

Chapter 9: Public Nuisances and Other Issues

Quick Guide to Chapter 9:

Is it possible to close an establishment that is allegedly engaged in a First Amendment-protected business?

Yes. The Supreme Court has ruled that even "adult bookstores" can be closed if they are proved to be a "public nuisance" in that they are essentially houses of prostitution and meeting places for public sexual contact. Statutes that target for closure businesses that knowingly allow illegal conduct in violation of the law are valid even if the business is allegedly selling First Amendment-protected items. (9.1)

Can the state constitution provide greater protection to SOBs than the federal constitutional cases?

Yes, and a few states have gone that route, although it is never justified because no framers of state constitutions intended to protect sexually explicit speech. However, you must examine the cases construing your state constitutional protection for freedom of speech and privacy to be prepared for any trouble spots. Defense lawyers are raising this issue in virtually every pornography case. (9.2)

In this final chapter, we will discuss closing SOB's as public nuisances, and then touch on various other issues relating to the regulation of SOB's.

9.1 – Closing SOB's As Public Nuisances

Perhaps one of the least used, but most effective methods of attacking SOB's is to use state and local public nuisance laws to close SOB's for a period of time, which sometimes forces the business to close permanently and leave the town.

The United States Supreme Court squarely addressed the issue of whether public nuisance laws could be used to close an "adult" bookstore in *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986). In that case, Erie County officials employed a New York public nuisance statute providing for a one-year closure of any establishment where "lewdness, assignation, or prostitution" were taking place. The law was used against a typical "adult" bookstore that had the usual fare of sexually explicit materials, and also had "peep show" booths in the back where public sexual activity occurred. The undercover Deputy Sheriff personally observed instances of masturbation, fondling, and fellatio by patrons on the premises of the store, all within the observation of the proprietor. He also observed instances of solicitation of prostitution, and was himself solicited on at least four occasions by men who offered to perform sexual acts in exchange for money. The Deputy Sheriff reported that the management of the [adult bookstore] was fully aware of the sexual activity on the premises. 478 U.S. 699.

The New York Court of Appeals used an *O'Brien* analysis to hold that the statute incidentally burdened First Amendment speech rights, and that closing it for a year was a much broader remedy, and much more restrictive of speech than necessary to accomplish the statute's purpose of preventing illegal sexual activity in public establishments. 65 N.Y.2d 324 (1985).

The Supreme Court first noted that two other state supreme courts had already upheld such a use of public nuisance laws. 478 U.S. 702, n. 1 Chief Justice Burger then held for the Court that, unlike *O'Brien*, where the conduct of burning a draft card carried a strong speech component, the conduct of prostitution and public sexual activity in this case had no First Amendment protection, and therefore the First Amendment was not implicated.

As you would expect, an SOB will argue that it can't be closed because it sells material presumptively protected by the First Amendment. The Court saw through this line of reasoning:

If the city imposed closure penalties for demonstrated Fire Code violations or health hazards from inadequate sewage treatment, the First Amendment would not aid the owner of premises who had knowingly allowed such violations to persist.

478 U.S. at 705.

The Court ruled that the severity of the burden on First Amendment rights was "dubious at best"

and "mitigated by the fact that respondents remain free to sell the same materials at another location." *Id.* Then the Court noted that, under the SOB's tortured analysis, "every civil and criminal remedy imposes some conceivable burden on First Amendment protected activities

One liable for a civil damages award has less money to spend on paid political announcements or to contribute to political causes, yet no one would suggest that such liability gives rise to a valid First Amendment claim....Similarly, a thief who is sent to prison might complain that his First Amendment right to speak in public places has been infringed because of the confinement, but we have explicitly rejected a prisoner's claim to a prison environment least restrictive of his desire to speak to outsiders.

Id. at 706. The Court concluded with a compelling statement in support of closing any "adult" bookstore used for public sexual activity with the knowledge of its owners:

[W]e conclude the First Amendment is not implicated by the enforcement of a public health regulation of general application against the physical premises in which respondents happen to sell books.... The legislation providing the closure sanction was directed at unlawful conduct having nothing to do with books or other expressive activity. Bookselling in an establishment used for prostitution does not confer First Amendment coverage to defeat a valid statute aimed at penalizing and terminating illegal uses of premises. The legislature properly sought to protect the environment of the community by directing the sanction at premises knowingly used for lawless activities.

Id. at 707.¹

This raises some interesting possibilities for states and municipalities to consider as serious methods of combating SOBs. Virtually every state has some sort of public nuisance law that empowers county or city law enforcement officials to bring an action to close any establishment where owners knowingly allow illegal sexual activity or prostitution to occur.

As was discussed in Chapter 2, the evidence of sexual activity in the typical "peep show" booth is overwhelming. No owner or operator of such an establishment could make a credible argument that he did not know what was occurring in his building, given the fact that he pays someone to clean up the used condoms, semen and other fluids from the walls and floor of the booths.

