

Pre-Council Work Session of the Mayor and City Council of the City of Abilene, Texas, to be held in the Basement Conference Room of City Hall on Thursday, October 16, 1986, at 8:30 a.m. to consider the following:

1. Discuss consent and/or regular agenda items.

Regular Meeting of the Mayor and City Council of the City of Abilene, Texas, to be held in the Council Chambers of the City Hall on Thursday, October 16, 1986, at 9:00 a.m.

CITY COUNCIL: Mayor David Stubbeman; Council - Gary D. McCaleb, Betty Ray, Walter E. Wheat, A. E. Fogle, Jr., Welton Robinson and Harold Nixon.

1. **Call to Order.**
2. **INVOCATION:** Councilman Gary McCaleb.
3. **APPROVAL OF MINUTES:** Pre-Council Work Session and Regular City Council Meeting held September 25, 1986.
4. **AWARDS:**

Certificate of Appreciation - Receipt of Letter from Mr. Wes Robinson, Elizabeth, Australia.

CONSENT AGENDA

All items listed below are considered to be routine by the City Council and will be enacted with one motion. There will be no separate discussion of items unless a Council Member or citizen so requests, in which event the item will be removed from the general order of business and considered in its normal sequence.

5. **Ordinances & Resolutions:**
 - a. Consider on first reading - an ordinance changing zoning district boundaries - **Z-3386** - Request from Jim Shipp, agent, J. Lynn Kitchens, to rezone from RM-3 (Residential Multi-Family) to LC (Limited Commercial) district, property located at South 27th Street & Waverly Avenue, and set a public hearing for October 23, 1986 at 9:00 a.m.
 - b. Consider on first reading - an ordinance changing zoning district boundaries - **Z-8286** - Request from Phillip Andrew Arledge to rezone from RS-6 (Residential Single Family) to GC (General Commercial) district, located 701 E. S. 11th Street, and set a public hearing for October 23, 1986 at 9:00 a.m.
 - c. Consider on first reading - an ordinance changing zoning district boundaries - **Z-8386** - Request from Tittle Luther Loving - Properties to add H (Historic Overlay) to underlying CB (Central Business) district, located at 340 Beech Street, and set a public hearing for October 23, 1986 at 9:00 a.m.

- d. **APPEALED ITEM:**
Consider on first reading - an ordinance changing zoning district boundaries - **Z-8486** - Request from Roy Adams/Cindy Adams, agent, Cindy Adams, for an ordinance amendment to PDMX (Planned Development - Mixed Use) district to allow outside sales, located at 4051 West Lake Road, and set a public hearing for October 23, 1986 at 9:00 a.m.
- e. Consider on first reading - an ordinance changing zoning district boundaries - **Z-8586** - Request from City of Abilene, agent, Department of Planning and Development, to rezone from A0 (Agricultural Open Space) to MH (Mobile Home) district, located south of Twylight Trail, and set a public hearing for October 23, 1986 at 9:00 a.m.
- f. Consider on first reading - an ordinance changing zoning district boundaries - **Z-8886** - Request from A. D. May, D.D.S., agent, Bradley Stone, from 0 (Office) to PDMX (Planned Development Mixed Use) district, located at the southwest corner of South 27th and Buffalo Gap Road, and set a public hearing for October 23, 1986 at 9:00 a.m.
- g. Consider on first reading - an ordinance changing zoning district boundaries - **Z-8686** - Request from Zettie H. Parker to rezone from RS-6 (Residential Single Family) to LC (Limited Commercial) district, located at South 25th & Maple Streets, and set a public hearing for October 23, 1986 at 9:00 a.m.
- h. Consider on first reading - a Zoning Ordinance amendment to Section 23-315.2(D), Off-Street Parking Spaces and Areas concerning locational requirements for off-street parking, and set a public hearing for October 23, 1986 at 9:00 a.m.
- i. Consider on first reading - a Zoning Ordinance Amendment to Section 23-363, Definitions, 23-306, Conditional Use Provisions, and 23-306.4, Conditional Uses Permitted, concerning satellite dish antennas and set a public hearing for October 23, 1986, at 9:00 a.m.
- j. Consider on first reading - an ordinance amending the Abilene Municipal Code, Chapter 18, Traffic, concerning traffic code schedules.
- k. Resolution to consider the appointment of Municipal Court Judge for a two-year term.
- l. Oral Resolution to consider agreements with First Southwest Company and McCall, Parkhurst, and Horton for professional services in connection with the recent Capital Improvements bond election and subsequent issuance of bonds.
- m. Oral Resolution approving extension and renewal of Interlocal Computer Use Agreement between City of Abilene and Central Appraisal Authority of Taylor County.
- n. Oral resolution approving lease agreement for Hanger #3 (Old Big Country Squadron) at Abilene Municipal Airport.
- o. Oral resolution approving lease agreement for terminal space at Abilene Municipal Airport.
- p. Oral Resolution to consider amendment to Street Use License granted 9/11/86 for the United Centre (Mims Building), N. 3rd and Cypress.
6. **Award of Bid:**
a. Zoo Security Service - Bid #145.

