sixth Avenue.

The findings are shown in the following table.

**TABLE VIa**  
**PROSTITUTION ARRESTS AT SELECTED LOCATIONS**  
**MIDTOWN COMMUNITY COURT**  
**(60% Sample)**

LOCATIONS	10/12/93-12/31/93	1/1/94-2/28/94	TOTAL
8 AVENUE (42-48 Streets)	4	16	20
9 AVENUE (42-48 Streets)	3	2	5
WEST OF 9 AVENUE (42-48 Streets)	21	3	24

*Source: Midtown Community Court, 3/4/94.*

The Office of Midtown Enforcement, although acknowledging the decline in criminal activity in the Times Square area, continues to deploy surveillance teams to monitor the level of prostitution activity in the area. (Office of Midtown Enforcement

1991-2 Fiscal Year Report).

## INTERVIEW FINDINGS

Previous secondary effects studies have combined survey research and anecdotal reports from community and business interests. Our study did so as well. A total of 54 interviews were conducted between November, 1993, and March, 1994. Three different interview questionnaires were employed: one designed for property owners and business operators, a second intended for local organizations, churches, and schools, and the third for Community Board representatives.

In general, we sought to obtain information on perceptions and experience of the impact in the Times

Square area of adult entertainment establishments. More specifically, we tried to elicit detailed observations of the effects of these enterprises on business and daily life. We also attempted to obtain information on the effects of these businesses in geographic terms, i.e., the proximity and distance of adult use establishments and the resulting intensity and/or diminution of impacts.

To provide context, we asked all respondents about their views of what constituted the major problems facing the Times Square area, and the relative importance of pornography and adult use businesses among these problems. The open-ended conversations that followed completion of the formal interview schedule were often most productive. Where possible, the interview results are presented below as quantified measures but in addition, many valuable insights emerge from interview material that is not easily quantified.

## **Property and Business Owners**

### **Real Estate Owners, Managers, and Corporate Leaders**

Our twelve-interview sample in this important category included five of the largest real estate companies or management agencies in the city, with multiple holdings in Times Square and elsewhere. We interviewed one appraiser familiar with the Times Square area, one owner of residential property, and one leasing agent. In addition, we spoke with executives of two important publishing and communications corporate groups.

Most of these respondents have been part of the Times Square scene for decades, and some are relatively recent arrivals. They are all aware of Times Square's history, in all its ups and downs, and some have played roles in this history. Their observations and expertise, however, are focused on the growth of Times Square as a unique conglomerate of entertainment uses, commercial tenants, tourist attractions, and, increasingly, a home for financial and multi-national corporations.

As our appraiser interviewee stated, we must evaluate how the presence of these adult entertainment uses slows down or reduces rentals and business activity in the long run. That is, it can be said that pornographic uses may attract other businesses and traffic, which brings revenue to the owners of those businesses in the short run. But there is no way to encourage increased value of commercial properties for a variety of businesses in the long run if they are next door to a concentration of pornography establishments.

This observation is confirmed by the direct experience of our real estate respondents. Three real estate developers had bought buildings in the Times Square area, which housed adult use businesses, and they sought to terminate these leases as quickly as possible. They all asserted that the presence of such stores had a definitely negative effect on office leasing, especially for corporate tenants. A leading real estate agent described the lower rents and difficult leasing conditions of an office building located on 42nd Street between Seventh and Eighth Avenues. He also depicted the lower rents on Eighth Avenue as compared to Seventh Avenue for comparable buildings, and cited instances of tenants refusing to renew leases because of the Eighth Avenue location and its atmosphere.

An owner of a smaller residential property on 46th Street said that he believed that the adult use businesses on his corner at Eighth Avenue frighten people away. He had an apartment on the market recently and a prospective applicant who said he wanted to rent it for his daughter and friends turned out to be really interested in using it as a massage parlor. The owner recently advertised office space in his building, but has so far attracted two adult use businesses, while other applicants have been scarce.

The builder and owner of World Wide Plaza spoke of the need to oust a porn theatre one block to the north (which later relocated further south on Eighth Avenue) in order to attract major corporate tenants. While his tenants have long-term leases, and he recognizes that the development of his building was

affected by recent downturns in the real estate market having little to do with porn, he nevertheless expressed concern about the new spread of porn uses along Eighth Avenue. In fact, though the block from 50th Street to 51st Street, north of World Wide Plaza, remains vacant because of these larger market trends, he is seeking to encourage the lessee to rent to local retail uses, rather than to adult entertainment businesses. Members of this development organization stated that they believed that security costs in this building were somewhat higher than those of comparable buildings located in other neighborhoods. They also were very concerned about the recent increase in adult uses on Eighth Avenue, which they fear is occurring because of the public agency condemnations along 42nd Street, which may well be forcing the porn merchants northward.

All of our respondents said that adjacency of porn establishments has a negative effect on sales and leasing, and that plainly the concentration of establishments affects the overall image of the western edge of Times Square. They describe Eighth Avenue and certain side streets where these stores are located as "less hospitable places," and as injurious to the quality of life. One corporate executive said that one of his employees was mugged in front of an adult-entertainment store. A developer and an executive of a corporation both said that adult businesses on the same street, or diagonally across the street from a property have offensive and negative results.

All except one developer said that perhaps there is a way to limit the number of such establishments, and to disperse them. The dissenter said that not even one could be tolerated.

All of our property owners and business representatives--large and small--expressed the view that adult use businesses have a negative effect on the market or rental values of businesses located in their vicinity. It was very clear that negative effect was intensely felt if the adult business was right next door, in the same building, or on the same block. But every respondent also emphasized the negative effects of a concentration of businesses, stating that "Eighth Avenue is a less attractive place to do business" than other avenues in the Times Square area. One representative of a major property owner said that there were more improvements on Ninth Avenue in recent years than on Eighth Avenue, as evidenced in the numbers of new restaurants and small viable retail stores which have opened on that street. In the light of other improvement in the Times Square area, this respondent, too, expressed concern about "the march of porn stores up Eighth Avenue."

A corporate newcomer to the Times Square area expressed great optimism about its future and he said that the confidence was shared by employees and prospective retail tenants, but he also said that the positive trends were clear along Seventh Avenue and Broadway, and certainly less so along Eighth Avenue.

A real estate agent who tries to rent only to "Triple A" tenants said that proximity to adult establishment would be a deterrent to them. If there was an opportunity to rent to, say, a major fast food chain, which might be willing to locate on Eighth Avenue, in such a case, he was sure that concessions or sweeteners would have to be offered in the form of sharing in increased insurance costs, or in offering lower-priced rentals.

On the other hand, new area business and long-term owners both said that there is much improvement in Times Square and that its new identity as a center for corporations, entertainment, and tourism will continue to make it attractive to investment from all over the world. Because of the extraordinary pedestrian traffic, it can and will attract major retailers, and it is important that this trend not be deterred by the concentration of porn theatres, strip clubs, and adult video stores.

### **Theatre Owners**

Interviews were held with high executives of the three major legitimate theatre organizations. All were very emphatic about the deleterious effects of the presence of adult use stores near their theatres and in the neighborhood in general. They stated that these uses "scare away audiences," and were not good for business. One respondent believed that one of his well-equipped and otherwise competitive

theatres could not compete for bookings because of its location near 42nd Street's porn strip. That is, he could not obtain rentals for productions, and was forced to create projects of his own to keep the theatre from staying dark.

All three, including the owner of that theatre, mentioned the direct negative effects of the presence of an adult use establishment right next door to the Martin Beck Theatre. Despite the fact that this theatre now houses a musical hit, the owners describe complaints from patrons about the adjacent sex establishment. Complaints were voiced about the "unpleasant" atmosphere on the western edge of the streets on which their theatres were sited, West Forty Fourth Street and West Forty Seventh Street.

One respondent, with a more than twenty year history of theatre operation in the area, was unequivocal in his view that the presence of these establishments hurt business. From the days of massage parlors in the 1970s to the video stores of today and the resurgence of topless dancing establishments, there has been a continuing pattern of deterioration of facades, sidewalks, and blockfronts--a pattern damaging to theatregoing. He believed that low-level drug dealing and prostitution could be linked to the presence of these adult entertainment places, and that the presence of even one such store on a street is negative.

The other two theatre executives believe that the more concentration of porn businesses you have, the more it hurts property values. While they did express concern for free speech considerations, they were all quite critical of the negative effects of the appearance of these stores, which they say contributes to blight.

These exhibitors asserted that Broadway theatre and restaurant patrons are a class of people who are discouraged by the prospect of walking through pornography-filled streets. The respondent from a nonprofit theatre located in Times Square, not immediately near adult use businesses, did not express major problems or complaints related to such places. He recognized, however, that many of his patrons parked their cars west of Eighth Avenue, and that many of his promotions included dining on Restaurant Row, but he cited no specifically perceived negative effects.

The theatre owners stated that the incidence of crime has declined in the Times Square area, and that the area is cleaner and safer, its negative raffish image has improved markedly. But they were concerned about Eighth Avenue, about vacant stores, and about uses such as porn stores that were incompatible with theatregoers.

## **Restaurants**

We interviewed seven respondents, representing eight variously-priced restaurants and chains in the Times Square area. Two were located on 46th Street's Restaurant Row, two on Eighth Avenue, and three elsewhere in Times Square. One restaurateur was also a building owner.

All of the respondents believed, in general, that the presence of the adult use establishments was not good for their business. One of the owners was not at all affected, he said, by the adult businesses, because the block on which his restaurants were located was free of such uses. But although this restaurant operator had been offered properties on Eighth Avenue as well as on 43rd Street, he said that he would not open restaurants on those sites even if they were free. "My customers want to be entertained, to be in an uplifting environment. My places attract family and friends. I don't want my customers to be put off by the atmosphere."

But the owner of a lower-priced coffee shop on Eighth Avenue who claimed that he sought tourists and local business said that the presence of these businesses made for a "terrible" influence, and that Eighth Avenue was no longer "a very popular area." He said that business is off after 7:30 or 8 at night on this Avenue, compared to business a few years ago.

Another popular restaurant with a substantial core of regular customers who are not bothered by the

presence of porn stores said, however, that the restaurant has great difficulty attracting the corporate parties that they have been seeking. They believe that there is a public perception that the area is unsavory, since they have had the experience of attracting potential parties, and then having those potential customers cancel. This manager also expressed concern that tourists may pass her restaurant by because it is sandwiched between pornography establishments.

Three of the restaurant operators described complaints from customers about loitering. The food establishments located on or near Eighth Avenue said that they believed that new porn businesses were relocating from 42nd Street; they also said that the flamboyant advertising of porn stores, even ads seen from across the avenue, had a negative effect on their business.

All these respondents were aware of and complained about drug dealing which they could not directly tie to the adult entertainment ventures, but which they felt were part of the same picture.

Both a small coffee shop owner and the owner of two larger family restaurants expressed their opinion that Times Square remains a promising business growth area and that they intend to stay. But the coffee shop may be forced to move off Eighth Avenue, and would like to unless conditions improve.

## Hotels

The three hotel operators who were part of the interview sample, and the owner of one of the properties--all located along Eighth Avenue--agreed that the dense concentration of adult entertainment venues was a deterrent to their trade.

The owner of a long-standing moderate priced tourist and convention hotel said that there had been a tremendous improvement in conditions in Times Square in the last two or three years. He attributed this to the work of the Police Department and the Times Square Business Improvement District. But this hotel owner continues to have some difficulty attracting airline and corporate business, and the trade shows that it seeks. He described complaints from airline personnel that women among them were verbally assaulted on Eighth Avenue. He said that Times Square is viewed as a "fun area," but that Eighth Avenue is the "seedy side of the district." He also said that he is himself "not a prude," that it is perhaps possible to live with some of these establishments, but that the concentration of them--more than one on every block on Eighth Avenue--is "disgusting and harmful." In sum, this manager of a large hotel said that there is great improvement, but there is still the need to combat sleaze through City action and through pressure on landlords.

An assistant manager of a chain hotel did not see any positive or negative direct effects of porn businesses on his own. But he did observe that prostitution activity seemed to be worse than last year, and he offered the opinion that plainly people do not like to see either that activity or porn establishments when they leave his hotel.

In the interviews with the owner and his lessee of a small hotel franchised by an international chain we heard about the direct effects of porn establishments. Though located on Eighth Avenue, with X-rated movies at the end of the block, they believed that they could attract customers because of their national booking service. But after obtaining their lease, an adult-use store opened right next to the front door of the hotel, and the respondent described many instances of customers having booked rooms through the national office arriving, looking, and canceling. These customers sometimes took photographs of the adjacent porn store and sent them back to the national booking office. As a consequence, business is down substantially. Both owner and manager describe the constant activity of prostitution in front of the porn store and their hotel, and both associate drug dealing and crime with the loiterers attracted to the store.

The owner had the opportunity to acquire and rent the adjacent store. He could have rented to adult use businesses, he said, but refused. He claimed that the adult use is paying a much higher, above market rent than what the previous owner or any non-pornographic business would pay for that space. He also

said that "I am certain that there are illegal activities in the back room [of the store]. The rent is too high to be sustained by the sales." Both men expressed concern about a store across the Avenue that had been vacant for a year and a half, and feared it would be rented for adult entertainment use.

### **Retailers**

The five merchants interviewed had all been in business in the area for many years. Four are family-owned businesses which also own the buildings in which they operate. Three of the businesses are industry wholesalers, destination markets, and local service stores.

Two of the interview respondents saw no particular effects of the presence of adult use establishments on their own specific businesses. Both of these condemned the presence of drug and crack dealers in the vicinity. One of these two said that he knew the manager of a gay movie theatre across the Avenue and considered him a neighbor trying to do business.

Another interviewee felt differently, that conditions brought about by the porn businesses were pretty bad, negatively affecting rents. Though he said he was as concerned about the First Amendment as anyone, and "did not consider myself a saint," he did say that the people who hang out in front of these establishments are unsavory and are involved in petty street crime. He feels that the presence of such stores hurts the perception of Times Square as a place of entertainment and business. He had become optimistic about Times Square's future in the last years, but now found himself worried about the increase in the number of adult use stores on Eighth Avenue, and the consequent security and safety problems. Nevertheless, he plans to continue doing business in the area where his family has been since 1935, and would consider expanding into more space in an industrial or commercial building west of Eighth Avenue.

A liquor store owner said that his real living is from the residential and business trade in the area and he does not welcome the presence of the adult use stores. He is convinced that they are associated with street drug dealing, and claims to have observed known dealers in video stores many times per day. He believes that they frequent these places--which otherwise seem to be doing very little trade--because the video dealers are tied into the crack-selling business. That owner and a manager of a store owned by a family which has been doing business in Times Square for ninety years expressed great concern about vacant stores, high rents that only the porn operators can afford, and loiterers who interfere with customers.

### **Community Residents and Organizations**

In the greater Times Square neighborhood there are eight block associations, approximately seven public schools, and about fifteen churches, six of them within the BID boundaries.

### **Block Associations**

Of eight known block associations in the area west of Eighth Avenue, we interviewed representatives of five. All the respondents described the negative impact of the concentration of adult use businesses for both the residential and commercial communities. They all said that they believed and observed that these uses are negative in their effects because they attract loiterers, drug dealers, prostitutes, and their customers. Four of the block association leaders said that adult use establishments drive out legitimate businesses, and they deplored the recent loss of a stationery store and a drycleaners which had been replaced by adult entertainment businesses.

All five representatives said they had been directly affected by the presence of adult use establishments on their blocks, and indirectly, by the presence of groups of prostitutes who congregate in front of the establishments on Eighth Avenue, and also onto the side streets. They linked this prostitution activity to

Eighth Avenue itself, but they acknowledge the presence of prostitution and drug dealing on other avenues to the west. Four of these respondents had made complaints to owners or operators of adult use establishments about their displays and about loitering. One had not. The same four had also complained to the Police, Midtown Enforcement, and the Community Board.

On the question of the scope of the area impacted by an adult use business, four of the respondents believed that the impact was neighborhood-wide, by which they mean that the image of the entire area is tarred: "It erodes the neighborhood's self-esteem." In terms of the impact of any single adult entertainment location, two believed that such impact extends across a street or avenue, and one believed that it extended more than five hundred feet. All respondents commented on the appearance of the stores; some called them aesthetically unpleasing and garish, obtrusive and tawdry, and disturbing to children. Some felt that the appearance of adult movie theatres was somewhat less disturbing than that of other adult businesses, and others complained that the covered, blanked-out windows of adult bookstores were forbidding and repellent.

These community interviewees believe that drugs and drug-related criminal activities constitute the number one issue for neighborhood residents, prostitution activity a close second, and the presence of pornography establishments was rated as third.

Another theme for longer-time residents was the belief that there had been many signs of renewal and community health in the Times Square area in recent years, but that the arrival of new adult use businesses, vacant stores, and resultant increases in drug activity were now posing new threats to community stability. These respondents viewed themselves as part of a working- and middle-class community in Clinton, adjacent to the commercial Times Square, and fighting to preserve the residential character of their home blocks.

### **Community Boards Four and Five**

Community Board Five covers the Times Square area and reaches through most of the BID district to the east side of Eighth Avenue. Board Four covers the west side of Eighth Avenue, the Clinton residential and manufacturing communities to the west, as well as the Chelsea community to the south, where there has also been a recent increase in the presence of adult establishments.

We interviewed the District Manager and the Co-Chair of the Public Safety Committee of Board Four, and the Assistant District Manager and Co-Chair of the Public Safety Committee of Board Five. All four told of an increase in complaints and concern being directed to the Boards over the past two years. For Board Four, many of the complaints focused on the area along Sixth Avenue in Chelsea, as well as on the area just south of the BID boundaries, on Eighth Avenue. There were specific complaints about particular establishments, including the documenting of criminal activity along Sixth Avenue, along Eighth Avenue south of the BID, and at Forty Sixth Street and Eighth Avenue.

In terms of effects, one representative may have summed up the feeling by saying that the presence of these businesses makes "people feel that my neighborhood is no longer my own: people who are apolitical begin to organize against these stores." Another said "the block is taken away from the residents, you can't walk down the street. Other people who use the street to walk or shop cross over or avoid these businesses."

All these respondents described instances of loitering, late-night drinking, and, in the case of some establishments, documented criminal activity. Yet, because these activists also had experience with the negative impacts of non-pornographic bars and discos as well, they did state that perhaps every establishment had to be judged on its own effects on a block or a community. If any of these users could be good neighbors, if they could blend in with the community, then perhaps some could be tolerated. But they also said that the experience has been that if there is one establishment, then others follow, leading to an unacceptable concentration of adult use stores. This is what has occurred in Chelsea, and this is the case on Eighth Avenue. When there comes to be "a critical mass" and when

the stores are poorly run, the area becomes a point of attraction for all sorts of undesirable activities.

These informants expressed their concern about impacts on their residential communities, but they also saw their interests linked to the prosperity of the theatre community in Times Square, for example, and to the continuing growth of other businesses in Clinton and Chelsea.

### **Schools**

We were able to interview representatives of two public schools in the area, Public School 111, and Park West High School. They decried the proliferation of adult entertainment stores in general, and stated that they did not want young people to grow up assuming that "the sleazy image" provided by these stores is the norm. "Why throw this at children before they are ready?" They also expressed concerns about prostitution and drug dealing in the area, which, together with the presence of the porn stores, contributes to the negative image of the Times Square and Clinton areas. One representative had recently made specific complaints about a nude bar opposite the back of the school building, and had worked with the Community Board to lessen the effects and even, unsuccessfully, to close that bar.