The state of Ohio has been particularly aggressive in using public nuisance laws against SOBs

¹ On remand, the New York Court of Appeals held that the state constitution's protection for free speech prevented that use of New York's nuisance statute against a speech-related business. *People ex rel. Arcara v. Cloud Books, Inc.*, 503 N.E.2d 492 (N.Y. 1986). State constitutional activism is discussed briefly in section 9.2.

that allow sexual activity to occur. See *State ex rel. Rear Door Bookstore v. Tenth District Court of Appeals*, 588 N.E.2d 116 (Ohio 1992) (holding that the ordinance was not vague and allowing the closure of the entire store not just the peep booths); *State ex rel. Roszmann v. Lion's Den*, 627 N.E.2d 629 (Ohio App. 1993) (owners and employees of adult video arcade could be held responsible for sexual acts of patrons in semi-private booths that constituted nuisance). Other states have also allowed closure for nuisance. See, e.g., *Recreational Developments of Phoenix, Inc. v. City of Phoenix*, 220 F.Supp.2d 1054 (D.Ariz. 2002)(businesses with purpose of providing opportunity to engage in or observe live sex acts is public nuisance); *Maloy v. City of Lewisville*, 848 S.W.2d 380 (Tex.App. 1993) *rev'd on other grounds* *Schleuter v. City of Forth Worth*, 947 S.W.2d 920 (Tex. App. 1997); *People v. Sequoia Books, Inc.*, 500 N.E.2d 82 (Ill. App. Ct. 1986); *City of Gretna v. Russland Enterprises, Inc.*, 564 So.2d 367, 370 (La. App. 1990) (upholding statute that allowed abatement for nuisance, in this case prostitution, carried out by third parties if the owner knowingly allows it to occur); *State v. Irving*, 700 S.W.2d 529, (Mo. Ct. App. 1985); *Com. ex rel. Preate v. Danny's New Adam & Eve Bookstore*, 625 A.2d 119 (Pa. Commw. Ct. 1993) (allowing closure of peep booths and "couch dancing" area, but allowing the bookstore to stay open) *Com. ex rel. Lewis v. Allowill Realty Corp., Inc.*, 478 A.2d 1334 (Pa. Super. Ct 1984) (allowing closure of the whole store, not just the booths) ; *Com. v. Croatan Books, Inc.*, 323 S.E.2d 86 (Va. 1984); *State v. Panno*, 447 N.W.2d 74 (Wis. Ct. App. 1989) (upholding one-year closure of an adult bookstore even without evidence that owner had knowledge of the nuisance);

SOBs with "peep show" booths are not the only type of SOB subject to regulation as a public nuisance. Obviously, any nude dancing establishment where undercover officers can prove owners and operators knowingly allowed "dancers" to perform acts of prostitution would be prosecutable as a nuisance. Further, in some jurisdictions the act of "lap dancing" -- involving physical, sexual contact between "dancers" and patrons -- is considered lewd conduct which allows municipalities to invoke nuisance laws. *Hoskins v. Department of Business Regulation, Div. of Alcoholic Beverages and Tobacco*, 592 So.2d 1145 (Fla. Dist. Ct. App. 1992) (lap dancing is lewd.); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 535 N.W.2d 178, 183 (Mich. 1995) ("An almost-nude female employee squirming in the lap of a customer for his sexual arousal is conduct that carries one right up to the line where prostitution begins."); *State ex rel. Miller v. Private Dancer*, 613 N.E.2d 1066, 1070 (Ohio Ct. App. 1992) (upholding lower court's determination that "lap dancing was lewd and tended to incite sensual desire or imagination"); *Com., Pennsylvania Liquor Control Bd. v. CIC Investors No. 870, Ltd.*, 584 A.2d 1094 (Pa. Commw. Ct. 1990) (male lap dancer lewd); *State ex rel. Pierotti v. Owens*, 1992 WL 62002 (Tenn.App. 1992) ("table/couch dances" that involve fondling and other sexual contact that owners and operators are aware of and encourage constitute a health hazard, foster breaches of peace, and are a public nuisance).

9.2 – State Constitutional Issues Independent State Grounds

A strategy of choice in the pornography industry these past few decades has been to avoid the fact that the First Amendment does not protect their interests as much as they would like by attempting to get state courts to interpret state constitutional free speech and privacy provisions

in an expansive manner. A few state courts have fallen for this, thus providing greater protection to obscenity and sometimes to businesses that engage in pornographic speech, than is provided by the U.S. Constitution.

The worst example of this is in the state of Oregon, a state in which pornographers now have the run of the place and are taking full advantage of it. In 1986, the Oregon Supreme Court used a combination of flawed historical research and lofty rhetoric to declare that obscenity was protected by Oregon's Constitution. *State v. Henry*, 732 P.2d 9 (Ore. 1986).