REGULAR AGENDA

7. **Ordinances and Resolutions;**
 - a. Resolution to Consider approval of landscaping project for beautification of Arnold Blvd., and authorize Mayor to sign agreement with State of Texas for same.
 - b. **Public Hearing** - Consider on second and final reading - a zoning ordinance amendment concerning the regulation of Adult Entertainment Enterprises.

8. **Other Business:**
 - a. Pending and Contemplated Litigation (see Notice for Executive Session, Litigation for listing subjects).
 - b. Appointment and Evaluation of Public Officials (see Notice for Executive Session, Personnel for listing subjects).

ADJOURN

PRE-COUNCIL WORK SESSION, THURSDAY
October 16, 1986, 8:30 A.M.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
BASEMENT CONFERENCE ROOM, CITY HALL

The City Council of the City of Abilene, Texas, met in a Pre-Council Work Session on October 16, 1986, at 8:30 A.M. in the Basement Conference Room of City Hall. Mayor David Stubbeman was present and presiding with Councilman Gary D. McCaleb, Councilwoman Betty Ray, Councilmen Walter Wheat, A. E. Fogle, Jr., Welton Robinson, and Harold Nixon. Also present were City Manager Jim C. Blagg, Assistant City Managers Roy L. McDaniel and Rickey Childers, City Attorney Harvey Cargill, Jr., City Secretary Patricia Patton and various members of the City Staff.

The Council briefly discussed various consent and regular agenda items. There being no further questions, the meeting was recessed to the City Council Chambers for the Regular Council Meeting.

REGULAR CITY COUNCIL MEETING
October 16, 1986, 9:00 A.M.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
CITY COUNCIL CHAMBERS OF CITY HALL

Mayor Stubbeman reconvened the City Council of the City of Abilene, Texas, into Regular Session October 16, 1986, at 9:00 a.m. in the City Council Chambers of City Hall.

Invocation was given by Councilman Gary McCaleb.

The minutes of the Pre-Council Work Session and Regular City Council Meeting held September 25, 1986, stand approved.

Mayor Stubbeman presented awards to the following individuals for their participation in the Neighbors Working For Abilene effort toward the Bond issue:

Mike Brooks	Farrel Reeder	Liz Herrera
Nancy Estes	Leon Petty	Nikki Short
T. C. Melton	Joe Russey	Allan Frizzell
Sharon Allen	Elwin Skiles	David Weeks
Michele Baddow		

Mayor Stubbeman entered into the record a formal letter from Mr. Wes Robinson, Elizabeth, Australia, the City of Abilene's Sister City in honor of the Sesquicentennial celebration. A true and correct copy of the letter is hereby incorporated and made a part of these minutes as Exhibit "A".

Mayor Stubbeman removed from the agenda item 5a, Z-3386. The item was denied by the Planning and Zoning Commission and not appealed at the present time.

Councilman Wheat moved to approve the consent agenda items, being 5b through 6a, as presented by the staff. The motion was seconded by Councilwoman Ray and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Fogle, Robinson, Nixon, and Mayor Stubbeman.

NAYS: None.

ABSTAIN: Councilman Wheat on 5i only.

5. Ordinances & Resolutions:

a. Removed from Agenda.

b. Consider on first reading - an Ordinance changing zoning district boundaries - **Z-8286** - Request from Phillip Andrew Arledge to rezone from RS-6 (Residential Single Family) to GC (General Commercial) district, located 701 E. S. 11th Street, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES, AS DESCRIBED BELOW; DECLARING A PENALTY, AND CALLING A PUBLIC HEARING.

c. Consider on first reading - an Ordinance changing zoning district boundaries - **Z-8386** - Request from Tittle Luther Loving - Properties to add H (Historic Overlay) to underlying OB (Central Business) district, located at 340 Beech Street, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES, AS DESCRIBED BELOW; DECLARING A PENALTY, AND CALLING A PUBLIC HEARING.

d. **APPEALED ITEM:**

Consider on first reading - an Ordinance changing zoning district boundaries - **Z-8486** - Request from Roy Adams/Cindy Adams, agent, Cindy Adams, for an ordinance amendment to PDMX (Planned Development Mixed Use) district to allow outside sales, located at 4051 West Lake Road, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE AND ORDINANCE 23-1986, CONCERNING THE F. M. 600 PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- e. Consider on first reading - an Ordinance changing zoning district boundaries - **Z-8586** - Request from City of Abilene, agent, Department of Planning and Development, to rezone from AO (Agricultural Open Space) to MH (Mobile Home) district, located south of Twilight Trail, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES, AS DESCRIBED BELOW; DECLARING A PENALTY, AND CALLING A PUBLIC HEARING.