### **Social Service Organizations**

Three interviews were held with 1) the executive director of an organization providing residential and service needs for older citizens, 2) the executive director of a multi-service settlement house, and 3) the executive director of an AIDS project. A fourth, more informal conversation was held with the executive director of an organization serving the homeless.

Two of these respondents observed that the presence of adult entertainment businesses has a negative effect on the area. The settlement house leader said that the families and children she serves try to avoid Eighth Avenue, and the senior service representative believed that their ability to attract viable commercial tenants for their retail rental space was being hurt.

The AIDS organization representative asserted that pornography may be okay for some, but may be linked to drugs and prostitution because there is also commercial sex taking place in and around these establishments. He believes that there is a double standard prevailing, in that not enough is being done to combat drug dealing, prostitution, and the spread of AIDS. Each of these interviewees was concerned about the negative image of Times Square that may be fostered by the presence of the porn businesses and their ancillary activities.

The respondent from the homeless agency described the presence of a scantily dressed woman dancing on the street and distributing flyers for a newly-opened business one block south of the BID boundaries. This new business is on the same block as the outreach ministry of a church, and very close to the two residences for homeless adults run by her organization. She stated that she is working with people who are "trying to get their lives together" and she found the presence of these establishments not helpful. The three executive directors believed that the appearance and exterior displays were "embarrassing," "seamy," and "seemed to be violent."

As to the issues and problems facing the neighborhood and Times Square, all three mentioned drug dealing and prostitution, and two spoke of the negative effects of street crime, even if they were only perceived effects. All three said that Times Square is and should be a place of entertainment and tourism, but that there was a difference between this and sleaze. One person also mentioned that the stalled 42nd Street development and the empty buildings had "deadened" the block. She was also concerned about the decline of neighborhood service stores, needed by seniors and families living in the area.

### **Religious Organizations**

Six church representatives were interviewed, one of whom had been in the area only a few months

while the others had been working in the Times Square area for many years. While these people all decried the content of the advertising at adult use businesses, their image of women, and the negative effects of their existence, their true complaints were directed at the ancillary activities or effects that they insist were the inevitable result of the businesses' presence. Each of these members of the clergy spoke about the prevalence of prostitution activity. Many knew who these prostitutes were, and were concerned about the violence they had observed, women being beaten and other violent incidents associated with the selling of sex on the street.

They all stated that the presence of these stores attracted people who, as one put it, "are involved in some sort of scam." That is, the stores attract hangers-on, street people who engage in gambling, drug dealing, as well as groups of men looking for sex, and women, men, and boys selling sex. Three of these interviewees acknowledged that there is also a great deal of prostitution west of Eighth Avenue where there are no adult entertainment spots.

Clergy spoke of themselves and their parishioners being accosted by prostitutes; one described an attempt by a prostitute to pick his pocket as he walked his dog on Eighth Avenue. One church leader believed that people come from all over the world to patronize the pornography establishments in the area, but three others said that they did not believe that tourists came to Times Square for this purpose. Instead, they maintained that it was difficult for tourists to make their way past the sleaze of Eighth Avenue.

These church people, like the community residents, spoke of a feeling that things had been improving in their community until the most recent influx of additional adult entertainment businesses. In some respects they welcomed what they saw as the improved image of Times Square, and praised the work of the BID. But their major issue, above all others, remains the drug problem, and resultant street crime, which they see as the scourge of the entire community.

## SOME ADDITIONAL TESTIMONY

During the course of this study, in addition to the interviews that made up the formal survey, we received or had passed along to us from time to time written communications from various individuals who live or work in the Times Square area. Some of these are sampled below:

**, Proprietor, Restaurant:**

(March 1, 1994)

I am a new business owner on West 47th Street between Broadway and Eighth Avenues. We opened our doors at \_\_\_\_\_ on October 7, 1994 [sic, 1993?]. Our restaurant occupies the space of the old Delsomma Restaurant. During these four months we have seen BID's work in the neighborhood evident in the painting of storefront gates, removal of bills posted on abandoned buildings, helpful clean-up crews and ever so accommodating security people. Unfortunately, we have also noticed the opening of four new adult video stores in a two-block stretch between 46th and 48th Streets on Eighth Avenue. While I have never seen any of them with more than two customers inside, the element of underground business they attract is atrocious, namely prostitution, drug dealing and loitering. Since their customers are few they obviously generate their income in some other unobvious manner.

While the owners of the adult video stores have a civil right to earn a living, I am opposed to its impact on the neighborhood and would like to know what I can do to protect the area from similar new business and discourage store owners from operating in the area. Not only does it hurt the area's legitimate businesses, but we must remember there are several high schools in the area whose students should not be exposed to these activities.

**Thomas K. Duane, Councilmember:**

(Letter to the owner of 320 West 45th Street, now occupied by an adult entertainment business, December 23, 1993)

As you may be aware, "Private Eyes" joins the growing list of adult uses (i.e. adult video stores and topless/bottomless dance clubs) in the Clinton neighborhood of Manhattan. Red Zones in other American cities have caused dramatic increases in crime and negatively impacted the local economy. While you may gain short-term economic benefits from renting out your property to an adult use, you also will be creating a negative economic climate for your own property.

You should also be aware that your property is directly across the street from a residentially zoned property filled with families and young children. Moreover, the City Council has been considering legislation, which would legalize adult uses within 500 feet of residentially zoned property. "Private Eyes" would clearly be illegal if such legislation were to pass.

The Block Associations in Clinton have been working long and hard to make their streets safer and drug-free. Renting your property to an adult use such as "Private Eyes" undermines their hard work and significant achievements.

I am aware the Community Board #4 has offered to assist you in identifying a more appropriate use for 320 West 45th Street. I urge you to accept the board's offer. I would be more than happy to provide assistance from my office as well.

**The West 45th Street Block Association:**

(Letter to Community Board 4, March 4, 1994)

...The "Private Eyes" adult nightclub at 320 W. 45th St. has become a continuous cause of concern and frustration among block residents. Although the club may be in technical compliance with various laws, little by little, Private Eyes has created conditions that cheapen the quiet ambiance of this mostly residential block, adversely affect our quality of life and attract elements (both patrons and non-patrons) who continually disturb the peace.

"No Parking" was established on this block several years ago to discourage loitering around parked cars. By allowing (or encouraging) patrons to disregard parking regulations, conditions are created for late night crowds and disturbances.

Indeed, we've noticed a distinct increase in Private Eyes patrons hanging out and

milling around parked cars -- late at night usually between 2 and 4 a.m. These patrons are often inebriated, rowdy and shouting, blowing car horns and in at least one instance they have even tried to overturn a car. A side effect is that car alarms tend to go off frequently.

This late-night congregating in front of the club happens again and again. These people do not live here or have any respect for block residents. And whether by design or happenstance, the club attracts certain non-patrons detrimental to the block. Street prostitution and drug dealing has increased.

Almost every night, Private Eyes has employees handing out advertising flyers on the corner of Eighth Avenue and 45th Street. Although we're cognizant of first amendment rights (which don't necessarily apply to commercial advertising), these pamphleteers tend to block a very busy corner, attract drug dealers and cause litter (from their discarded handouts).

We must relate that this is a residential block with approximately 2,000 apartments. This is not a problem of morals, but the presence and behavior of Private Eyes directly and adversely reduces whatever quality is left on this block. From various buildings, we've heard residents complain of being woken up in the middle of the night, others who claim they're afraid to go into their own building if blocked by dealers, crack addicts or other scurrilous characters.

Aside from a few storefront businesses, the Martin Beck Theatre is the only Broadway theatre west of 8th Avenue, bringing onto our block around 2,000 tourists every night and a portion of the \$2.3 billion revenue of the theatre industry. The conditions created by Private Eyes may not directly affect that revenue, but surely tourists are in increased danger and may leave our city with a foul impression.

**Ross Graham and Timothy Gay, Chairperson and Committee Chairperson of Community Board #4:**

(August 16, 1993)

Re: the building at the northwest corner of 46th St. and 8th Avenue:

Community Board No. 4 understands that the property you own at the above location is being renovated to possibly accommodate a multi-floor adult entertainment center, or, in other words, a "porn palace."

Community Board No. 4 is on record as opposing a concentration of adult entertainment businesses in any specific neighborhood. Store fronts along Eighth Avenue in the 40s are quickly being turned into pornographic video and literature outlets, and several theaters specialize in adult movies and live entertainment.

The "porno palace" appears to be the first proposed multi-level facility of its kind in the neighborhood.

However, you should know that each of the 300 Blocks from West 43rd to West 59th Street is residential. West 45th, 46th (your corner), 47th and 48th Streets are especially residential with active block associations, and West 46th Street, as you know, is Restaurant Row. A number of legitimate Broadway, off-Broadway,

and off-off-Broadway theaters operate within a few blocks, as well as businesses ranging from major law firms (at Worldwide Plaza) to child care centers. Junior High School 17, with more than 700 children, is located a half a block away, on West 47th Street between 8th and 9th Avenues. In addition, your proposed "porno palace" is within 100 feet of a church.

Community Board No.4 strongly urges you to reconsider the proposed use of your building.

**Rowan Murphy, Assistant Director of Common Ground Community (CGC), operator of The Times Square, an affordable housing program in what was formerly the Times Square Hotel at 25 W. 43 Street:**

(Testimony before Manhattan Borough President's hearing, October, 1993)

...CGC acquired The Times Square in March of 1991. At that time, there was one adult use establishment on the south side of W. 43rd Street, across from our building. The block, at that time, had a growing reputation as a "safe corridor," as the result of intensive efforts by the Mayor's Office of Midtown Enforcement, Midtown South, and local businesses to increase community policing and security awareness. In September of '92, two additional adult use establishments opened, the 24-hour "Playpen" and "Malebox" located directly across from our front entrance.

For the 364 individuals who live at The Times Square, and our staff, this concentration of uses has meant a steadily deteriorating quality of life on 43rd Street. Before the Malebox and Playpen opened, tenants could enjoy sitting in the lobby or mezzanine during the evening, strolling to the corner for coffee or lingering on the steps for some fresh air. Now, the street is a gathering place for prostitutes and others involved in illegal activities.

Patrons for the adult use establishments harass and intimidate our elderly tenants, in particular. Patrons use our service entrance as a urinal on a regular basis. Our security staff is hassled when attempting to keep our entrance clear of loiterers from these establishments. The street is now ugly and intimidating at night, discouraging use of the lobby and mezzanine by our tenants and creating noise problems for tenants living at the front of the building overlooking 43rd Street.

The concentration of adult uses on West 43rd Street gives the block a very different appearance and feeling than it had when a single establishment existed there.

...[T]he density of adult uses, the disruptions they create, and the sordid street activity they attract have been major negative factors for those evaluating our building as a place to live. The majority of the applicants who decline acceptance at our building described their main reason for doing so as concern about the safety and quality of life on the block.

### **Public Nuisance and Public Health Problems: The Adonis Theatre**

**Study of Police Activity in Milford: Testing for  
Negative Secondary Effects of Adult Businesses**

**An Addendum to:**

**“Report on the Opinions to be Expressed by Professor Daniel Linz  
Sidepockets, Inc. d/b/a Keepers v. The City of Milford Connecticut, August 10,  
2004”**

**By Professor Daniel Linz**

**October 1, 2004**

In order to test the foundational assumption that the city of Milford may regulate adult businesses because they are associated with negative secondary effects, an empirical study of criminal activity surrounding adult businesses in Milford was undertaken. Unlike previous studies, conducted in other municipalities, specific attention was given to developing an empirical approach that fulfilled the requirements for the proper conduct of a social scientific inquiry.

A 1000 feet circumference surrounding each of six adult businesses in Milford was established. Comparison areas were selected in the city of Milford and matched to the adult areas on the basis of demographic features and commercial property composition. The number of calls to the police from 2000-2003 in the areas surrounding the adult businesses was compared to the number of calls found in the matched comparison areas. The following criteria were applied to insure that a scientifically valid quasi-experimental study of secondary effects would be conducted in the city of Milford.

First, in order to insure accurate and fair comparisons, comparison areas were selected that were equivalent to the areas surrounding the exotic dance entertainment businesses. Second, a sufficient period of time (over three years) was employed when compiling the crime data used in this investigation in order to ensure that the study was not merely detecting a temporary and erratic pattern of criminal activity. Third, the crime rate was measured according to the same valid source for all areas of the city considered and the crime information source was a factually valid compilation of the calls for service to the police supplied by the City of Milford. Statistical analysis is undertaken where appropriate and an error rate is calculated to determine if any differences found between club and comparison areas are due to chance or true differences.

#### **A Quasi-Experimental Approach**

It was not possible to randomly assign units of analysis to an experimental group and a control group to perform a "true" experiment to test the hypothesis that adult businesses engender negative effects. However, there is a set of professional standards that have been devised by social scientists to insure "methodological rigor" (procedural validity) in this situation. These standards are generally known as professional standards for conducting "quasi-experiments."

In order to insure accurate and fair comparisons, a control area must be selected that is truly "equivalent" to the area containing the adult entertainment business(es). Since in this study an attempt was made to uncover whether crime had increased in the areas surrounding the exotic dance nightclubs, professional standards dictate that the control (non-exotic dance) site must be comparable (matched) with the study (exotic

dance) site on demographic and other variables that are generally regarded as being related to crime rates.

### **Matching Adult Business and Comparison Areas**

In order to insure confidence in our results, it is of particular importance that the study and comparison areas be matched for population ethnicity and age, two factors that are known to be related to crime rates. The socioeconomic status of individuals in both areas must also be considered and the study and comparison areas must be matched on these variables as well. For example, Jacqueline Cohen, Wilpen Gorr, and Andreas Olligschlaeger (*Modelling street-level illicit drug markets*. Working paper 93-64, The H. John Heinz III School of Pub. Pol. and Mngmt., Carnegie Mellon University, Pittsburgh, 1993). have found that crime hotspots tended to be in areas with higher levels of poverty. The number of female-headed households and total divorced residents in each area should also be taken into account. This is because Cohen, Gorr, and Olligschlaeger found that crime hotspots tended to be associated with low family cohesion.

The study and control areas should also be approximately equal in total population both in order to control for the effects of population density on crime and to correct for rate of crime. A concerted effort should also be made to include only comparison areas with similar real estate market characteristics, such as proportion of commercial and industrial space in either area. Higher levels of crime tend to plague places with certain types of facilities and not others. In some cases, for example, crimes seem to be elevated by a target rich environment—for example, thefts of 24-hour convenience stores, auto thefts from large parking lots, or robberies from shoppers in

heavily frequented commercial areas (See: P. A. Engstad. *Environmental opportunities and the ecology of crime*. Crime in Canadian Society. (1975); D. C. Duffala.

Convenience stores, armed robber, and physical environmental features. *American Behavioral Scientist*, 20: 227-246. (1976). All of these various attempts to "match" the subject and control areas are critical in order to insure that the results we obtain can be ascribed to the presence or absence of and adult businesses, and not to some other irrelevant factor.

### **Establishing Matched Comparison Locations**

In order to insure that the research reported here utilized appropriately "matched" adult business (study) and nonadult business (comparison) areas, a crime mapping approach was utilized. A 1000 feet area was identified as surrounding each of six adult businesses in Milford.

Comparison areas, each 1000 feet in radius were selected by using a set of neighborhood demographic features that matched with the adult business areas on the basis of demographic features known to be related to crime, and by further matching areas on the basis of commercial property composition (the latter was established by an extensive on site investigation of the Milford area).

The following demographic variables (measured by the 2000 U.S. Census) were chosen for matching control and adult business sites because of their established empirical relationship with criminal activity: Number of female headed households, total population, total number of white residents, total number of black residents, residents aged 15-24 median household income. Each of these variables was identified at the U.S. Census block level.

The geographic information system computer program, Maptitude, was used to locate the census block within which each adult business was located. The values on each of the demographic variables were identified for the census block within which the adult business was located. A comparable block, matched for values on the crime-related Census variables, was then selected via Maptitude. When study or comparison areas fell across more than one census block, a mean for all of the blocks involved was calculated to determine the value of each demographic variable. All control areas were selected before any analysis of the police calls for service data was undertaken.

**Table 1** displays a comparison of the values for the demographic characteristics measured at the census block level for the adult locations and the control locations to which they were matched. Looking at the table reveals that the adult area census blocks were closely matched. This helps ensure that any differences that we might later uncover in the number of calls for service are the result of the presence or absence of adult businesses, and not the result of some other factor.

**Figure 1** presents maps of the Milford area and shows the location of the adult businesses; including the 1000 feet radius around each adult location. Also displayed in **Figure 1** are the nonadult areas located by Maptitude that are matched to the adult areas by the demographic variables related to crime.

### **Measuring Calls For Service**

All calls for service were included in our examination. In the present study calls for service to the police for a three-year-ten-month period from January 2000 to July 31, 2003 were obtained from the City of Milford crime records division and examined. A

listing of all calls included in the study and their location are available by computer disk from the authors.

## **Results**

**Table 2** displays the calls for service to the Milford police within a 1000 feet radius of the six adult businesses and the matched comparison areas. The results for each adult business and its controls are discussed separately.

**Keepers.** This adult business has only recently on a business site previously occupied by a nonadult business opened (the business was previously a billiard hall and bar). Additional data are currently being reviewed in order to undertake valid comparisons.

**Penthouse Books.** This adult business has only recently opened (2003) on a business site previously occupied by a nonadult business. There is not a sufficient time period available to assess this business. A preliminary assessment has been made by the Milford Police and is reported in the newspaper the Connecticut Post. Milford Police Sgt. Antonio Vitti said a review of department activity in the past 12 months did not show any increase in sexual assaults within the past year. "There has been no [noticeable] change in the city's sexual assault rate in the past year," he said. "We have not noticed anything like that." (Sunday, July 04, 2004, Connecticut Post). We will accept Sgt. Vitti's assessment until we have obtained more calls for service data for further analyses.

**Milford Book and Video.** Comparison of the total calls for service to the police indicate that the 1000 foot area surrounding this adult business has considerably fewer calls for service than the control locations anchored by the centroids The Knickerbocker Bar, Hooters, Smiles and the Mobil gas station.

**Vinny's Adult Superstore.** Comparison of the total calls for service to the police indicate that the 1000 foot area surrounding this adult business has considerably fewer calls for service than the control locations anchored by the centroids The Knickerbocker Bar, Hooters, Smiles and the Mobil gas station.

**Discount Video/Romantix.** Comparison of the total calls for service to the police indicate that the 1000 foot area surrounding this adult business has considerably fewer calls for service than the control locations anchored by the centroids Redwood and Peir 3 Pub.

**Video Pleasures.** Comparison of the total calls for service to the police indicate that the 1000 foot area surrounding this adult business has slightly more calls for service than the control locations.

Based on the six months worth of information we have examined for these locations as well as a review of all of the previously obtained calls for service data for Milford it is my opinion that I would not expect to see any unusual problems at these locations.

As for the other adult locations, three out of four of these adult locations show considerably lower levels of police activity than their control areas. In one case there was slightly more activity for the area surrounding the adult business compared to the controls.