- f. Appealed Item:
Consider on first reading - an Ordinance changing zoning district boundaries - **Z-8886** - Request from A. D. May, D.D.S., agent, Bradley Stone, from O (Office) to PDMX (Planned Development Mixed Use) district, located at the southwest corner of South 27th and Buffalo Gap Road, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE AND ORDINANCE NO. 68-1985, CONCERNING THE OVER PLACE PDMX PLANNED DEVELOPMENT DISTRICT; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- g. Consider on first reading - an ordinance changing zoning district boundaries - **Z-8686** - Request from Zettie H. Parker to rezone from RS-6 (Residential Single Family) to LC (Limited Commercial) district, located at South 25th & Maple Streets, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES, AS DESCRIBED BELOW; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

- h. Consider on first reading - a Zoning Ordinance amendment to Section 23-315.2(D), Off-Street Parking Spaces and Areas concerning locational requirements for

off-street parking, and set a public hearing for October 23, 1986 at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

- i. Consider on first reading - a Zoning Ordinance Amendment to Section 23-363, Definitions, 23-306, Conditional Use Provisions, and 23-306.4, Conditional Uses Permitted, concerning satellite dish antennas and set a public hearing for October 23, 1986, at 9:00 a.m.

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

- j. Consider on first reading - an ordinance amending the Abilene Municipal Code, Chapter 18, Traffic, concerning traffic code schedules.

AN ORDINANCE AMENDING CHAPTER 18, "MOTOR VEHICLES AND TRAFFIC", OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY.

- k. Resolution to consider the reappointment of Municipal Court Judge for a two-year term.

The Resolution is numbered 56-1986 and is captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, REAPPOINTING PHILIP L. WETHERBEE MUNICIPAL COURT JUDGE FOR A TERM OF TWO (2) YEARS.

- l. Oral Resolution to consider agreements with First Southwest Company and McCall, Parkhurst, and Horton for professional services in connection with the recent Capital Improvements bond election and subsequent issuance of bonds.

- m. Oral Resolution approving extension and renewal of Interlocal Computer Use Agreement between City of Abilene and Central Appraisal Authority of Taylor County.

- n. Oral resolution approving lease agreement to Abilene Aero, Inc. for Hanger #3 (Old Big Country Squadron) at Abilene Municipal Airport.

o. Oral resolution approving lease agreement to Atlantic Southeast Airlines for terminal space at Abilene Municipal Airport.

p. Oral Resolution to consider amendment to Street Use License granted 9/11/86 for the United Centre (Mims Building), N. 3rd and Cypress.

5. Award of Bid:

a. Zoo Security Service - Bid #145. The bid was awarded to O. S. I. Security Patrol.

Fred Aycock, Assistant Director of Community Services, briefed the Council on an oral resolution to consider the approval of a landscaping project for the beautification of Arnold Boulevard, and to authorize the City Manager to sign an agreement with the State of Texas for this project.

Councilman Wheat moved to approve, by oral Resolution, the landscaping project on Arnold Boulevard from Highway 80 to Hartford Street, as presented by staff. The motion was seconded by Councilwoman Ray and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Fogle, Robinson, Nixon, and Mayor Stubbeman.
NAYS: None.

Harvey Cargill, City Attorney, briefed the Council on an Ordinance considered on second and final reading concerning zoning ordinance amendment to regulate sex-oriented adult entertainment businesses. Mr. Cargill called on Lee Roy George, Director of Planning, to provide testimony on the zoning-related portions of the ordinance; Sergeant D. W. Havens, Vice-Narcotics division, for testimony on the activities of the movie arcades and peep shows; and Dr. Ferris, Abilene Health Department, gave testimony regarding the spread of disease that may be transmitted at these facilities. A true and correct copy of Mr. Cargill's statements and questions, as well as the responses from Mr. George, Sergeant Havens, and Dr. Ferris, are hereby incorporated and made a part of these minutes as Exhibit "B".

Mr. Cargill read aloud a letter from Mr. Clyde D. Whitt, attorney representing Video View, requesting an amendment to the ordinance. A true and correct copy of Mr. Whitt's letter, dated October 14, 1986, is hereby incorporated and made a part of these minutes as Exhibit "C".

Mayor Stubbeman opened a public hearing to consider the aforementioned request and the following persons spoke in regard to the request:

IN FAVOR:

- Mr. Robert Hierman, 3758 Auburn, quoted page 295 of the Meece Report on pornography.
- Dr. Leland Kennedy, 1209 Nottingham; Pastor, Trinity Baptist Church.
- Phillip Day, P. O. Box 360, attorney, and co-owner of 290 Cedar Building.
- Monty McGlaun, 3926 Wilshire Dr.; representing First Methodist Church, presented 147 signatures in support of the passage of the ordinance.
- Jim Dunnam, 2118 Gathright Dr.
- Bill Bruster, 4149 S. 20th; Pastor, First Baptist Church.
- Troit Stowe, 2073 Graham; Chairman, Harvest Church of Abilene.
- Lugene Lewis, 3150 Valley Forge Rd.
- Gloria Goodrich, 210 Washington Blvd.; representing Kid's Bargain Room, 3514 N. 6th.
- Roy Lewis, 3150 Valley Forge.
- Anita Jones, 4641 Bruce Dr.
- Collin Watson, 1102 N. 3rd, #508.
- Reynaldo Rillo, P. O. Box 201; representing Abilene Federation of Decency, presented a petition containing 1,594 signatures in favor of passage of the ordinance.
- Allen Neece, 2302 Old Orchard.
- Dinah Springer, 3317 Ward Dr.
- Rev. L. J. Crockett, Zion Lutheran Church.
- Bill Spencer, Pastor, University Baptist Church, presented 85 letters in support of the ordinance.
- Dave Killough, pharmacist at Hendrick Medical Center.
- Gayle Park.
- Irene Munoz.
- David Kelsey.
- Clay Herman, 402 Miller.

AGAINST:

- James George, 617 Cherry; floor manager at Sugar's Nightclub.

There being no one else present and desiring to be heard, the public hearing was closed.

Councilman McCaleb moved to approve the Ordinance, on second and final reading, concerning a zoning ordinance amendment to regulate sex-oriented adult entertainment businesses, as recommended by staff. The motion was seconded by Councilman Fogle and the motion carried.

AYES: Councilman McCaleb, Councilwoman Ray, Councilmen Wheat, Fogle, Robinson, Nixon, and Mayor Stubbeman.
NAYS: None.

The Ordinance is numbered 86-1986 and is captioned as follows:

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," DEFINING, REGULATING AND RESTRICTING ADULT ENTERTAINMENT ENTERPRISES, PROVIDING FOR LOCATIONS AND DISTANCES FROM CERTAIN LOCATIONS, OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

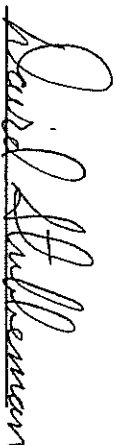
Mayor Stubbeman recessed the Council into executive session in accordance with State law, Sections 2e and 2f of the Open Meetings Act, to consider pending and contemplated litigation and the appointment and evaluation of public officials.

The Council reconvened from executive session and reported no action taken.

There being no further business, the meeting was adjourned at 11:30 a.m.



Patricia Patton
City Secretary



David Stubbeman
Mayor



THE CORPORATION OF
THE CITY OF ELIZABETH
P.O. BOX 93 - ELIZABETH - SOUTH AUSTRALIA 5112
TELEPHONE: (08) 255 2744

Exhibit "A" to City
Council Minutes of
October 15, 1986

All correspondence
to be addressed to the
Town Clerk

Our Ref:
Your Ref:
Refer enquiries to:

October 6, 1986

Honorable David Stubbeman, Mayor
and Members of the City Council
Ablene, Texas

Subject: Visit to Ablene

Dear Council Members:

May I formally record my appreciation of the assistance, cooperation and friendship extended to me during my visit to the City of Ablene.

As you are aware, Ablene and Elizabeth are "twinmed" cities for the Sesquicentenary Celebrations of both Texas and South Australia and my visit is in conjunction with these celebrations.

The South Australian State Department of Local Government established ten scholarships for a work exchange program. I was fortunate to secure one of these, and during the past 3 1/2 weeks have enjoyed a unique educational experience; i.e., the opportunity to study at first hand the operation of your local government authority here at City Hall. In addition, my wife and I have attended several functions and meetings in the wider community of Ablene in order to (a) get to know the place and the people better and (b) to add a little, where possible, to the Sesquicentenary celebrations by way of representing my City of Elizabeth and your "twin city".

Our activities in this latter regard have been somewhat negated by the difficulties experienced in having forwarded from D-FW our luggage containing all of our promotional material--this was delayed for over two weeks.

I would place on record the appreciation of both my wife and me for the friendly cooperation of your City Manager and his Staff, the Chamber of Commerce, and the many, many folks who have extended the hand of friendship to us. We particularly enjoyed renewing the friendships established when parties from Ablene visited Elizabeth in April and July of this year.