#### **"Hotspot" Analyses**

While adult business effects on police activity events are not noticeable at the immediate vicinity neighborhood level, they may be present at the individual address level. In other words more focused address analyses may reveal that while three out of

four neighborhoods with adult businesses had no greater crime event frequency, on City of Milford, within the immediate neighborhood the adult businesses where the primary source of crime activity.

A "hotspot" analysis was conducted to test this possibility. The hotspot methodology used in the present study follows that employed in the Garden Grove study (1991) cited by the City of Milford as justification for the current ordinance. This study was an attempt to determine if adult businesses in the City of Garden Grove constituted a public safety hazard. The authors undertake a "hotspot" analysis (page 23) by listing the relative rank of adult business addresses versus other business addresses in the immediately surrounding area.

In Table 3 we display the results of a "hotspot" analysis for the City of Milford. In the tables we provide the number of dispatches resulting in a report or arrest to the specific adult business address, the percentage attributable to the adult business address and the rank of the address relative to other addresses in the 1000 foot area.

The method devised in the Garden Grove Study involves comparing specific adult business addresses with the remaining neighborhood in terms of percentage of crime and the relative ranks of addresses. In the study, for example, crimes from seven adult businesses located on Garden Grove Boulevard in the city of Garden Grove CA. The authors then calculated the percentage crime accounted for by the adult address among all crime on Garden Grove Boulevard. They reasoned if the adult business accounted for 10-25 percent of crimes in a neighborhood they constituted a significant source of crime events. They also computed the relative ranking of the adult business address among all addresses on Garden Grove Boulevard. They concluded that because three to five of the

six adult businesses were found at the top ten "hotspots" this finding further bolstered their conclusion that these businesses were a significant source of crime.

Using the percentage and ranking method employed in the Garden Grove Study it can be readily seen that the adult businesses in Milford are a very small source of police call events in Milford. As is shown in Table 3, the majority of the adult business addresses do not even rise to the level of one-percent of crime events in the neighborhood. Several cannot be ranked because there are zero crime events at their address. These businesses do not constitute either a serious or significant public safety hazard.

The exception to this pattern is the address specific ranking of Keepers. However, further investigation into the specific call types indicated that the police were attending to incidents that had little to do with the business itself (see Table 4).

#### **More Focused Analyses of Crime and Disorder Incidents at Adult Businesses in Milford**

##### **Additional Data Request**

An additional data request for calls for service records was made of the Milford Police Department in order to obtain at least a complete year's worth of data for 2003 and data as far as mid-2004 when the request was made. It should be noted that we requested police records "up to the present." We requested these records in order to undertake a more thorough before-after analysis of Keepers--a business address that introduced adult entertainment in November of 2002. We received a printed version of calls for service to the adult businesses Vinny's, Video Pleasures, Milford Book and Video, Discount Video/Romantix and Keepers. These calls appeared to be those from January 1, 1989 to

approximately June, 2003. We did not receive the calls for service for the last half of 2003 or for any portion of 2004.

We opted to take advantage of the 10-year period of calls for service information that we had obtained in order to examine the trends in police activity at adult bookstore addresses in Milford. Every record was entered into a spreadsheet. Included were the date, type of activity (crime type or non-crime), relevant disposition, and specific location with which the incident was associated. This resulted in a data file containing a total of 331 calls for the five businesses.

Those incidents not involving criminal activity were removed from the data set. This included calls such as medical help needed, civil investigation, and found property. Also removed were those incidents for which the reporting officer made clear that he/she either found nothing when arriving on the scene, or for which the officer specifically arrived on the scene and determined that the situation "checks out." This included all calls for which the officer stated that the alleged participants in an incident were gone upon his/her arrival (GOA), or for which the officer explicitly stated "checks out" in the call report. Harassing phone calls were also removed from the data set. Such calls were occurring over a telecommunications network, and cannot be said to occur at the specific address at which the complaint was made.

Finally, because some of the businesses in question operate in strip malls, and so share a common street address with other businesses, those incidents for which the report clearly stated that the problem occurred at a business other than the adult uses in question were removed. This left a total of 217 total incidents for consideration.

#### **Trend Analyses for Adult Businesses in Milford**

**Table 5** displays the calls for service to the police to adult business addresses in Milford from 1989 to 2003. The most notable aspect of the table is the extremely low number of police calls at two adult businesses, Vinny's and Video Pleasures over the ten-year period. Next, it is also important to note that while Milford Book and Video and Discount Video/Romantix have more calls for service than Vinny's or Video Pleasures they have considerably fewer than the nonadult business Sidepockets. Sidepockets it will be recalled is not an adult business for nine of the ten years. Sidepockets is been converted to an adult business and is now called Keepers.

**Figure 2** displays the ten-year trend in calls for service to the police for Sidepockets/Keepers and the average for the four other adult businesses in Milford. Note that pattern of police activity is very similar for the adult and nonadult businesses. Both exhibit a cycle of dips over the ten-year period. The calls for service crime events at Sidepockets/Keepers are sharply more pronounced at the peak points 1993, 1997 and 2001. In summary, we see that over the last ten years there were greater secondary effects at a nonadult business location compared to the adult businesses in Milford. Specifically, there was considerably more police activity at a pool hall than at the adult businesses.

#### **Before-After Analyses for Sidepockets/Keepers**

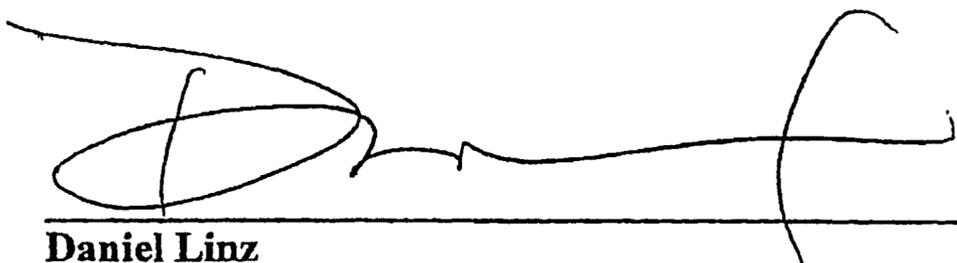
Finally, we asked the question: Does police crime and disorder related activity increase after a nonadult business converts to an adult business. **Tables 6 and 7** display the crime and disorder calls for service at the address for the business Sidepockets/Keepers. Recall that this business address was converted to an adult use in November of 2002. A comparison of crime and disorder events six months before and

six months after the conversion shows an identical number of events before and after the conversion. **Figure 3** graphically illustrates this lack of difference. Thus, we may conclude from this monthly data analyses that before and after the inception of an adult business that there is absolutely no indication of an increase in adverse secondary effects in the form of crime and disorder.

### **Summary and Conclusions**

Our analysis showed little difference, overall, between the total numbers of calls to the police reported in the areas containing the adult businesses and the total number of calls to the police in the comparison areas. Ten-year trends showed low levels of police activity at the adult business and considerably more activity at a business that did not feature adult entertainment. Before after analyses revealed that there were no increases in crime and disorder after a non-adult business was converted to an adult use.

**Respectfully submitted,**



**Daniel Linz**

10/05/04

Table 1  
Number  
of  
People  
age 15-  
24

Name of Business at Area Centroid	Population	# of Caucasians	# of African Americans	People age 15- 24	Median Household Income	Female Headed Households	Centroid Address
<b>Keepers</b>	<b>1668</b>	<b>1547</b>	<b>41</b>	<b>173</b>	<b>73452</b>	<b>62</b>	<b>354 Woodmont Road</b>
Bakers Bar and Grill	1610	1497	40	167	66179	55	531 New Haven Avenue
Gippers Ale House	1634	1522	30	165	64796	59	304 Old Gate Lane
Seven Seas	1639	1570	27	142	69073	66	16 New Haven Avenue
<b>Penthouse Books</b>	<b>1543</b>	<b>1438</b>	<b>33</b>	<b>167</b>	<b>68740</b>	<b>57</b>	<b>9 Banner Drive</b>
Seven Seas	1639	1570	27	142	69073	66	16 New Haven Avenue
Gippers Ale House	1634	1522	30	165	64796	59	304 Old Gate Lane
Bakers Bar and Grill	1610	1497	40	167	66179	55	531 New Haven Avenue
<b>Milford Book and Video</b>	<b>1281</b>	<b>1223</b>	<b>26</b>	<b>120</b>	<b>63878</b>	<b>37</b>	<b>784 Boston Post Road</b>
Knickerbocker Bar	1143	1084	22	92	61799	42	1201 Boston Post Road
Hooters	1142	1081	31	102	58490	39	990 Boston Post Road
Smiles	1296	1222	17	127	59918	49	1607 Boston Post Road
Mobile gas station	1281	1219	18	129	64621	43	1354 Boston Post Road
<b>Vinny's Adult Superstore</b>	<b>1281</b>	<b>1223</b>	<b>26</b>	<b>120</b>	<b>63878</b>	<b>37</b>	<b>753 Boston Post Road</b>
Knickerbocker Bar	1143	1084	22	92	61799	42	1201 Boston Post Road
Hooters	1142	1081	31	102	58490	39	990 Boston Post Road
Smiles	1296	1222	17	127	59918	49	1607 Boston Post Road
Mobile gas station	1281	1219	18	129	64621	43	1354 Boston Post Road
<b>Romantix</b>	<b>1472</b>	<b>1291</b>	<b>39</b>	<b>137</b>	<b>55551</b>	<b>66</b>	<b>120 Boston Post Road</b>
Redwood	1330	1280	16	144	52560	57	541 Naugatuck Avenue
Pier 9 Pub	1116	1012	29	111	54310	62	8-10 Naugatuck Avenue
<b>Video Pleasures</b>	<b>811</b>	<b>768</b>	<b>23</b>	<b>99</b>	<b>58222</b>	<b>38</b>	<b>110 Bridgeport Avenue</b>
general control 1	809	772	19	102	53490	32	342 Bridgeport Avenue
general control 2	944	913	19	115	56463	47	388 Bridgeport Avenue
general control 3	1040	984	19	88	55131	43	804 Bridgeport Avenue

**Control Areas**

**Adult Business Areas**

**Table 2**  
**Calls for Service to the Police for Adult Business and Demographically**  
**Matched Comparison Areas in Milford, CT**

Keepers

Centroid area	2000 counts	2001 counts	2002 counts	2003 counts*	Total counts
<b>Keepers</b>	<b>188</b>	<b>214</b>	<b>212</b>		<b>758</b>
Seven Seas	330	372	306	183	1191
Gippers Ale House	198	247	147	116	708
Bakers Bar and Grill	150	134	155	76	515

\* Note: 2003 data only goes through July 31

† Keepers opened in 2003.

Penthouse Books

Centroid area	2000 counts	2001 counts	2002 counts	2003 counts*	Total counts
<b>Penthouse Books</b>	<b>494</b>	<b>552</b>	<b>507</b>		<b>1851</b>
Seven Seas	330	372	306	183	1191
Gippers Ale House	198	247	147	116	708
Bakers Bar and Grill	150	134	155	76	515

\* Note: 2003 data only goes through July 31

‡ Penthouse Books opened at the end of 2002.

Milford Book and Video

Centroid area	2000 counts	2001 counts	2002 counts	2003 counts*	Total counts
<b>Milford Book and Video</b>	<b>230</b>	<b>222</b>	<b>209</b>	<b>145</b>	
Knickerbocker Bar	1302	1401	1654	908	5265
Hooters	480	468	462	264	1674
Smiles	494	416	444	273	1627
Mobil gas station	256	264	288	152	960

\* Note: 2003 data only goes through July 31

Vinny's Adult Superstore

Centroid area	2000 counts	2001 counts	2002 counts	2003 counts*	Total counts
<b>Vinny's Adult Superstore</b>	<b>224</b>	<b>221</b>	<b>211</b>	<b>137</b>	
Knickerbocker Bar	1302	1401	1654	903	5260
Hooters	480	468	462	264	1674
Smiles	494	416	444	273	1627
Mobile gas station	256	264	288	152	960

\* Note: 2003 data only goes through July 31

Romantix

Centroid area	2000 counts	2001 counts	2002 counts	2003 counts*	Total counts
<b>Romantix</b>	<b>148</b>	<b>108</b>	<b>113</b>	<b>83</b>	
Redwood	279	212	221	164	876
Pier 3 Pub	349	326	328	202	1205

\* Note: 2003 data only goes through July 31

Video Pleasures

Centroid area	2000 counts	2001 counts	2002 counts	2003 counts*	Total counts
<b>Video Pleasures</b>	<b>449</b>	<b>461</b>	<b>431</b>	<b>285</b>	
general control 1	270	312	313	194	1089
general control 2	321	357	360	244	1282
general control 3	337	376	310	215	1238

\* Note: 2003 data only goes through July 31

**Table 3**

Result of "hot spot" analyses within the 1000 feet area surrounding each adult business

**Area around Keepers 2000-2002**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	302 WOODMONT RD	81	42.2
2	354 WOODMONT RD		9.1
3	335 QUARRY RD	10	5.2
4	333 WOODMONT RD	8	4.2
5	340 WOODMONT RD	8	4.2
6	333 QUARRY RD	8	4.2
7	571 ANDERSON AVE	7	3.6
8	435 WOODMONT RD	6	3.1
9	282 WOODMONT RD	6	3.1
10	269 WOODMONT RD	4	2.1
11	281 WOODMONT RD	4	2.1
12	36 HIGGINS DR	3	1.6
13	5 HIGGINS DR	3	1.6
14	26 HIGGINS DR	3	1.6
15	35 HIGGINS DR	3	1.6
<b>Total</b>		<b>172</b>	

**Area around Keepers 2003**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	302 WOODMONT RD	49	32.9
2	354 WOODMONT RD		23.5
3	330 WOODMONT RD	7	4.7
4	282 WOODMONT RD	7	4.7
5	35 HIGGINS DR	6	4.0
6	335 QUARRY RD	6	4.0
7	269 WOODMONT RD	5	3.4
8	340 WOODMONT RD	4	2.7
9	32 HIGGINS DR	4	2.7
10	333 QUARRY RD	3	2.0
11	583 ANDERSON AVE	3	2.0
12	285 WOODMONT RD	2	1.3
13	333 WOODMONT RD	2	1.3
14	WOODMONT RD & HIGGINS DR	2	1.3
15	5 HIGGINS DR □	2	1.3
<b>Total</b>		<b>135</b>	

\* See Table 4

**Area around Penthouse Books 2000-2002**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	433 OLD GATE LN	172	34.8
2	365 OLD GATE LN	97	19.6
3	WOODMONT RD & I-95	50	10.1
4	190 WOODMONT RD	47	9.5
5	401 OLD GATE LN	39	7.9
6	214 WOODMONT RD	18	3.6
7	28 WOODMONT RD	13	2.6
8	114 WOODMONT RD	8	1.6
9	130 WOODMONT RD	6	1.2
10	465 OLD GATE LN	6	1.2
11	69 WOODMONT RD	5	1.0
12	105 WOODMONT RD	5	1.0
13	45 WOODMONT RD	4	.8
14	138 WOODMONT RD	4	.8
15	91 WOODMONT RD	3	.6
23	9 BANNER DR	1	.2
<b>Total</b>		<b>478</b>	

**Area around Penthouse Books 2003**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	433 OLD GATE LN	130	43.6
2	365 OLD GATE LN	50	16.8
3	WOODMONT RD & I-95	30	10.1
4	190 WOODMONT RD	17	5.7
5	214 WOODMONT RD	15	5.0
6	9 BANNER DR	7	2.7
7	45 BANNER DR	7	2.3
8	WOODMONT RD & OLD GATE LN	7	2.3
9	28 WOODMONT RD	6	2.0
10	465 OLD GATE LN	4	1.3
11	65 WOODMONT RD	3	1.0
12	69 WOODMONT RD	3	1.0
13	138 WOODMONT RD	3	1.0
14	105 WOODMONT RD	2	.7
15	401 OLD GATE LN	2	.7
<b>Total</b>		<b>287</b>	

**Area around Milford Book and Video 2000-2003**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	804 BOSTON POST RD	35	15.2
2	735 BOSTON POST RD	26	11.3
3	765 BOSTON POST RD	25	10.9
4	864 BOSTON POST RD	17	7.4
5	719 BOSTON POST RD	10	4.3
6	784 BOSTON POST RD	10	4.3
7	198 NORTH ST	7	3.0
8	730 BOSTON POST RD	7	3.0
9	853 BOSTON POST RD	6	2.6
10	714 BOSTON POST RD	6	2.6
11	868 BOSTON POST RD	5	2.2
12	211 W RIVER ST	4	1.7
13	748 BOSTON POST RD	3	1.3
14	6 STRAWBERRY HILL RD	3	1.3
15	807 BOSTON POST RD	3	1.3
<b>Total</b>		<b>167</b>	

**Area around Vinny's Adult Superstore 2000-2003**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	804 BOSTON POST RD	35	15.8
2	735 BOSTON POST RD	26	11.7
3	765 BOSTON POST RD	25	11.3
4	684 BOSTON POST RD	18	8.1
5	784 BOSTON POST RD	10	4.5
6	719 BOSTON POST RD	10	4.5
7	730 BOSTON POST RD	7	3.2
8	198 NORTH ST	7	3.2
9	714 BOSTON POST RD	6	2.7
10	287 W RIVER ST	4	1.8
11	211 W RIVER ST	4	1.8
12	92 FOUNDERS WAY	4	1.8
13	807 BOSTON POST RD	3	1.4
14	748 BOSTON POST RD	3	1.4
15	753 BOSTON POST RD	3	1.4
<b>Total</b>		<b>162</b>	

**Area around Romantix 2000-2003**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	179 BOSTON POST RD	15	10.1
2	120 BOSTON POST RD	10	10.1
3	175 BOSTON POST RD	11	7.4
4	105 BOSTON POST RD	10	6.8
5	149 WASHINGTON ST	9	6.1
6	150 BOSTON POST RD	7	4.7
7	100 WASHINGTON ST	7	4.7
8	30 STRAN RD	7	4.7
9	100 BOSTON POST RD	6	4.1
10	46 ERNA AVE	5	3.4
11	32 ROSELLE ST	5	3.4
12	66 ERNA AVE	4	2.7
13	153 WASHINGTON ST	4	2.7
14	658 WEST AVE	4	2.7
15	83 ERNA AVE	4	2.7
<b>Total</b>		<b>113</b>	

**Area around Video Pleasures 2000-2002**

<i>Rank</i>	<i>Address</i>	<i>Frequency</i>	<i>Percent</i>
1	249 BRIDGEPORT AVE	46	10.2
2	25 BRIDGEPORT AVE	27	6.0
3	128 BRIDGEPORT AVE	17	3.8
4	20 ELLIS ST	16	3.5
5	205 BRIDGEPORT AVE	16	3.5
6	131 BRIDGEPORT AVE	15	3.3
7	186 BRIDGEPORT AVE	13	2.9
8	70 BRIDGEPORT AVE	12	2.7
9	100 BRIDGEPORT AVE	11	2.4
10	597 NAUGATUCK AVE	11	2.4
11	79 BRIDGEPORT AVE	8	1.8
12	245 BRIDGEPORT AVE	8	1.8
13	40 BRIDGEPORT AVE	7	1.5
14	57 BRIDGEPORT AVE	6	1.3
15	489 WOODLAND DR	6	1.3
NOT LISTED	110 BRIDGEPORT AVENUE		0
<b>Total</b>		<b>219</b>	

Table 4

This table contains the relevant information for each of the 35 incidents associated with 454 Woodmont Road in Milford, Connecticut, as provided by the Milford Police Department. The wording and descriptions of these incidents appears as it was provided (including typos) from the City of Milford. Incidents that clearly should not be included as legitimate incidents associated with Keepers appear in rows with a **dark blue background**. The specific reason these incidents should not be considered as specifically associated with Keepers appears in [REDACTED]. There is more than one reason highlighted for some entries. In addition, the red text is [REDACTED] when the specific name of a different business is mentioned as the place where an incident took, or is taking place. Those incidents which either obviously should be considered as associated with Keepers, or for which it is unclear as to whether they should be associated with Keepers appear in rows with a **light blue background**.