As I mentioned earlier, I am here on a work exchange program and whilst it has been explained to me that it has not been possible for you to take up the exchange in the current year because of economic difficulties,

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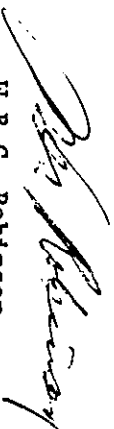
00229

Letter--Honorable David Stubbeman, Mayor
and Members of the City Council
October 6, 1986
Page Two

both my Council and I personally, will be pleased to reciprocate the privileges extended to me during my stay here. I cannot emphasize strongly enough the benefits accruing to your City by sending, initially, your City Manager, on a visit to Elizabeth and South Australia. The experience gained and benefits accruing therefrom cannot be readily measured, nor can the fostering and enhancement of international relationships and good will. I urge you strongly to give favorable consideration to this matter at the earliest opportunity. It would indeed be good for both our communities to develop this relationship and this program in the years to come, with further exchanges of staff members and perhaps too, elected members. This visit has been for me a memorable, exciting, interesting and educational experience.

I thank you all for making it all possible and conclude by extending my very best wishes to you all in the continuing development of the City of Ablene.

Sincerely yours,



W.B.C. Robinson
Town Clerk
City of Elizabeth

WBGR/dp

3-9a-2

00230

HONORABLE MAYOR AND COUNCIL MEMBERS:

The City has been told that if the Council passes an adult entertainment ordinance, that the City will be sued.

It is imperative that the Council consider all the facts and that a clear, precise record be developed. We will, therefore, be explicit in our explanations and descriptions of adult entertainment enterprises.

We would ask that the Council and audience be patient, because we need to explain the ordinance and explore the problems before we open the Public Hearing.

The Council has been presented several studies for its consideration on 1st reading of this ordinance.

Now, with the assistance of several staff members, we will explain what the adult entertainment ordinance covers, and areas it does not cover.

The proposed ordinance requires adult entertainment enterprises to be located in heavy industrial, light industrial, and heavy commercial zones.

Additionally, they must be 600' from churches, schools, hospitals, parks, lots in residential and college and university districts, and North and South 1st streets, and must not be closer than 1,000' to another adult entertainment enterprise.

The City is following the approach approved by the U.S. Supreme Court in *Renton*, decided this year, and two (2) District Court decisions in *Houston* and *Dallas*.

Cities can regulate where adult entertainment enterprises are located because of the detrimental impact that these businesses have on their neighbors.

The ordinance allows existing adult entertainment enterprises to remain at their location until January 1, 1988. If they haven't recovered their investment by the end of the amortization period, the Council can grant additional time.

The ordinance also provides for the presently existing adult entertainment enterprises to be able to get 1 year exemptions from the Council if they can show there is no detrimental impact on their neighbors.

These provisions are in the ordinance because, if they weren't in the ordinance it would be unconstitutional as applied to those businesses that can show that they haven't recovered their investments or that they have no detrimental impact on their neighbors.

The ordinance also requires the viewing booths to be illuminated and the doors to be removed from the booths.

In summary, it regulates and limits where adult entertainment enterprises are located.

The ordinance does not ban or prohibit adult entertainment enterprises from being in the City of Abilene, because we cannot absolutely ban them.

1. Cities cannot censor or regulate the contents of books, magazines, or movies.

3-1b2

00232

2. The proposed ordinance does not prevent convenience stores from selling Playboy or Penthouse.

If you, as a citizen, feel that your local convenience store should not sell some magazines, you have the right, under the 1st Amendment, to express your views to the store owners, so long as you don't block his entryways or cause a traffic hazard.

The convenience stores have the right to sell the magazines they choose so long as the magazines are not obscene under the Penal Code.

3. In the past few weeks I have received calls suggesting that we should prosecute pornography as Cincinnati and Atlanta have. These cities purportedly have no adult entertainment enterprises. These cities have the same laws in place as Abilene has in our Texas Penal Code. The only difference is that their citizens want and support the enforcement of the obscenity laws.

In Abilene there has been little public support for prosecution of obscenity cases.

The District Attorney and Chief of Police cannot justify the allocation of resources to developing obscenity cases unless the community supports such efforts.

If you as a citizen want prosecution of obscenity, you need to change the public's attitude toward obscenity.

3-1b-3

00233

RETURNING OUR FOCUS TO THE PROPOSED ADULT ENTERTAINMENT ORDINANCE; the proposed ordinance requires adult entertainment enterprises to be in locations where they will not cause harm to their neighbors.

I would like Mr. George, our Director of Planning, to assist me in highlighting key aspects of the Adult Entertainment Ordinance, and a few minor language clarifications.

1. In the ordinance we have a distance requirement from South and North 1st streets and have prohibited adult entertainment enterprises from being on North and South 1st streets.
2. Mr. George, the City has begun a beautification program for North and South 1st streets, hasn't it?
3. Mr. George, there are a great number of restaurants and fast food businesses, that serve families, young adults, and teenagers, on North and South 1st aren't there?
4. Do you feel that this provision is necessary to protect the entryway to the City along North and South 1st streets?
5. We also included a 1,000' separation between adult entertainment businesses.