Date	Incident ID#	Call Type	Situation at the Scene
10603	2003000464	- PRIV.PROP.	
12203	2003001748		PROBLEM AT
12403	2003001896	PUBLIC HAZARDS	
12503	2003002024	OTHER MISCELLANEOUS	CADILLAC CT 403RFC PARKED IN FRONT FOR A WEEK - VEHICLE BELONGS TO EMPLOYEE
12803	2003002265		
21103	2003003471		
21903	2003004231	- PROP. DAMAGE	
22003	2003004305	OTHER ORDINANCE/CODE VIOLATION	UNSHOVELLED SIDEWALK ORDINANCE FORM LEFT WITH FOUR SEASONS HAIR SALON WHO WILL CONTACT OWNER
22103	2003004380		DEMATTIA COMPANIES REP REQUESTING STAND BY TO PREVENT WATER MAIN PROBLEM IN KEEPERS CIVIL
22103	2003004424	BREACH OF PEACE REC. OF VEH STOLEN	STANDBY WITH HEALTH DEPARTMENT CLOSED BY HEALTH DEPT WITH NO PROBLEM
30403	2003005322	OUT OF TOWN	CT 775-MRT IN LOT
30503	2003005364	OTHER MISCELLANEOUS	
30703	2003005582	OTHER MISCELLANEOUS	ASSIST WITH LIQUOR REGS ENFORCEMENT

			POSSIBLE WANTED PERSON OTHER TOWN
61903	2003014088	SUSPICIOUS ACTIVITY	
62003	2003014181	EVADING RESPONSIBILITY	CT 683MEA REFER TO CASE 14181-03
62003	2003014188	DRIVING UNDER INFLUENCE/A ORD	6/21/03 COPY TO PER SE UNIT - MIA
62303	2003014450		PROTEC SECURITY 800-259- 6318 OP#143 GENERAL ALARM. TOM ON SCENE WITH NO CODE. CT REG 773KCO RED PONTIAC 2MALES INSIDE VEHICLE THEY'VE BEEN IN THE LOT EVERY OTHER NIGHT FOR THE PAST WEEK -
62403	2003014607	SUSPICIOUS ACTIVITY	
62503	2003014718	BURGLAR ALARMS	GENESIS ELECTRONICS / INTERIOR MOTION 800-542-2024
62903	2003015019	BURGLAR ALARMS	PACIFIC SECURITY 562-0075 FRONT AND REAR DOORS ADT
71703	2003016721	BURGLAR ALARMS	877-285-7897 EARLY 60'S RED CHEVY-NO PLATE-IN LOT WEEK & 1/2 PROPERTY OWNER MAKING ARRANGEMENTS FOR REMOVAL
71803	2003016763	SUSPICIOUS ACTIVITY	
73003	2003017847	BURGLAR ALARMS	USA CENTRAL 800 422 2300 USA CENTRAL 800 422 2300
73003	2003017860	BURGLAR ALARMS	GENERAL BURG OP 954
81803	2003019506	VANDALISM PRIVATE PROP.	DAMAGE TO SIGN NH 1522501 2DR BY VICTORY
81903	2003019613	OTHER MISCELLANEOUS	TOWING IN WEST HAVEN
82003	2003019761	DRUG OVERDOSE	MALE LOCKED HIMSELF IN BATHROOM,

30803	2003005594		MILFORD TAXI INVOLVED IN
31203	2003005968		WATER SHUT OFF AT
31303	2003006054	OTHER ORDINANCE/CODE VIOLATION	ASSIST HEALTH DEPT
31403	2003006066	HEALTH CODE VIO	KEEPER'S REOPENED
			DISPUTE BETWEEN KRISTEN MAURATI 8/5/73 AND MELISSA RINALDI 5/3/80 RINALDI WAS
42603	2003009395	BREACH OF PEACE	WARNED NOT TO RETURN TO THE ESTABLISHMENT
43003	2003009764	LARCENY/FROM AUTO	
51303	2003010909	OTHER ALARMS (PANIC ETC.)	USA CENTRAL 800-422-2300
53003	2003012367	BURGLAR ALARMS	OPER 967 COMMERCIAL PANIC ALARM ADT 877-285-7397

**Invalid calls = 12**

**Valid or unclear calls = 23**

Table 5: Calls for service to the police to adult business addresses in Milford from 1989 to 2003.

	Vinny's	Video Pleasures	Milford Book and Video	Discount Video /Romantix	Keepers	All 5 businesses
1989	0	1	3	1	2	7
1990	0	1	0	11	3	15
1991	1	1	4	3	3	12
1992	1	2	6	5	6	20
1993	0	1	3	7	12	23
1994	1	1	1	3	6	12
1995	0	3	0	4	3	10
1996	1	0	6	4	8	19
1997	1	0	3	4	13	21
1998	1	2	11	1	7	22
1999	0	2	3	2	2	9
2000	1	0	1	4	4	10
2001	0	0	2	3	10	15
2002	0	2	2	6	7	17
2003	0	0	0	1	4	5
Total	7	16	45	59	90	217

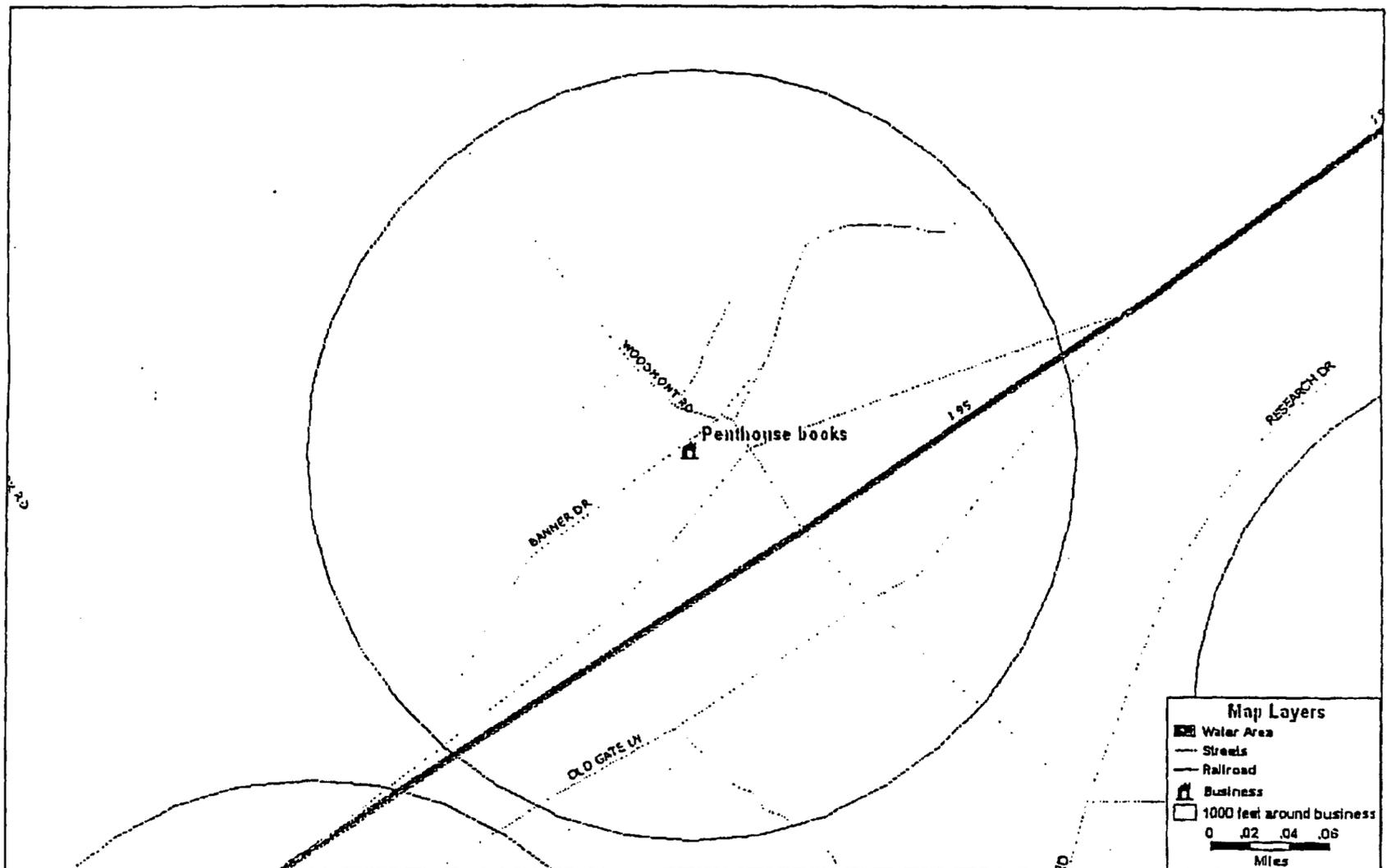
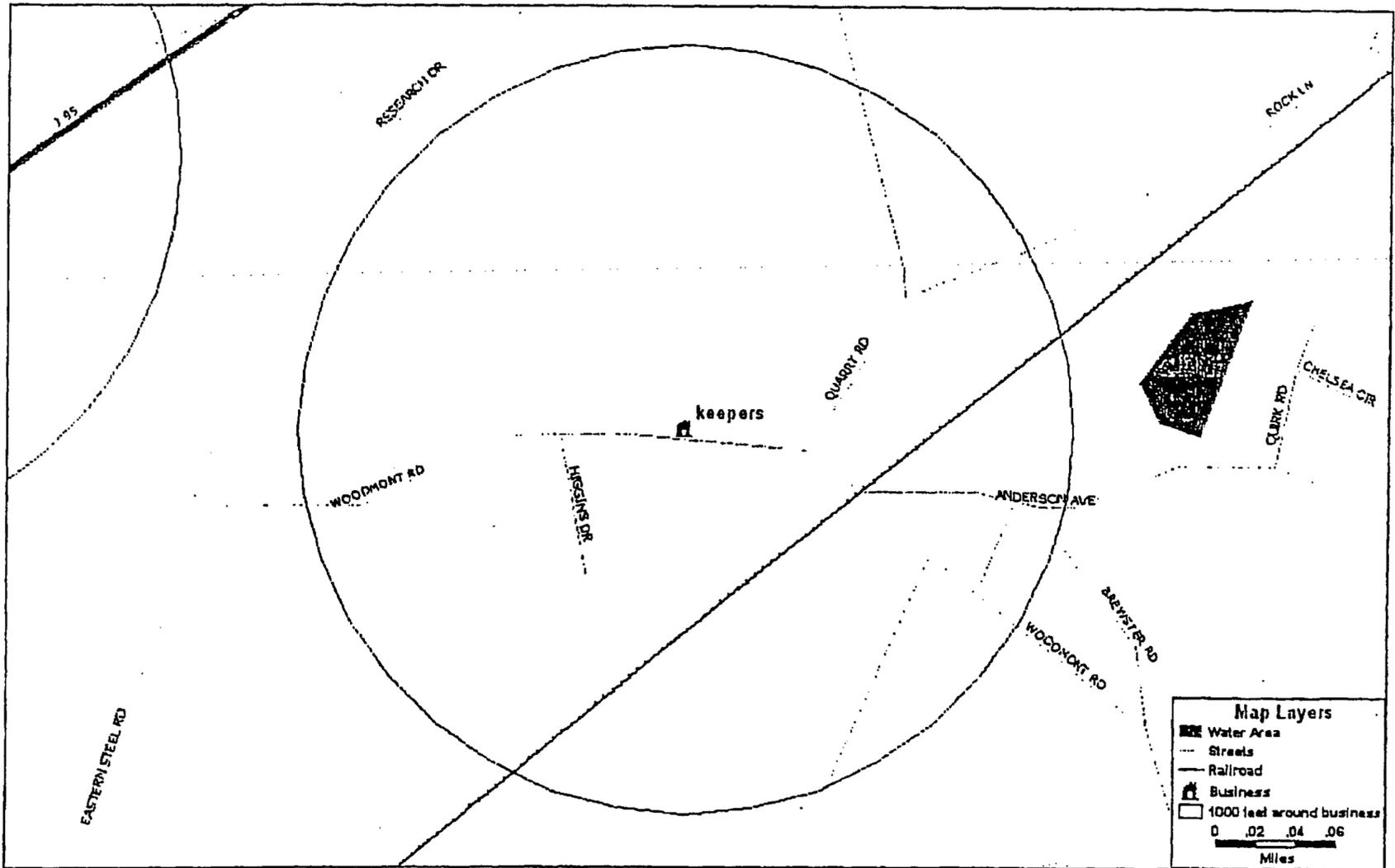
Table 6: Crime and disorder incidents before and after an adult business (Keepers) was established in Milford.

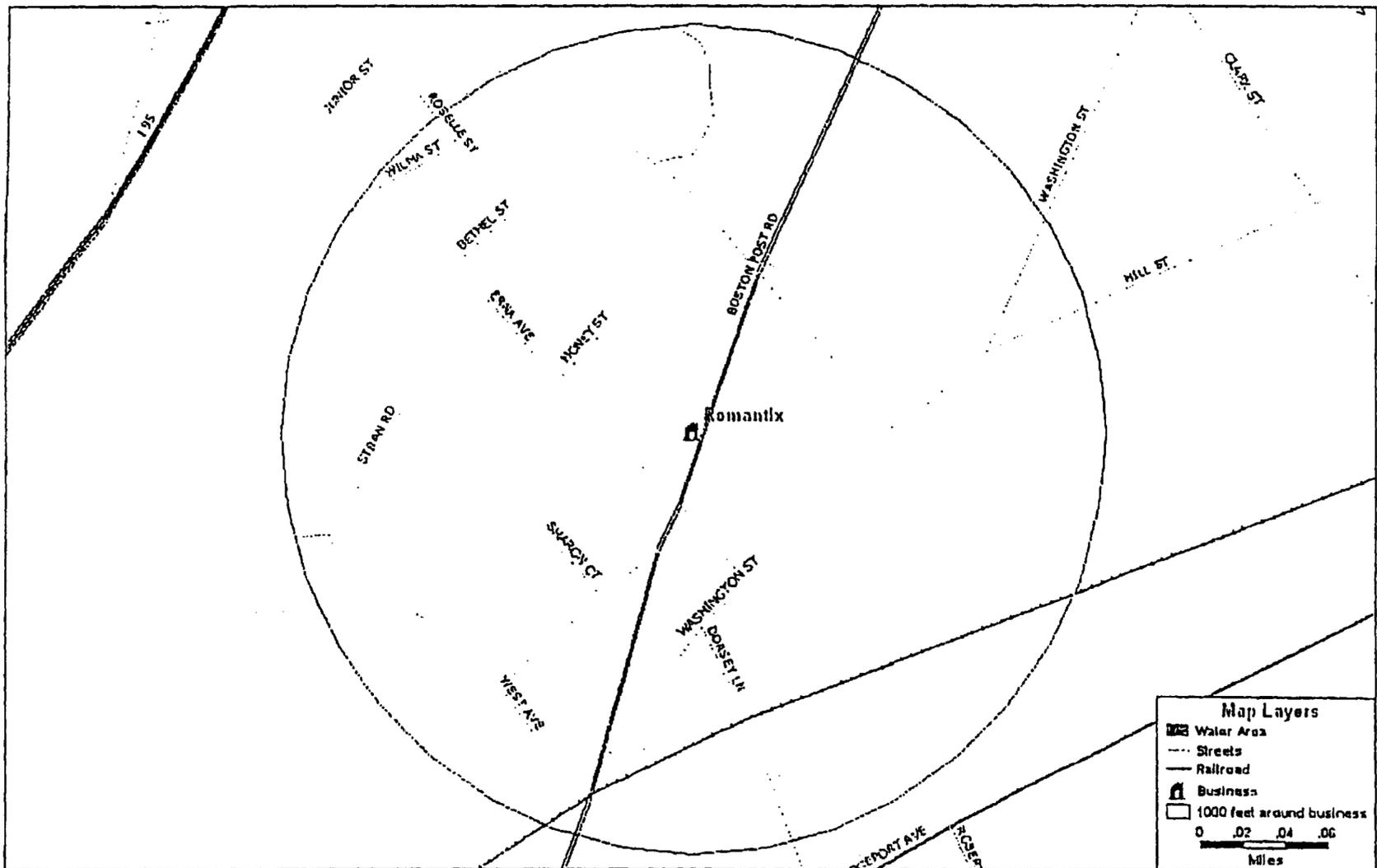
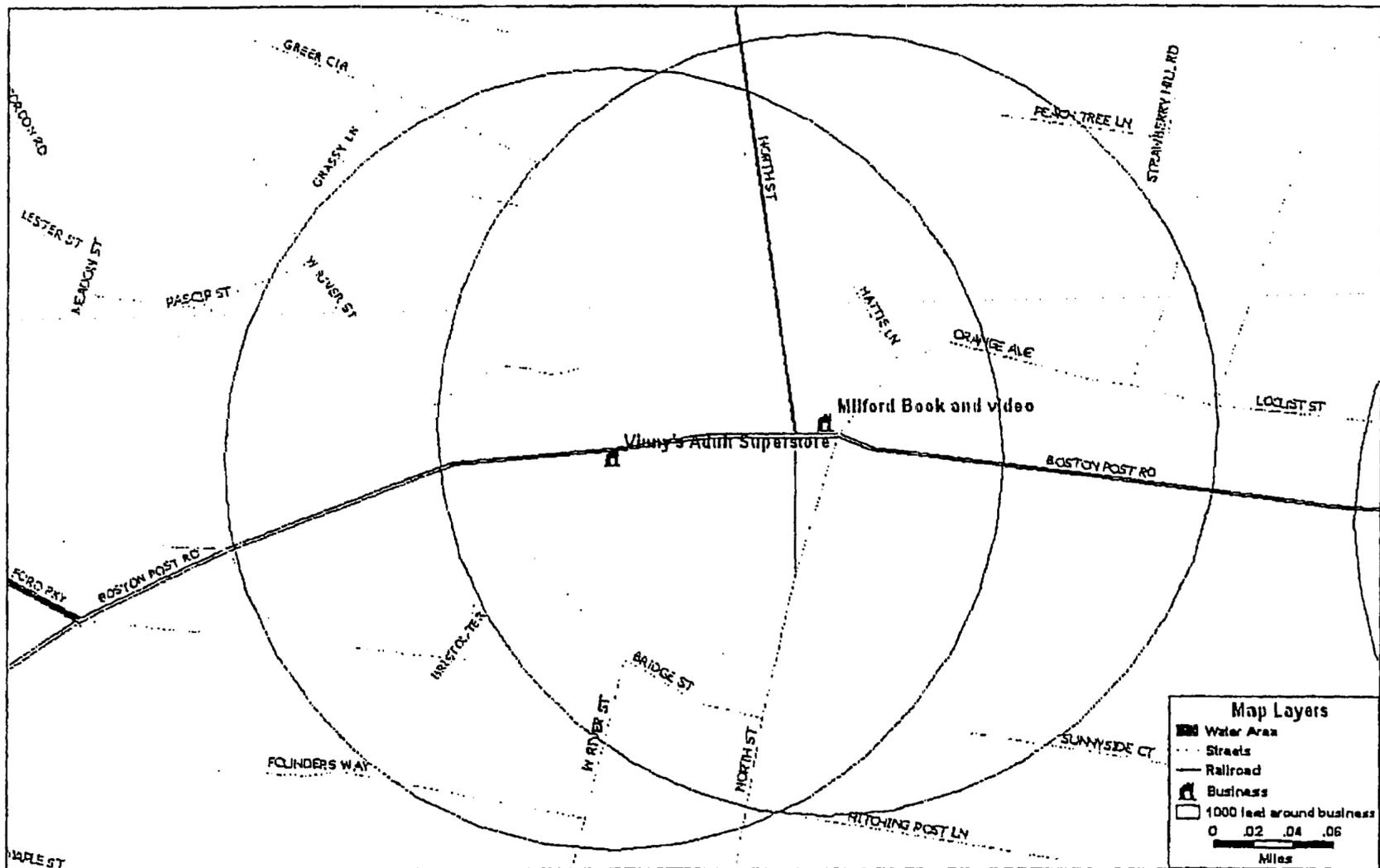
Date	Incident
May 15 <sup>th</sup> , 2002	BURGLAR ALARMS
May 28 <sup>th</sup> , 2002	MOTOR VEHICLE VIOL./MOVING
July 9 <sup>th</sup> , 2002	VANDALISM TO WINDOW-AUTO/BLDG.
July 15 <sup>th</sup> , 2002	POSSESSION MARIJUANA
August 10 <sup>th</sup> , 2002	BLDG. FOUND OPEN/LOCKED TAGGED
August 13 <sup>th</sup> , 2002	BREACH OF PEACE
September 8 <sup>th</sup> , 2002	VANDALISM PRIVATE PROP.
September 25 <sup>th</sup> , 2002	BURGLAR ALARMS
October, 19 <sup>th</sup> , 2002	SUSPICIOUS ACTIVITY
October, 19 <sup>th</sup> , 2002	POLICE K-9 ASSIST
November 12 <sup>th</sup> , 2002	RAPE
November 18 <sup>th</sup> , 2002	BURGLAR ALARMS
December 13 <sup>th</sup> , 2002	OTHER MISCELLANEOUS
January 6 <sup>th</sup> , 2003	MVA - PRIV.PROP.
February 19 <sup>th</sup> , 2003	MVA - PROP. DAMAGE
February 21, 2003	BREACH OF PEACE
March 4 <sup>th</sup> , 2003	REC. OF VEH STOLEN OUT OF TOWN
March 7 <sup>th</sup> , 2003	OTHER MISCELLANEOUS
March 13 <sup>th</sup> , 2003	OTHER ORDINANCE/CODE VIOLATION
March 14 <sup>th</sup> , 2003	HEALTH CODE VIO.
April 26 <sup>th</sup> , 2003	BREACH OF PEACE
April 30 <sup>th</sup> , 2003	LARCENY/FROM AUTO

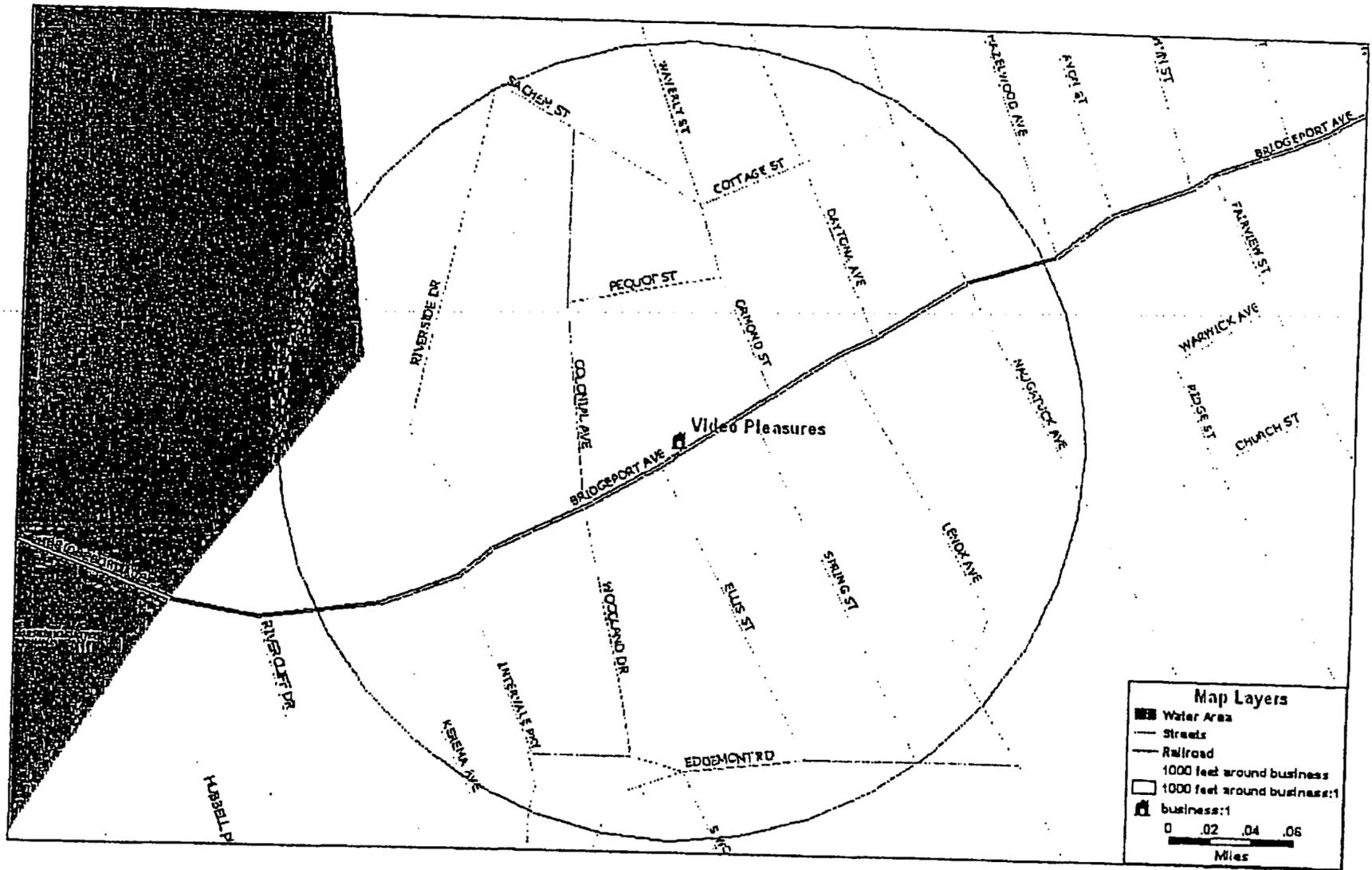
Table 7: Number of crime and disorder incidents before and after an adult business (Keepers) was established in Milford.

Month	Number of Incidents
May-02	2
Jun-02	0
Jul-02	2
Aug-02	2
Sep-02	2
Oct-02	2
Nov-02	2
Dec-02	1
Jan-03	1
Feb-03	2
Mar-03	4
Apr-03	2
May-02	0

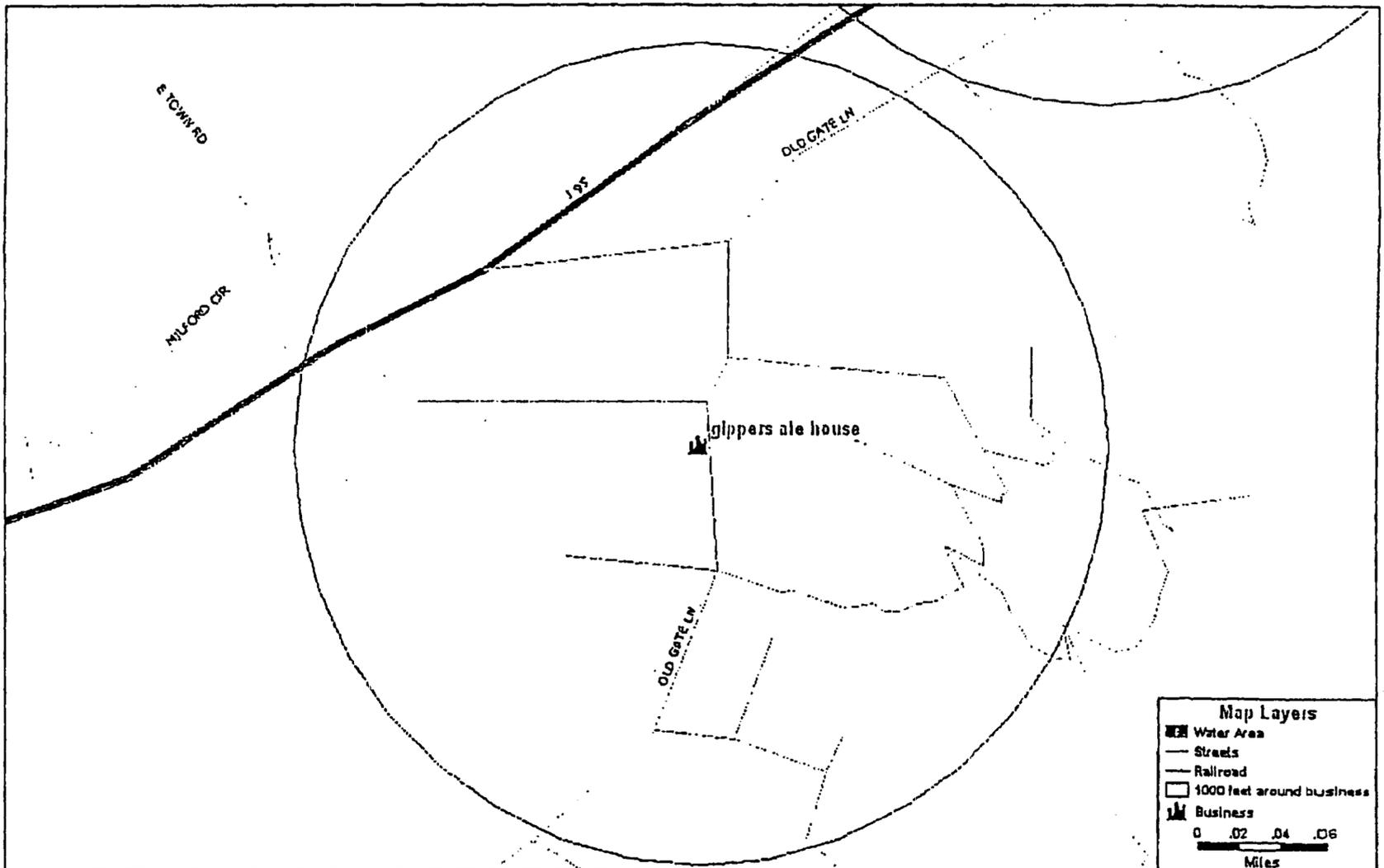
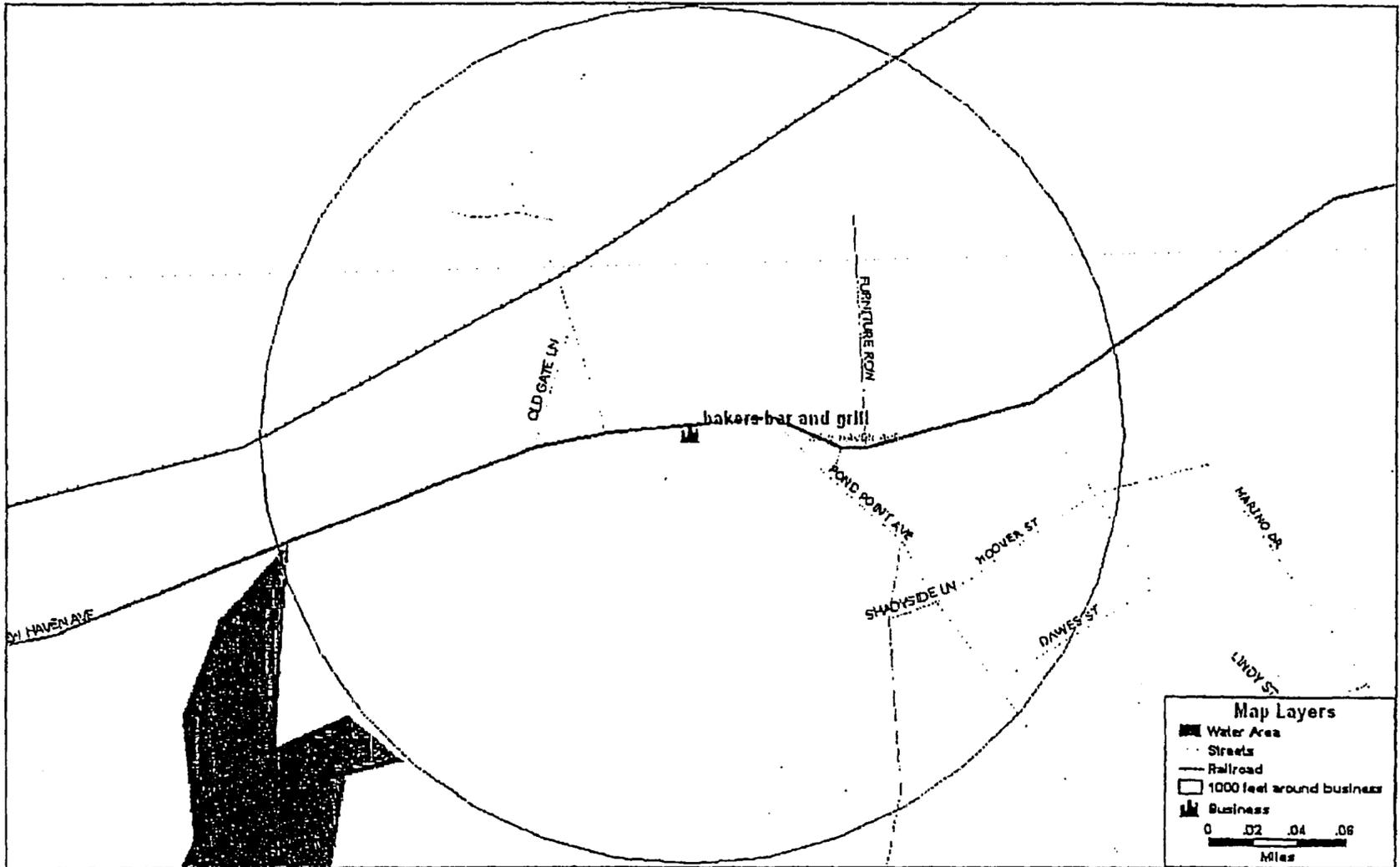
**Figure 1**  
**Adult Businesses**

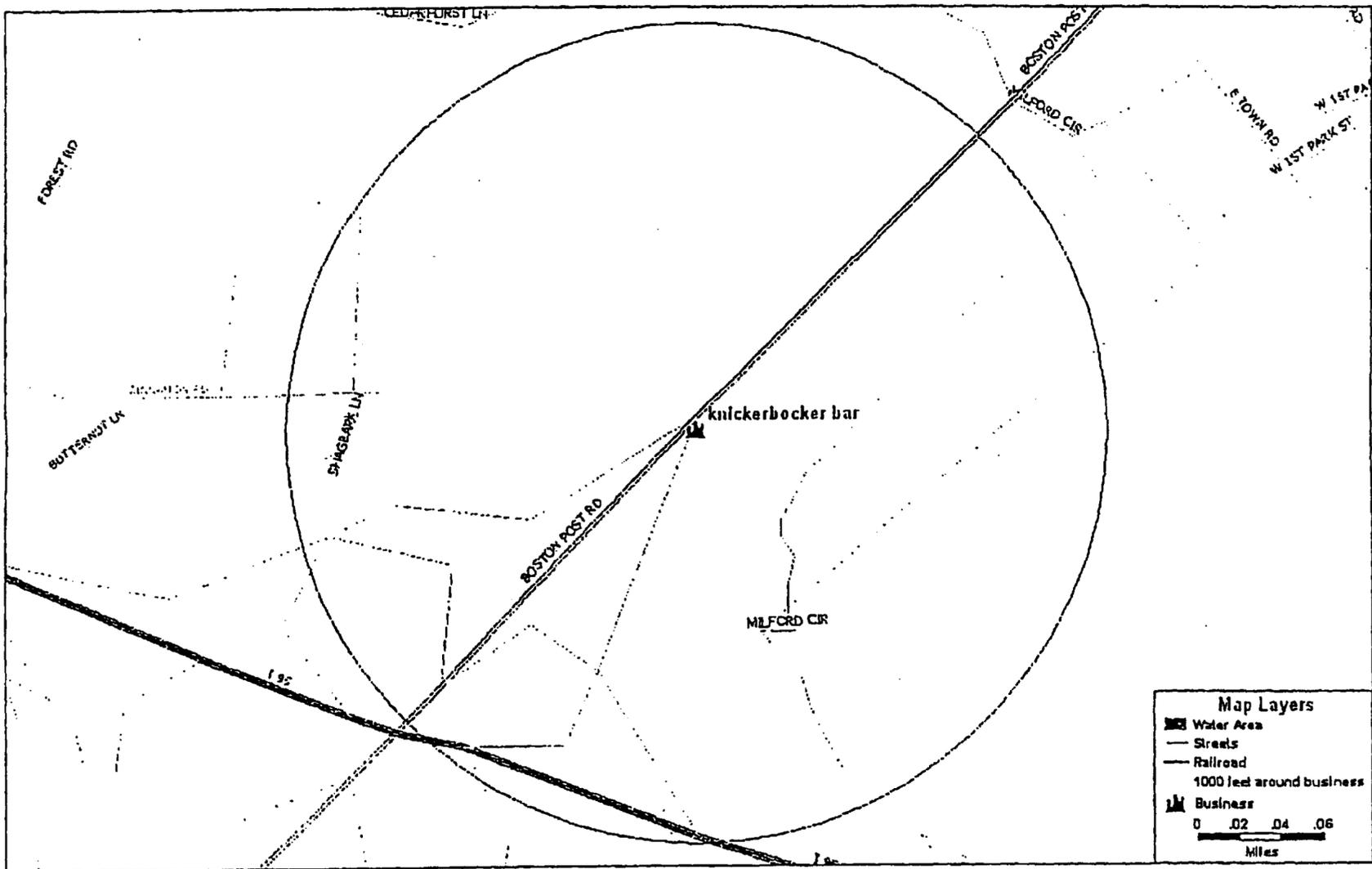
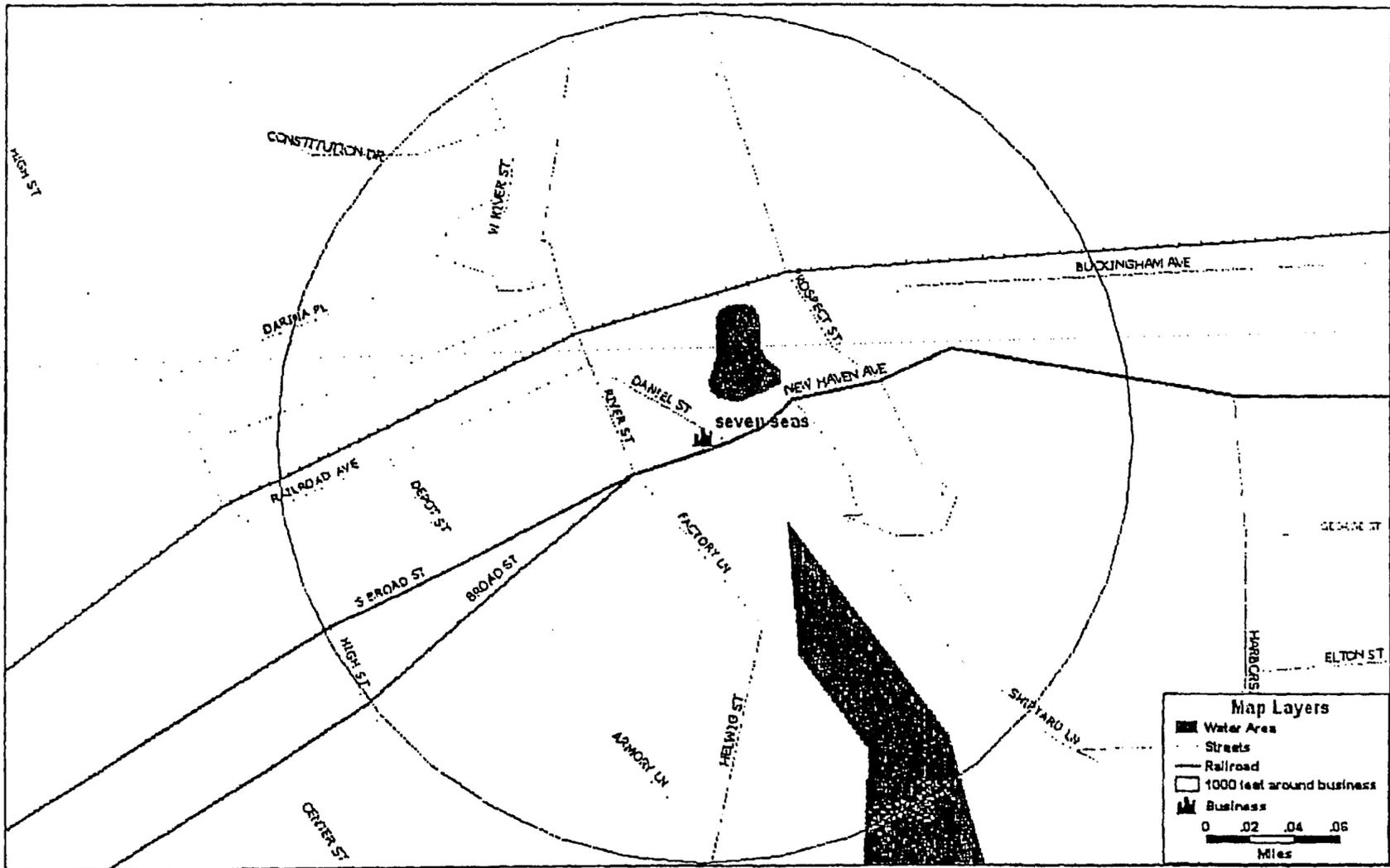