3-764

00234

6. What is the purpose of this provision?
 - a. Additionally, we have required adult entertainment enterprises to be 600' from churches, schools, hospitals, parks, and lots in residential and college and university districts.
 - b. Do you feel these provisions are necessary to protect these locations?
7. On first reading of the adult entertainment ordinance, you presented the results of nine (9) different studies.
8. Do you feel that these studies are relevant to the adult entertainment enterprises in Abilene and those that may locate in Abilene in the future?
9. Under Renton, Mr. George, 5% of the City was available for sites for adult entertainment enterprises.
10. How much of Abilene will be available?
11. How many sites will be available?
12. Mr. George, how long have you been Planning and Zoning Director?

3-11-65

00235

13. Presently, Abilene has seven (7) locations that may be topless bars or adult lounges and three (3) adult bookstores and movie arcades.

14. Do you feel that even if all 10 decided to relocate that there would be an adequate number of sites for these businesses to relocate to?

15. Do you also feel that there will be sufficient sites available if other adult entertainment enterprises wish to locate in Abilene?

16. The adult lounges or topless bars can remain where they are if their dancers wear more clothes, can't they?

17. The adult bookstores or film stores would have to reduce their stock and trade to less than 10% with an emphasis on sexual matters if they wanted to remain at their present locations, wouldn't they?

18. The movie arcades would have to change their emphasis from sexual matters to avoid being subject to the ordinance, wouldn't they?

19. The proposed ordinance requires movie arcade booths to be illuminated and have the booth doors taken off. The

3-266

ordinance gives the owners 120 days from the date of publication of the ordinance. Additionally, the owners can request an extension if they can't comply.

20. Mr. George, will these provisions give the owners of movie arcades time to comply?

21. The ordinance allows the operators until Jan. 1, 1988 to recover their investments. It also provides for extensions if the owner can show the council that he has not recovered his investment.

22. The ordinance also provides for exemptions to the placement requirements, if the owner can show the site has no negative impact on their neighbors.

23. The extensions are for periods up to one year at a time.

24. Mr. George, will these provisions allow owners an opportunity to recover their investments?

25. Will the exemption provision allow owners who have no negative impact on their neighbors to stay at their locations?

3-167

00237

26. Will the one year review process by the Council insure that if a negative impact is show, that the Council can then have a means to eliminate the problem?

27. Mr. George, you have reviewed the Dallas District Court decision, and Dallas' adult entertainment ordinance. Is their ordinance very similar, conceptually, to ours?

28. Do you believe that the proposed ordinance will be beneficial to the City and its quality of life?

29. Do you have any further comments you would like to make?

Unless Council has additional questions of Mr. George or me, I would like to call a representative of the Police Department.

WE WILL NOW SHIFT TO THE MOVIE ARCADES OR VIDEO PEEP SHOWS.

We are going to, in an explicit direct manner, describe the viewing booths, and the sexual activities that take place in the viewing booths.

Suggest to Audience, that if you would like to, you may step outside, excuse yourself, until we open the public hearing.

LEE ROY GEORGE'S ANSWERS TO CITY ATTORNEY'S QUESTIONS

2. Yes, we have identified major entryways into the city, primarily North and South First, Highway 36 and in a number of other cities that we've identified in some of our studies as being major entryways and we will I think in the very near future begin some sort of a program of concentrated proactive code enforcement along these areas to identify problems and perhaps change some of the problems that we have or address some of the problems that we have on these major entryways.
3. On North and South First Streets, both, probably a preponderance of the business on these areas are family-oriented businesses zoned General Commercial, and I think it is such establishments as restaurants, more retailing activities than in other parts of the city.
4. As is consistent with some of the policies and ordinances that we have in place, yes.
- 5a. The purpose of this provision as explained in the first reading of this ordinance is primarily to keep these kinds of businesses from concentrating in one particular area. There are two different philosophies as I explained earlier. One of those is to concentrate them in one area, and another is to keep them from concentrating. The City of Boston, all of you have heard about the "combat zone" attempted to try to consolidate all these kinds of businesses in one area, namely the combat zone. A number of different kinds of problems that came out of that, and I think now the general philosophy is that it is better that these kinds of businesses are spaced generally farther apart so that they don't concentrate, that's the reason for the 1,000 feet spacing requirement.
- 6b. Yes, these are where young people, other kinds of, particularly at the universities and churches, we have I think some real problems around these areas. To answer your question, yes.
8. Yes, each of these studies have a different perspective, perhaps, to offer. Some of them deal with studies that have been done within the real estate and appraisal community dealing with the effects of property values on areas surrounding these kinds of businesses. Others deal with, like the one in Austin, particularly deals with the surveys they did on who frequents these establishments and where they come from and each of the studies have a little different perspective but I think all of them relate to these particular activities and their effects on surrounding properties.
10. We have calculated on the map on the back, and I will refer
11. the Council to that a little bit later on as I did in the

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the first hearing. We've estimated that there are about 3,473 acres that would be available, that's approximately 5.4 square miles legally available for these kinds of sites. That would translate to approximately 5% of the city or about 246 of these potential locations with the spacing requirements as we have drafted in the ordinance.