# Controls









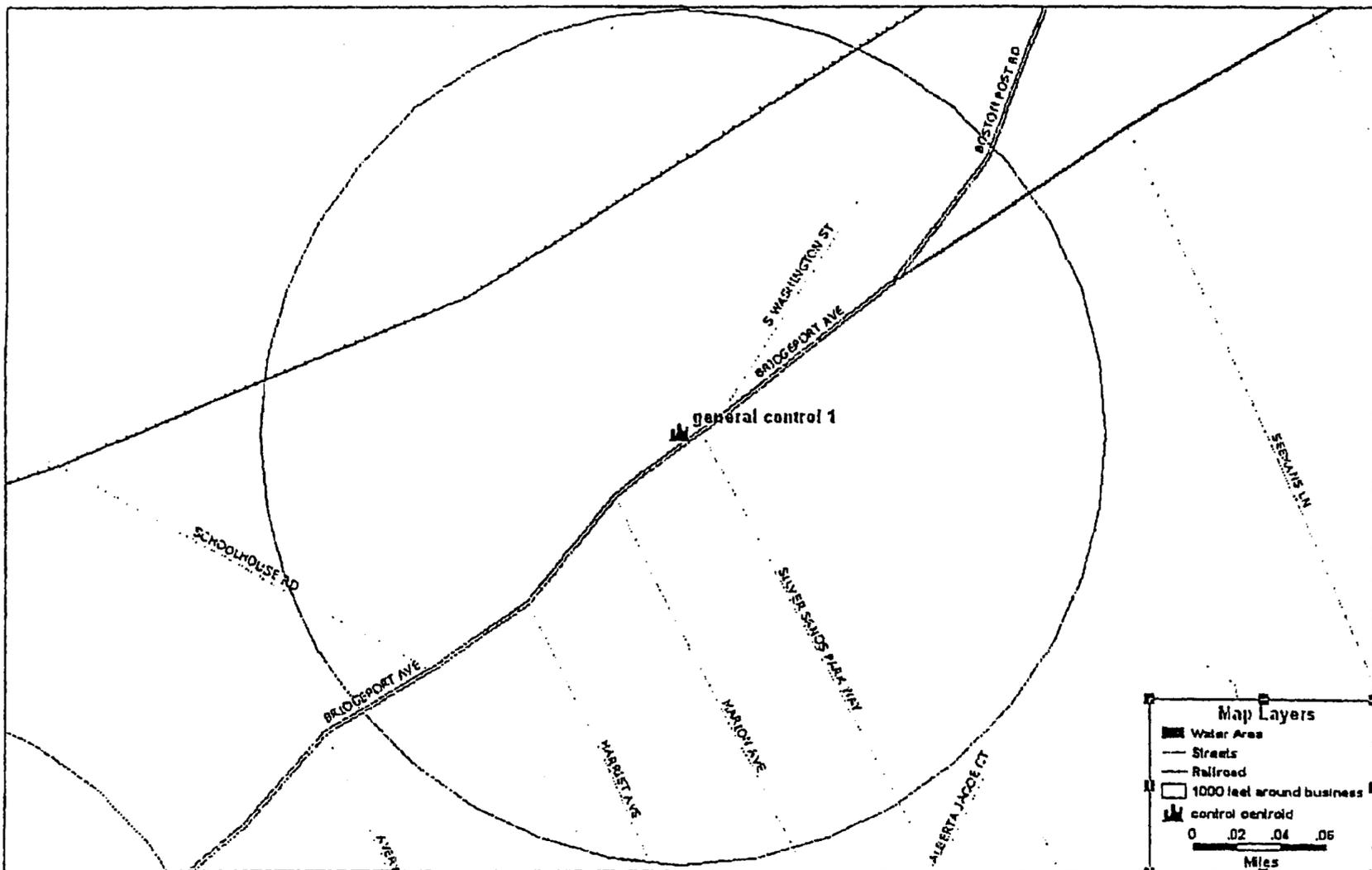
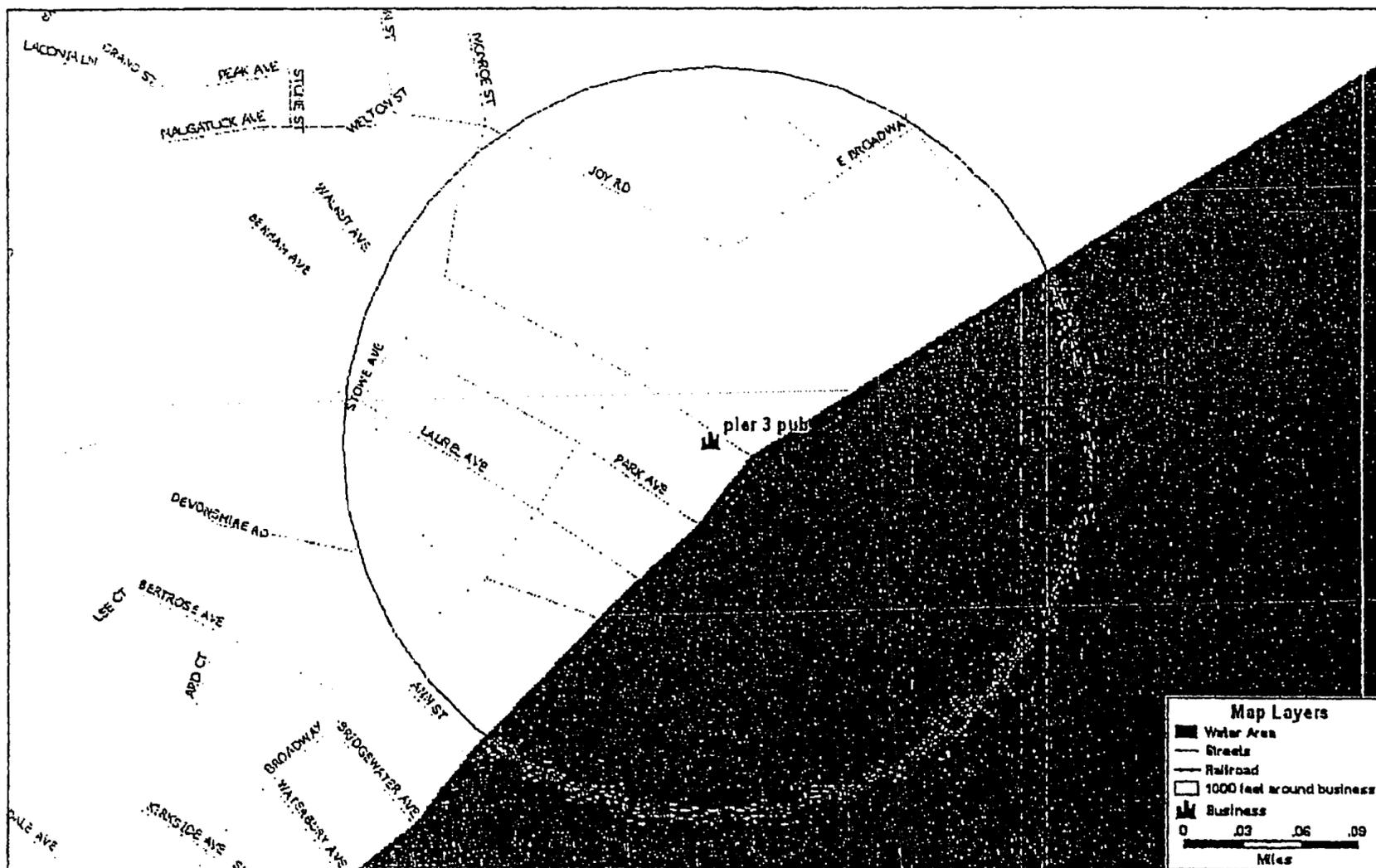


Figure 2: Comparison of crime data for Keepers and the average for the four other adult businesses.

Comparison of Crime data for Keepers and the Average for the Four Other Considered Adult Businesses

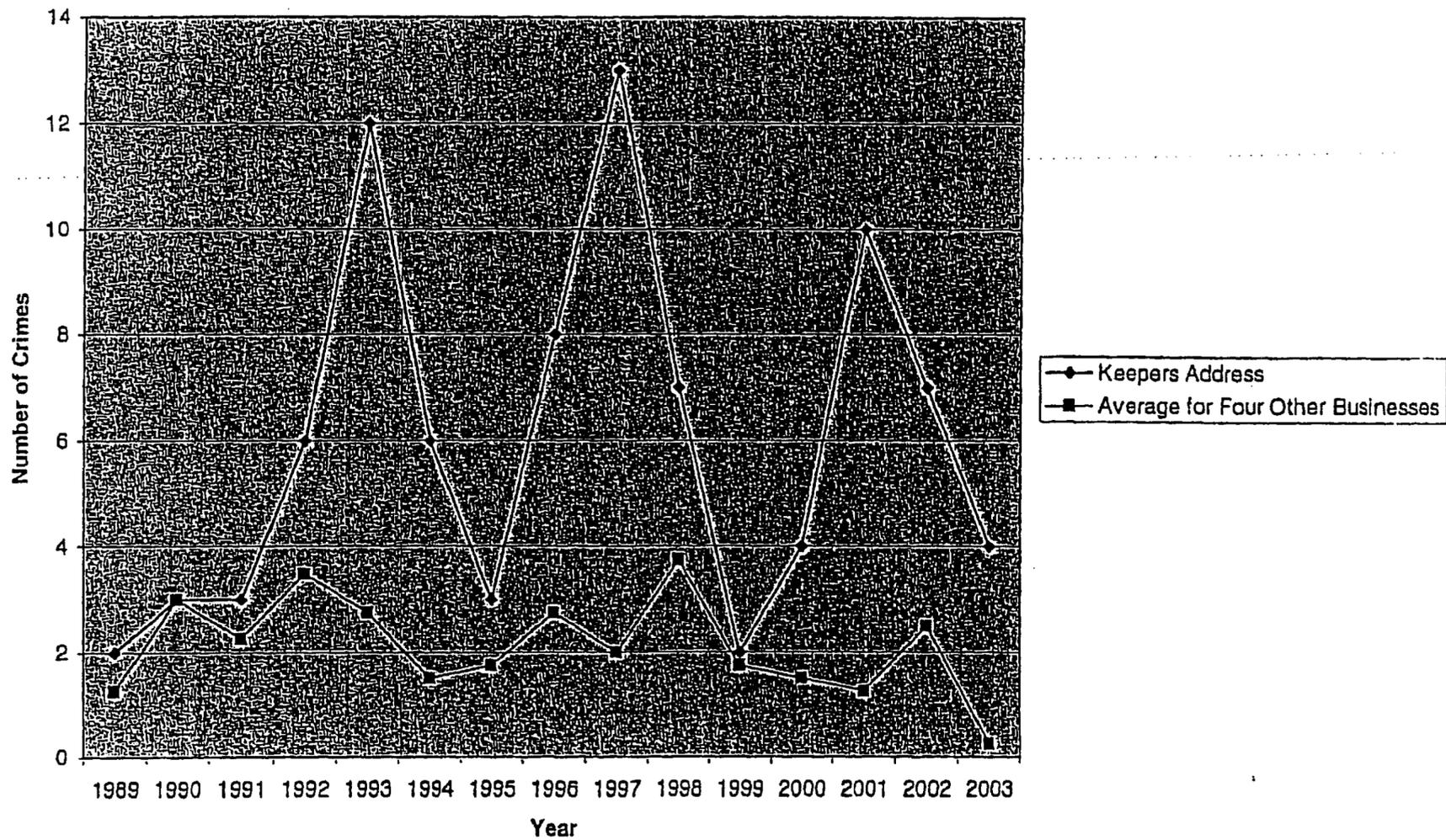
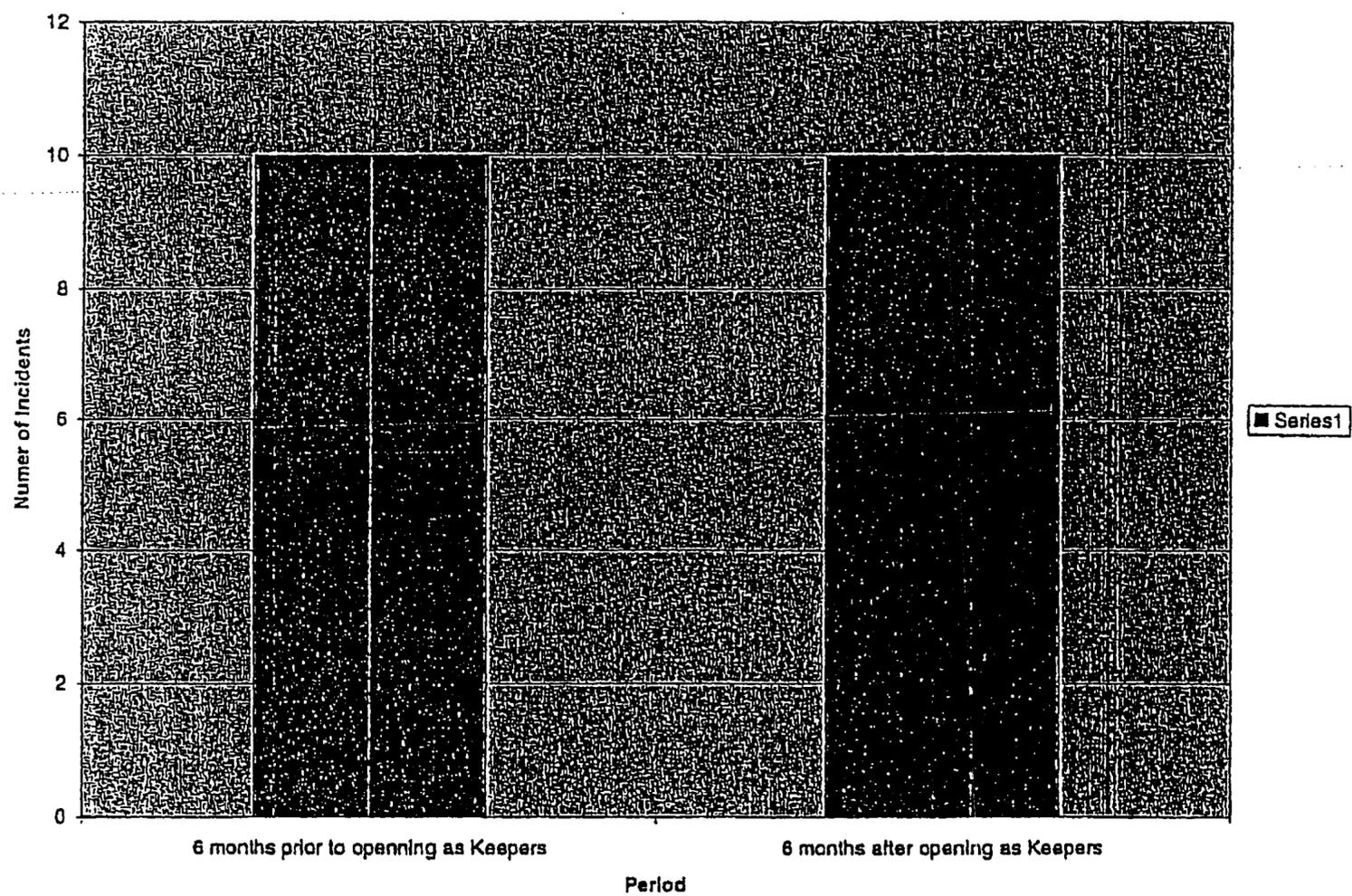
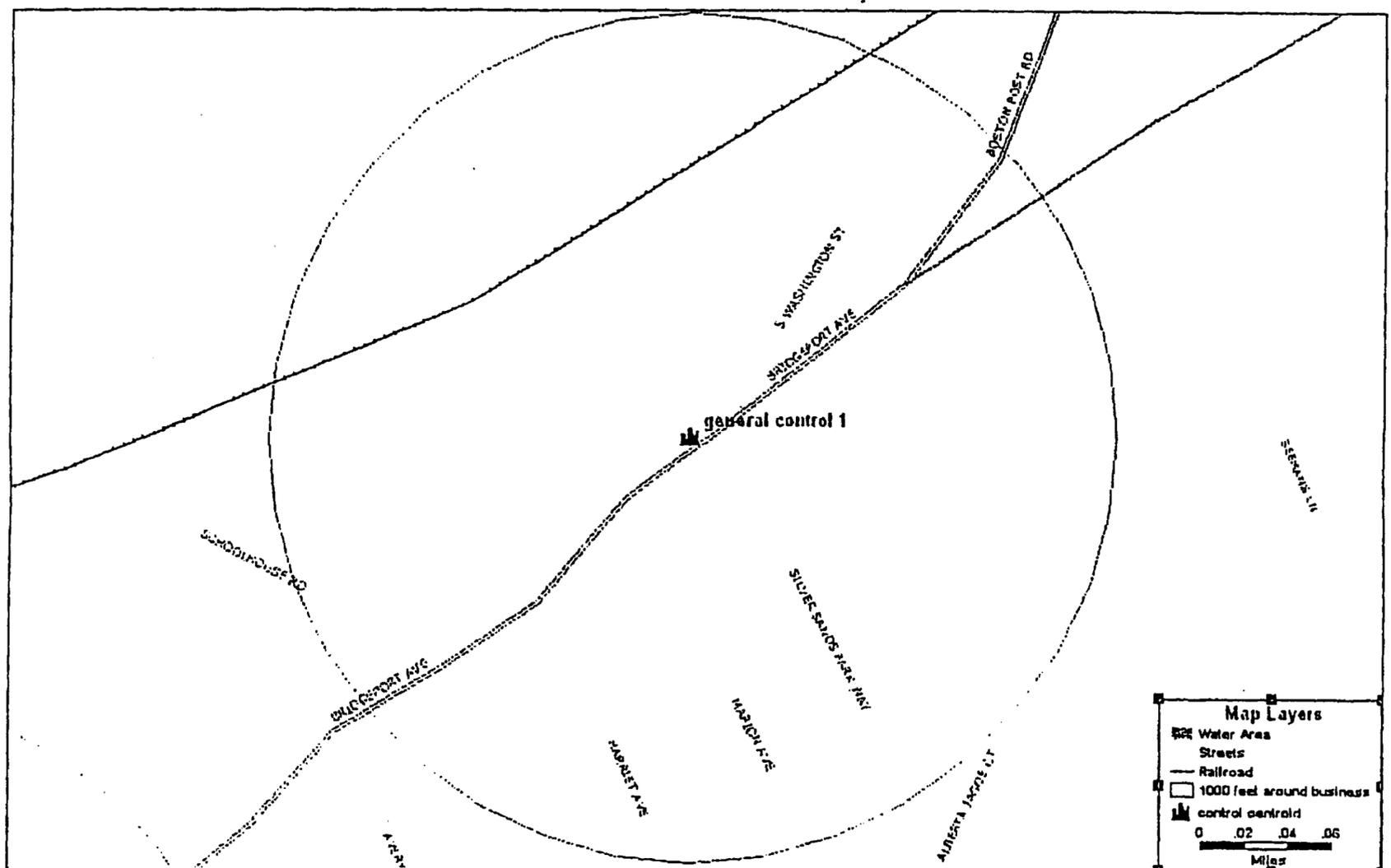
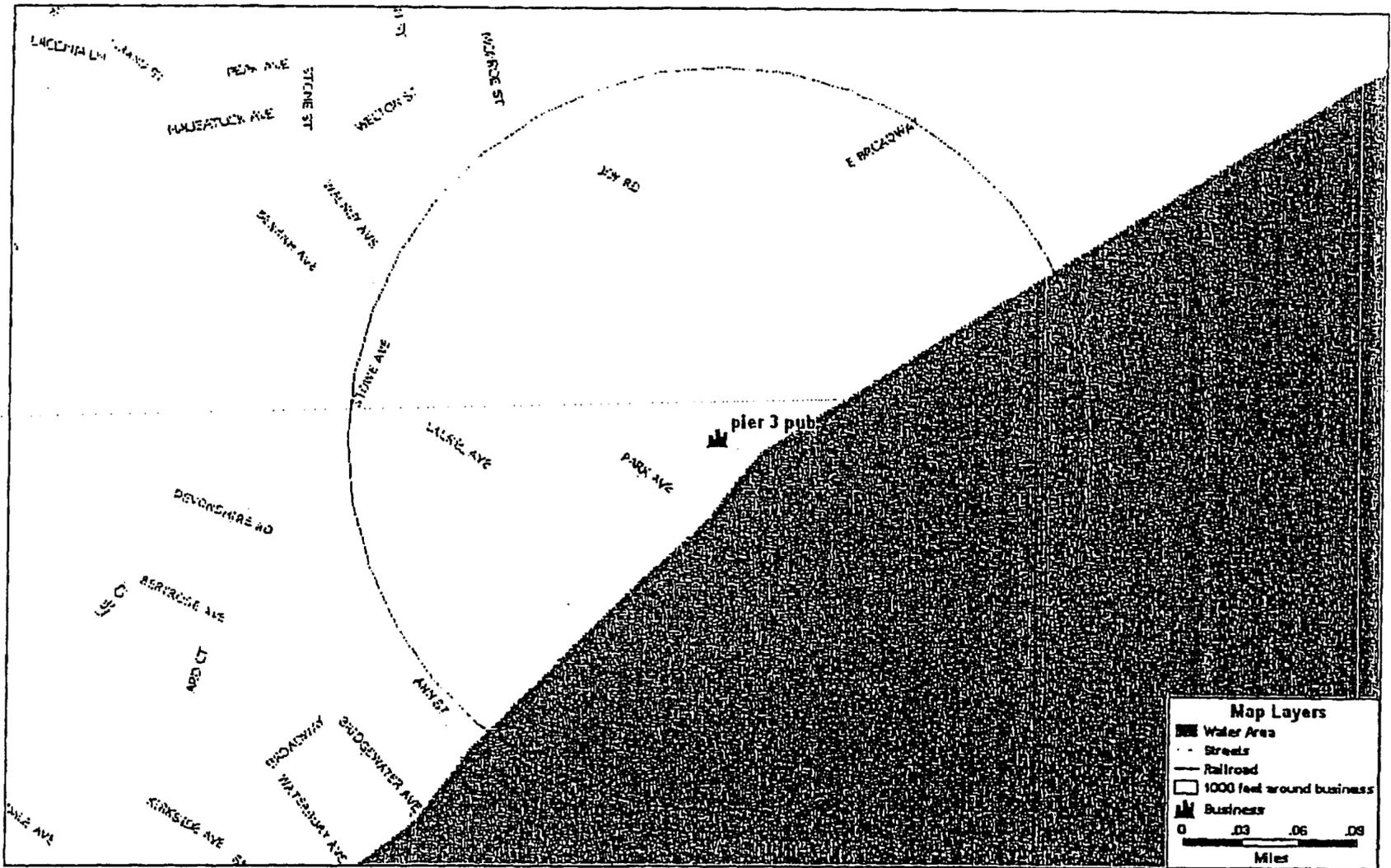
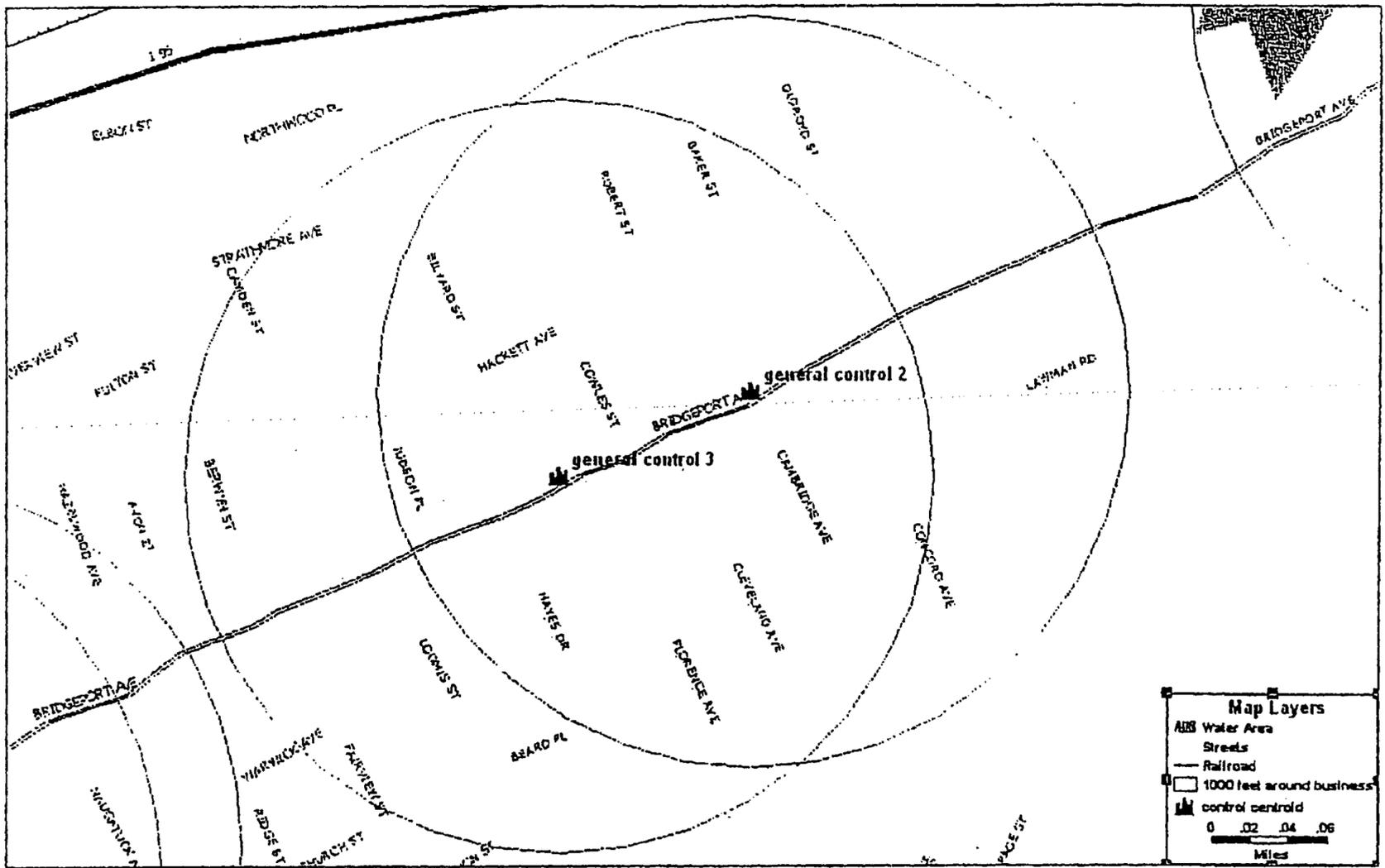


Figure 3: Illustration of no change in crime and disorder incidents pre and post adult business establishment in Milford.







Conducted by:

PLANNING DEPARTMENT  
CITY OF PHOENIX

1976  
May 25, 1979

ADULT BUSINESS STUDY

INTRODUCTION

A necessary premise for regulating adult businesses by zoning is that a land use relation or impact results from this form of business. Many zoning ordinances throughout the nation now have provisions based on one of two basic approaches to control the location of adult businesses. One approach, sometimes known as the Detroit Model, divides or prevents the concentration of adult businesses in an area. A certain distance from residential neighborhoods, churches, and schools is also maintained. Another approach, or the Boston Model, fosters the concentration of adult businesses in one area of the City.

The latter approach has resulted in the more noteworthy problems. For instance, in Boston's concentrated adult business area there is control of signs, upgrading of streets and sidewalks, renovation of store fronts, and even the construction of a new park. This scheme has not affected the high number of stabbings, murders, and muggings which take place in the district.

Also, at one time, New York City had concentrated adult business districts.

However, the police department reported that crime complaints were almost 70% higher on police posts with adult businesses, as opposed to posts without them.

The reports showed higher rates of rape, robbery and assault. In one adult business concentration around Times Square, sales taxes dropped by 43% in a two-year period, due to the loss of 2.5 times as many retail jobs as the rest of the City.

New York soon dropped its original adult business ordinance and adopted an amendment which was patterned after the Detroit model. The new ordinance also went one step further than any other in the nation when suggestion was made to amortize all

nonconforming adult businesses within one year. Thus, up to 80% of the existing sex businesses were terminated.



In the Phoenix Zoning Ordinance an amendment concerning adult businesses became effective on November 8, 1977. It too is patterned after the Detroit model.

Briefly, the amendment in Section 417 states that:

1. No adult business is to be within 1,000 feet of any use in the same category.
2. An adult business is not permitted within 500 feet of a school or a residential zone unless approved by City Council and area residents. A petition which is signed by 51% of the residents in the 500-foot radius who do not object must be filed and be verified by the Planning Director. After the petition is completed the City Council may consider waiving the 500-foot requirement.

Adult businesses are being created as a land use issue by their relationship to impacts on their surrounding properties and on adjacent neighborhoods. Are the crime impacts noted in Boston and New York's districts directly related to the adult business being there, or to some other societal variables in the neighborhood? Are they identifiable, and thus a probable cause for negative neighborhood reactions to nearby adult businesses?

The Phoenix Ordinance was based on two hypotheses: first, that there are direct impacts which uniquely relate to this class of land use; and second, that there are indirect, but equally potent, attitudinal concerns which result from proximity to an adult business. Examples of the former are possible traffic congestion, unusual hours of operation, litter, noise, and criminal activity. Illustrating the latter is substantial testimony that has indicated that many neighborhood residents dislike living near an area containing an adult business. Also, financial institutions take nearby adult businesses into account when financing



residential properties. Finally, people's perceptions of criminal activity is reinforced by a greater incidence of sexual crimes in areas or commercial districts containing adult businesses.

In this study we will show that there is a relationship between arrests for sexual crimes and locations of adult businesses. This relation will correlate with concerns which have been expressed by residents of nearby residential neighborhoods of the nature of crimes associated with adult businesses. Sex crimes appear to generate substantial fears for the safety of children, women, and neighborhoods in general. Their association with adult businesses generates negative images (as well as real or potential hazards) and results in a lowering of the desirability and livability of an impacted neighborhood.

This study specifically shows that there is a higher amount of sex offenses committed in neighborhoods in Phoenix containing adult businesses as opposed to neighborhoods without them. In this project three study areas were chosen -- neighborhoods with adult businesses, and three control areas -- neighborhoods without adult businesses, which were paired to certain population and land use characteristics. The amount of property crimes, violent crimes, and sex offenses from the year 1978 are compared in each study and control area.

#### THE STUDY AND CONTROL AREAS

Three different study areas containing adult businesses were selected to collect crime data. The east side of Central Avenue was chosen for the location of two study areas, while the west side has the third study area. Appendix I describes a more detailed process of how each study area was derived.

A control area has no adult business, but generally speaking, has similar population characteristics of a matched study area in terms of:



1. Number of residents
2. Median family income
3. Percentage of non-white population
4. Median age of the population
5. Percentage of dwelling units built since 1950
6. Percentage of acreage used residentially and non-residentially

Appendix II states a more detailed process of how each control area

Adult business locations are based on information furnished by the  
Department and verified by the Planning Department.



TABLE I

THE STUDY AND CONTROL AREA LOCATIONS

STUDY AREA I

Roosevelt Street - Oak Street  
16th Street - 32nd Street

CONTROL AREA I

Starting at 47th Avenue, east on Osborn Road,  
South on 35th Avenue, west on Thomas Road,  
South on 39th Avenue, West on Roosevelt Street,  
North on 43rd Avenue, West on McDowell Road,  
and North on 47th Avenue, to the point of  
beginning.

STUDY AREA II

Oak Street - Osborn Road  
32nd Street - 40th Street

CONTROL AREA II

Osborn Road - Campbell Avenue  
32nd Street - 40th Street.

STUDY AREA III

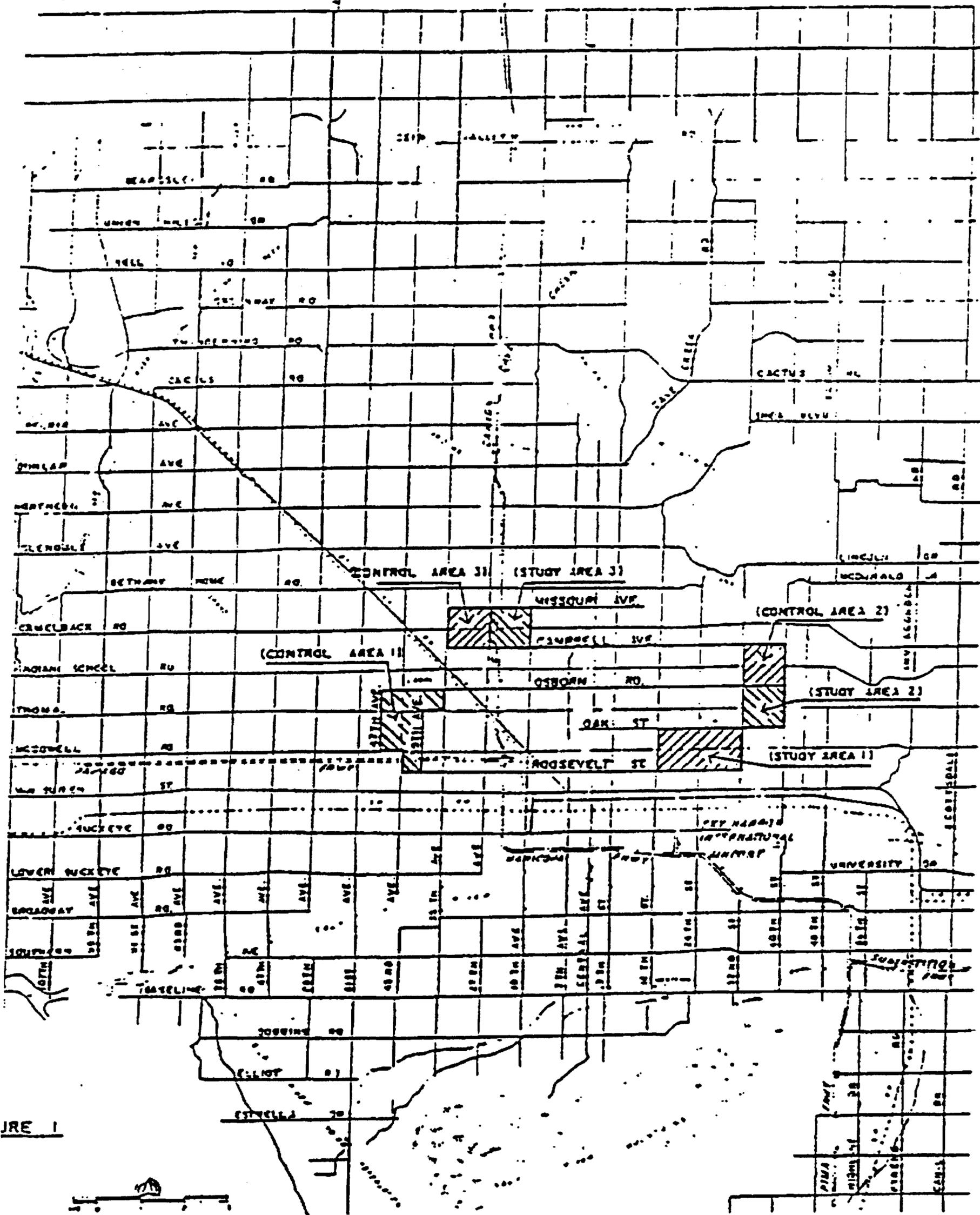
Missouri Avenue - Campbell Avenue  
19th Avenue - 27th Avenue

CONTROL AREA III

Missouri Avenue - Campbell Avenue  
27th Avenue - 35th Avenue

Figure 1, following shows the boundaries of the three study and control areas.