12. 17 years.
14. yes
15. yes
16. yes
17. that's correct
18. yes
20. yes
24. in my opinion, yes
25. yes sir
26. yes
27. Conceptually, it's very similar to ours
28. yes
29. Two comments that I would like to bring to the Council's attention, I think I called your attention to these in the first hearing. #1, the map on the back wall here, it does show in red the areas that will be available for these particular sites. We'd like to call your attention, we didn't have this on the map on the first reading, the black mark on the map on the far west edge, last panel on the left hand side there, the black marks are the corridor that are on south and north first streets, I wanted to call your attention to those. The red areas would be those areas that the staff calculated as being available potential sites for these kinds of areas. One other thing that I would like to call the Council's attention to, and that is the notice provision that went out before not only the first hearing, the Planning Commission hearing as well, but this public hearing as well. On July 14, 1986, the staff mailed out some 27 individual notices to businesses, individual property owners, the colleges here, we mailed out some 27 of those inviting people to the public hearing, telling them that we were working on an adult entertainment ordinance, to make sure that everyone knew where we were going with that. We did attempt to mail out to anyone who might be interested some notice provisions so that if they had questions about what it was they could call the staff. The Planning

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Commission held their public hearing on August 4, there were a large number of people there, probably some of the people that are here today were also at that public hearing. In an attempt to try to again notify people, we hand-delivered at least to those 10 businesses that we identified in the first hearing as being potential candidates for being affected by this ordinance. The attachments that you have in your packet, all but two of those businesses accepted that, two did not but we did attempt to try to make sure that they had a copy of the ordinance and knew that it was coming up today. Thank you.

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Suggest to Council, pause for a minute or two to allow folk to absent themselves for a while, if they wish.

1. I would like to ask Sergeant D.W. Havens to come forward.
2. How are you employed?
3. Pursuant to your duties, did you have officers go into the World-Newsstand, American Video, and Video Vue?
4. Did these officers prepare reports showing the physical layout of the movie arcades or peep shows?
5. Are you familiar with the physical condition and layout of the movie arcades or peep shows?
6. Sergeant D.W. Havens -
Like to read from the Attorney General's Commission on Pornography, July 1986, p. 1473.

Page 1473

"The average peep show booth has enough room for two adults to stand shoulder to shoulder. The inside of the booth is dark, when the door is closed, except for the light which emanates from the screen or enters from the bottom of the door."

Page 1475

"In addition to movie viewing, the booths also provide places for anonymous sexual relations. Many booths are equipped with a hole in the side wall between the booths to allow patrons to engage in anonymous sex. The holes are used for oral and anal sexual acts. Sexual activity in the booths involves mostly males participating in sexual activities with one another. However, both

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heterosexual and homosexual men engage in these activities. The anonymity provided by the "glory holes" allows the participants to fantasize about the gender and other characteristics of their partners."

Page 1476

"It is commonplace for a patron to enter an occupied booth, close the door behind him, and make advances toward the occupant."

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"Inside the booths, the floors and walls are often wet and sticky with liquid or viscous substances, including semen, wine, gels, and saliva. The trash and sewage and the application of disinfectants create a particularly nauseating smell in the peep booths."

- How do the booths in Abilene compare to the description I read?
7. In some of the booths, are there holes between the booths?
 8. How large are they and where are they located?
 9. Do you believe these holes are there for sexual activity?
 10. Are there any stains on the walls or floors?
 11. Were the stains analyzed?
 12. What were they?
 13. What sort of sexually related activities were reported to you at the movie arcades or peep shows?
 14. As to the movies themselves, is the predominate emphasis in the movies on sexually explicit matters as described in the adult entertainment enterprise ordinance?

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15. If the City required the doors to be locked and allowed only one patron to a booth, would this provision, from a practical point of view, be enforceable?
 16. Would it be difficult to know how many people were in locked booths?
 17. Do you feel the proposed requirements, of taking doors off and illumination so as to be able to see in the booths, will be enforceable?
 18. Is there anything else you feel Council should be aware of?

Unless the Council has questions, I would like to call a representative of the Health Department, Dr. Ferris
 1. I would like you to assume: that we have small viewing booths; have holes between the booths, and that there is sexual activity between people in the booths who may or may not know each other.
 2. Does this create the potential for spreading disease between people?
 3. Are you aware that other cities have passed ordinances requiring booths be open and illuminated so as to reduce the threat of spreading disease?
 4. Do you feel the proposed ordinance will be helpful as preventive measure to help prevent disease spread?
- Unless the Council has questions, I have no additional matters for Dr. Ferris to address.