JRE 1



Study Area I contains two square miles and one of the City's larger concentrations of adult businesses. These locations are: 1702 E. McDowell Road; 2339 E. McDowell Road; 2433 E. McDowell Road, and 3155 E. McDowell Road.

The matching population characteristics of Study and Control Area I are listed below in Table II. (Appendix III provides a more detailed process of how this data was derived.)

TABLE II  
POPULATION CHARACTERISTICS OF STUDY AND  
CONTROL AREA I

	<u>% Non-White</u>	<u>Building/ 1950-1970</u>	<u>Income</u>	<u>Median Age</u>	<u>Land Use Commercial/Residential</u>	
Study I	24%	57%	\$7,675	29	31%	69%
Control I	24%	93%	\$9,885	26	38%	62%

The only substantial population characteristic differences in these two areas are in the age of homes built between 1950 and 1970. The concentrated adult business district has a little over half of its homes built after 1950. Whereas the control area has almost 93% of its housing built after 1950.

Study Area II is one square mile on the east side of the City, and contains only one adult business within the square mile, at 3640 East Thomas Road. Its control area is to the north side of the Study Area.

The comparison of population characteristics are shown in Table III.



TABLE III  
POPULATION CHARACTERISTICS OF STUDY AND  
CONTROL AREA II

	<u>% Non-White</u>	<u>Building/ 1950-1970</u>	<u>Income</u>	<u>Median Age</u>	<u>Land Use Commercial/Residential</u>	
Study II	7.4	88.0	\$10,779	36	18%	82%
Control II	4.4	92.5	\$12,013	38	11%	89%

Study Area III also contains one adult business at 2103 W. Camelback Road. It is one square mile located on the west side of the City. Its Control Area is directly to the west. The comparison of population characteristics are shown below:

TABLE IV  
POPULATION CHARACTERISTICS OF STUDY AND  
CONTROL AREA III

	<u>% Non-White</u>	<u>Building/ 1950-1970</u>	<u>Income</u>	<u>Median Age</u>	<u>Land Use Commercial/Residential</u>	
Study III	8.2	83%	\$9,829	29	29%	71%
Control III	8.8	93%	10,559	28	28%	72%







CONCLUSIONS

Table V Property, Violent, and Sex Crimes in Selected Study Areas--1978<sup>1</sup> is a tabulation of the number of crimes committed and the rate of those crimes per 1,000 people living in each area. This table is on the following page.

There appears to be a significantly greater difference between the study and control areas for sex crimes than for either property or violent crimes. The following table illustrates a comparison of the ratio of the crime rate of the study area to the control area:

TABLE VI

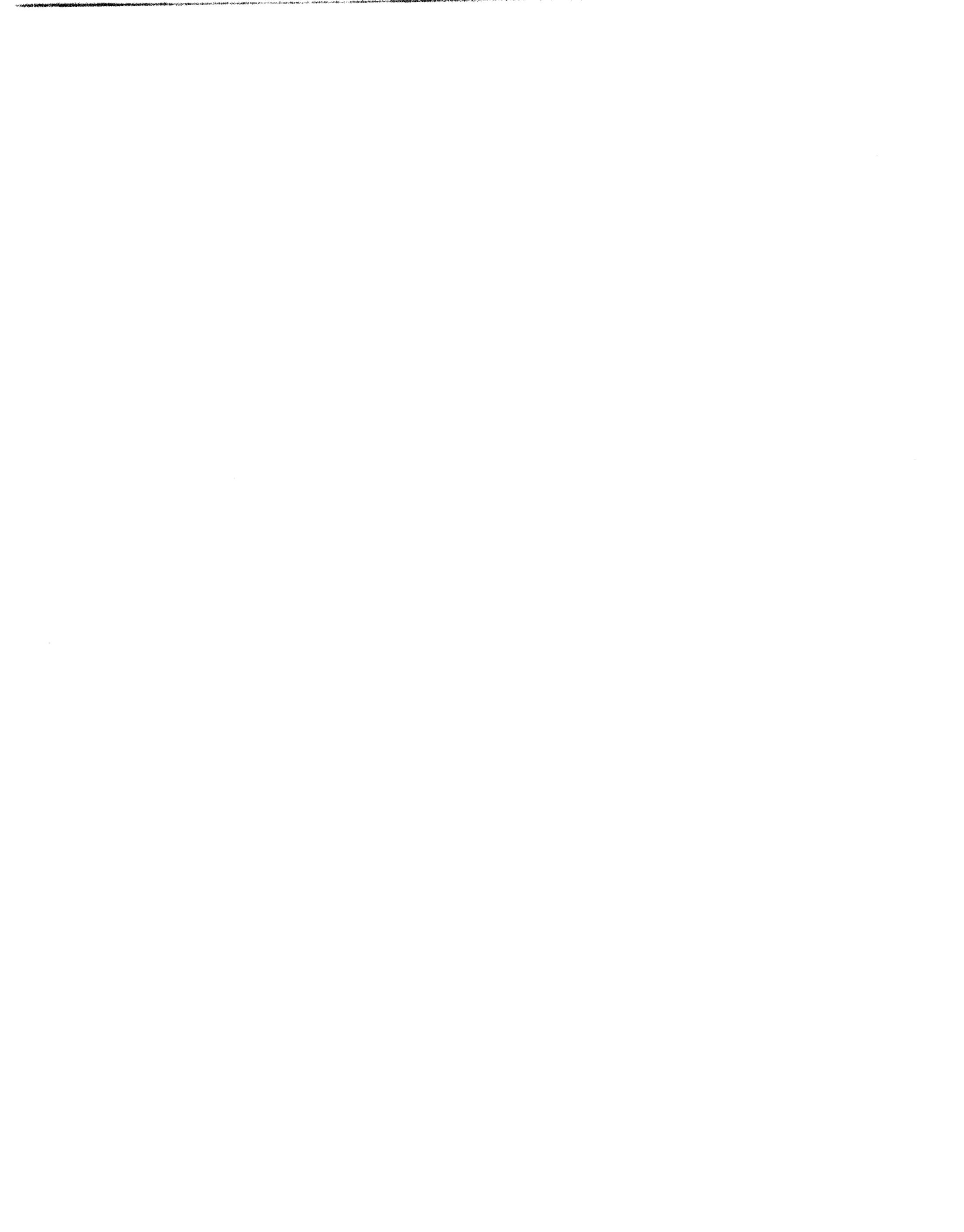
CRIME RATES AS A PERCENTAGE OF STUDY AREA TO CONTROL AREA

Study Area	Property Crimes	Violent Crimes	Sex Crimes	Sex Crimes (Less Indecent Exposure)
I	147%	144%	1135%	358%
II	173	83	277	160
III	108	86	405	178
<u>Average</u>	143%	104%	606%	232%

It is observed that there are about 40% more property crimes and about the same rate of violent crimes per 1,000 persons in the Study Areas as compared to the Control Areas.

On the other hand there is an average of six times the sex crime rate in the Study Areas as compared with the Control Areas. Although the majority of sex

<sup>1</sup>Table V Property, Violent, and Sex Crimes in Selected Study Areas--1978, was derived from information provided by the City of Phoenix Police Department's Crime Analysis Unit and Planning and Research Bureau. The data from these two sections was compiled by adding the number by type of crimes committed in police grids, which are quarter mile neighborhoods. Crimes are based on arrest records and do not reflect ultimate convictions. It has been assumed that conviction rates will be proportional to arrest rates.



crimes are Indecent Exposure, the fourth column illustrates that the remainder of the sex crimes also exhibit a significantly higher rate in the study areas.

A detective from the police department stated that most indecent exposure crimes were committed on adult business premises. An example of this finding is in Study Area I. In that location, 89% of the reported indecent exposure crimes were committed at the addresses of adult businesses.

Where there is a concentration of adult businesses, such as in Study Area I, the difference in sex offense rates is most significant. As stated earlier in the report this location has four adult businesses which are less than 1000 feet away from each other and less than 500 feet away from a residential district. There is also a higher number of sex offenses committed--84 more crimes than in Study Area II, and 56 more crimes than in Study Area III. Similarly, when compared to its Control Area, the sex crime rate, per 1,000 residences is over 11 times as great in Study Area I. In the remaining study areas, which each contain a single adult business, their rates are four and almost three times as great.



## APPENDIX I

### ESTABLISHMENT OF STUDY AREA BOUNDARIES

The process of defining the Study Area Boundaries was conducted in the following manner:

1. Locations of adult businesses in Phoenix were plotted.
2. The primary concentration of adult businesses was identified.
3. Preliminary decision was made to choose three study areas based on concentration and geographic isolation from each other.
4. Establishment of boundaries for each Study Area so that the adult businesses were approximately centered in each study area, and so that each Study Area had an area of at least one square mile, but not more than two square miles.

## APPENDIX II

### ESTABLISHMENT OF CONTROL AREA BOUNDARIES

The process of defining the Control Area boundaries was conducted in the following manner:

1. Identification of potential control areas based on the absence of adult businesses.
2. Delineation of possible Control Areas equal in size to the Study Areas.
3. Determination of population and land use characteristics of each possible control area using the same weighted-proportionality method used for the Study Areas (See Appendix III for Population Characteristics and methodology).
4. Selection of a Control Area to match each Study Area as closely as possible in size, number of residents, and all other selected characteristics listed in Appendix III.



### APPENDIX III

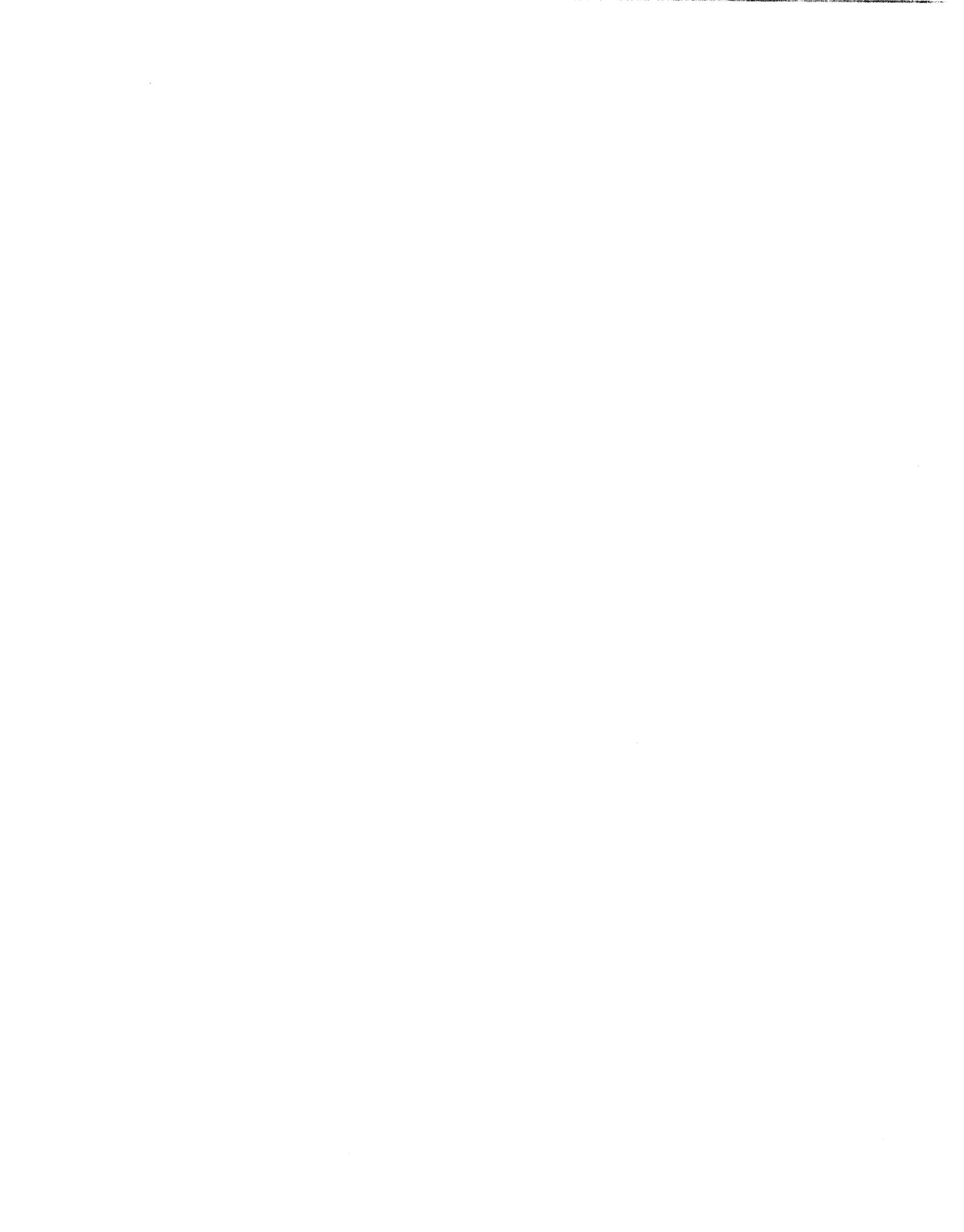
#### METHODOLOGY OF WEIGHTING POPULATION CHARACTERISTICS OF STUDY AND CONTROL AREAS

The characteristics used in weighting the similarities between the Study and Control areas were:

1. Percentage non-white population
2. Percentage of dwelling units built since 1950
3. Median income
4. Median age of the population
5. Percentage of acreage used residentially

Information about the above characteristics was available at the Census Tract level. Since the Study Area boundaries did not always align with Census Tract boundaries, it was necessary to "average" Census Tract values to simulate the characteristics of the Study Areas. The contribution of each Census Tract characteristic value was mathematically weighted, proportional to the amount of population that the Census Tract contributed to the Study Area population. Number 5, or the percentage of acreage used residentially, was attributed proportionally to the geographic area rather than the population.

The weighting of each Study and Control Area is tabulated in the following table:



WEIGHTING OF POPULATION CHARACTERISTICS BY CENSUS TRACT  
FOR STUDY AND CONTROL AREAS

Census Tract	% Non-White Population	% Dwelling Units Built Since 1950	Median Family Income	Median Age of Population	% of Acreage Used Residentially
<u>Study I</u>					
1115	8.5	67	\$8,741	32	82
1116	14.2	54	8,191	30	80
1133	45.0	50	5,451	27	58
1135	25.0	61	8,990	27	57
<u>Control I</u>					
1100	13.0	98	10,992	24	88
1101	18	100	11,202	26	45
1122	25	90	8,751	27	74
1123	30	99	10,179	22	52
1126	35	72	8,361	29	68
<u>Study II</u>					
1114	7.9	85	11,119	33	79
1109	6.9	91	10,469	38	85
<u>Control II</u>					
1109	6.9	91	10,469	38	92
1083	2.3	94	13,345	38	85
<u>Study III</u>					
1073	7.8	82	9,996	32	74
1090	8.7	83	9,609	26	68
<u>Control III</u>					
1072	9.2	90	10,570	27	66
1091	8.5	96	10,550	29	78



# Newport News, Virginia

## ADULT USE STUDY



# **ADULT USE STUDY**

**Newport News  
Department of Planning and Development**

**March 1996**

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## **I. INTRODUCTION**

Merchants Associations and the residents in the City of Newport News that have adult uses near them have expressed concerns over the lack of controls over these uses.

This report identifies the need for an ordinance that would regulate Adult Uses in Newport News. Research in other cities on the impact of adult uses found that crime rates were higher and property values lower near adult uses. This report summarizes the findings of that research.

This report also identifies the adult uses in the Newport News. The report gives the police calls for service for incidents that would concern adjoining areas. It also provides opinions from the Board of Directors and Governmental Affairs Committee of the Virginia Peninsula Association of Realtors about the impact of adult uses on the value of nearby properties.

The report concludes with a proposed ordinance, Exhibits D-1 and D-2 in the Appendix, to control adult uses in the City.

### **Background**

Cities which passed ordinances to regulate adult uses have been challenged in court over the violation of First Amendment and 14th Amendment rights. Courts have often struck down ordinances for various reasons:

1. The ordinances were motivated because of a distaste for the speech itself, and not on the desire to eliminate adverse effects.
2. The ordinances were not based on factual information that proved the existence of negative impacts on surrounding areas.
3. The ordinances severely restricted First Amendment Rights.
4. The ordinances placed arbitrary restrictions on legitimate businesses.
5. The licensing processes were confusing, and exorbitant license fees were punitive and bore little relation to the actual cost of the process or the public cost of the use.

Cities that have been successful in defending adult regulations used their police powers under zoning to develop performance oriented standards. Most cities are using variations of the Detroit, Michigan ordinance, that encourages dispersion of adult uses. A few use the Boston, Massachusetts model, (e.g. Seattle and Renton, Washington), which concentrates adult uses in certain areas.

The United States Supreme Court has upheld both types of zoning ordinances, (i.e. those ordinances that either disperse or concentrate adult uses). The Court is more likely to strike down an ordinance when . . . "cities attempt to regulate because they object to the sexually explicit messages conveyed by adult business. Courts will also void regulations that seek to exclude all adult uses through an outright ban, excessive locational requirements, or undue discretion placed in the hands of officials who review applications for special use permits or business licenses."<sup>1</sup>

### **Detroit, Michigan**

The Detroit Ordinance was challenged and upheld by the Supreme Court in 1976. In Young v. American Mini Theaters, 427 U.S. 50 (1976), 28 ZD 329, the Supreme Court held that "even though the First Amendment protects communication in this area (sexually explicit activities) from total suppression, we hold the State may legitimately use the content of these materials as a basis for placing them in a different classification from other movie theaters."<sup>2</sup>

The Detroit approach disperses adult uses. It separates adult use establishments from one another, keeps them separate from residential areas, and limits them to commercial and industrial zones. No adult uses are permitted within 500 feet of a residentially zoned area, or within 1,000 feet of any two other adult uses.

### **Boston, Massachusetts**

The Boston approach, which concentrates adult uses, reflected an existing situation where adult uses were already clustered near each other in the city. The city created an "Adult Entertainment Zone," and provided urban renewal funding to upgrade the area. The objective was to concentrate the uses to a single, small area of the city, and prevent their spread to other parts of the city, especially

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<sup>1</sup> Alan C. Weinstein, "Courts Take Close Look at Adult Use Regs," Land Use Law, May 1994

<sup>2</sup> Excerpt from City of Austin, Texas, Adult Use Study, citing McClendon, Bruce W., Zoning for Adults Only, Zoning News, American Planning Association, August, 1985