3. No 14

SERGEANT HAVENS' RESPONSE TO CITY ATTORNEY'S QUESTIONS

2. With the City of Abilene Police Department Vice/Narcotics Division.
3. Yes sir, I did.
4. Yes sir, they did.
Yes sir, they are.
Yes sir, they did.
Yes sir.
5. Yes sir, I am.
6. The booths in Abilene will be very similar, although they will have some differences between the different locations. Such as, in the American Video, it is definitely dark, probably the darkest one we have in the peep show area, there usually is an odor at American Video and the substance which is sticky on the floor you can tell it's there because your shoes stick to it, but it is usually so dark in the booths that you are unable to observe the walls. The World News Stand is a little bit cleaner and maybe a little bit more illuminated, but there is definitely sticky substance on the floors and dried substance on the walls. The Video Vue is probably somewhat cleaner than the others, illuminated a little bit better, but it also has a sticky substance on the floor and dried substance on the walls.
7. Yes sir, there are.
8. At American Video there are at least six booths that have holes in adjoining booths that are approximately 2" by 6", they appear to be neatly sawed. These holes are approximately waist high and above these holes there are smaller holes about eye level. At the World New Stand in booths 1 and 2, there are three small holes about the size of a dime about eye level and I believe between booths 3 and 4 there are 3" holes about waist level and no holes were observed at the Video Vue.
10. Yes sir, there are.
11. Yes sir. We did scrape a sample of stain out of the Video Vue and the reason why we chose that was because it was a little bit better lit and we could observe it better. We did send it to the Texas Department of Public Safety lab for analysis and I did get a report back on it showing that it was semen.
13. I had officers go into the American Video and while inside there they stated that going into one of the booths that did

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have the hole between the booths, when the officer stepped inside and put his money in for the machine to begin, that another subject unknown to him came into the booth beside him. As the movie was playing he did observe the subject in the booth next to him stick his fingers through the hole, he glanced back at the movie and back down again and when he did the subject had retracted his fingers and inserted his penis in the hole. On another occasion, I had an officer go into American Video and going into one of the booths that had the hole between the two booths, he started the video and at that time he was getting some illumination from the projector, he looked down at the hole and in doing so he did observe a black male's face - the only area that he could see through the hole was the nose and mouth area.

If I recall correctly, you said this particular location was very dark and it was hard to see anything, is that correct?

Yes sir, it is.

Because of the darkness, suppose one of these individuals had measles, mumps, or some other disease, could you be able to tell whether they had it or not if you had sex with them?

No sir, you couldn't.

Did you also tell the Council the two individuals that you described, one as putting his penis through the hole and the other putting his mouth near the hole, were not known to the officer who was there?

No sir.

14. Yes sir, it is.

15. No sir, it would be impractical, and unenforceable because
16. we wouldn't have the manpower to keep somebody on surveillance there to see if one person or more went into each booth.

17. Yes sir, I believe it would be enforceable, not only through our division, but to patrol walk-throughs. I also believe it would be a deterrent to any type of sexual relationship taking place at that time.

18. No sir, not at this time.

3-9b-16

00246

RESPONSE OF DR. FERRIS TO CITY ATTORNEY'S QUESTIONS

- 2. Very definitely.
 - 3. I am.
 - 4. Yes it will.
- No, I haven't.

3-16-17

00247

I think it is worthwhile to again emphasize to the audience that the City has been told that if it passes the adult entertainment enterprise ordinance, it will be sued.

Like to read a letter from the attorney representing Video Vue to the Council dated October 14, 1986.

To the Honorable Members of the City Council:

As you may be aware, I appeared before the Commission on behalf of Video Vue (727 South Treadaway, Abilene, Texas) at the time of its consideration of the proposed amendment to Chapter 23, subpart (e), of the Abilene Municipal Code involving adult entertainment enterprises, etc.; other commitments make it impossible for me to appear at your October 16, 1986 consideration of same. However, I stand by the remarks which I made before the Commission.

For your information, I only wish to add the enclosed copy of the Opinion in People Tags, Inc. v. Jackson County Legislature, 636 F.Supp. 1345 (W.D. Mo. 1986), which raises serious constitutional questions about zoning ordinances of the type which you propose to enact where those ordinances extinguish existing businesses. I strongly suggest your consideration of an amendment to the proposed ordinance rendering it inapplicable to existing businesses. Thank you for your consideration of this matter. Sincerely, Clyde F. Dewitt, BROWN, WESTON & SARNO

Under state law of Missouri, cities could not amortize non-conforming uses. This case is an example of how you enact an invalid ordinance.

It is noted in material previously given to Council on page 16-17 from National Institute of Municipal Law Officers' Oct. 5-8 Conference which is attached to my Oct. 16, 1986 memo to the City Council.

We have reviewed the case cited; we believe we have answered the concerns raised in the Missouri case.

3-7b B

Unless the Council has further questions, I suggest that we allow anyone who has excused themselves to return now, and that we open the ordinance up for public comments.

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