Two years later, the court struck down a typical SOB zoning ordinance in Portland, again as a violation of the state constitution's absolute protections for freedom of speech. *City of Portland v. Tidyman*, 759 P.2d 242 (Ore. 1988). Thus, Oregon municipalities at present are likely unable to enact any of the time, place and manner regulations that are available in other states.²

Fortunately, no other states have followed Oregon and used the excuse of an obscure state constitutional provision to provide greater protection from time, place and manner regulations for SOBs than that provided by the First Amendment, although New York's highest court did refuse to allow public nuisance laws to be used against an "adult" bookstore despite Supreme Court approval. *People ex rel. Arcara v. Cloud Books, Inc.*, 503 N.E.2d 492 (N.Y. 1986).³ However, New York does allow closure of SOBs if there is an abundance of evidence and other alternative methods have been tried first. *City of New York v. 777-779 Eighth Ave. Corp.*, 640 N.Y.S.2d 546 (N.Y.App.Div. 1996) (allowing closure after city obtained 57 reports on the SOB's violations and after city warned SOB that the city was giving the SOB a generous amount of time to come into compliance). Most courts quickly reject these boilerplate claims by SOBs to

² To learn more about the status of the law in Oregon, see Or. Const. Art. I, Section 8 (state Bill of Rights provision guaranteeing Free Expression); *State v. Robertson*, 649 P.2d 569 (Or. 1982)(provides the analytical framework for analysis of free expression); *State v. Plowman*, 838 P.2d 558 (Or. 1992) (summarizes the *Robertson* framework); *State v. Maynard*, 5 P.3d 1143 (Or. App. 2002) (provides a thorough discussion of the *Robertson* framework); *State v. Stoneman*, 920 P.2d 335 (Or. 1996) (upheld state statute regulating purchase of child pornography); *State v. Ready*, 939 P.2d 117 (Or. App. 1997) (state can outlaw possession of child pornography); *State v. Dimcock*, 27 P.3d 1048 (Or. App. 2001)(state can prohibit duplication of depictions of child pornography); 46 Or. Op. Att'y. Gen. 294 (1989)(provides discussion of zoning efforts to regulate pornography); William R. Long, Note, *Requiem for Robertson: The Life and Death of a Free-Speech Framework in Oregon*, 34 Williamette L. Rev. 101 (Winter 1998) (provides a comprehensive review and critique of the *Robertson* framework)

³ Hawaii's Supreme Court struck down Hawaii's state obscenity law under the state constitutional "right to privacy." *State v. Kam*, 748 P.2d 372 (Haw. 1988). At least 15 other states have specifically rejected such state constitutional judicial activism as it relates to obscenity laws. See *State v. Bateman*, 547 P.2d 6, 10 (Ariz. 1976); *People v. Ford*, 773 P.2d 1059 (Colo. 1989); *Stall v. State*, 570 So.2d 257 (Fla. 1990); *State v. Honore*, 564 So.2d 345, 349-50 (La.App. 1990); *People v. Neumayer*, 275 N.W.2d 230 (Mich. 1979); *State v. Davidson*, 481 N.W.2d 51 (Minn. 1992); *State v. Kipf*, 450 N.W.2d 397 (Neb. 1990); *State v. Burgun*, 384 N.E.2d 255 (Ohio 1978); *State ex rel. Keating v. Film Entitled "Vixen"*, 272 N.E.2d 137, 140 (Ohio 1971); *State v. Marshall*, 859 S.W.2d 289 (Tenn. 1995); and *State v. Reece*, 757 P.2d 947 (Wash. 1988). See also, for other state appellate decisions upholding state obscenity laws in the face of challenges under state constitutional provisions: *Fordyce v. State*, 569 N.E.2d 357 (Ind.App. 1981); *City of Farmington v. Fawcett*, 843 P.2d 839 (N.M.App. 1992), review quashed, 835 P.2d 80 (N.M. 1992); *Commonwealth v. Croll*, 480 A.2d 266, 269 (Pa. Super. Ct. 1984); *Video News, Inc. v. State*, 781 S.W.2d 411 (Tex.App. 1989), cert. denied, 111 S.Ct. 138 (1990); *Campbell v. State*, 765 S.W.2d 817 (Tex.App. 1988).

state constitutional protection. *See e.g. Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *Schleuter v. City of Fort Worth*, 947 S.W.2d 920 (Tex. App. 1997) (The Texas Constitution “provides broader rights of free speech than the First Amendment.... But, [the Texas Constitution] does not extend those broader rights to topless dancing.”); *County of Kenosha v. C&A Management, Inc.*, 588 N.W.2d 236, 244-246 (Wis. 2000) (rejecting Oregon’s acceptance of obscenity under state constitutions, limiting Wisconsin’s freedom of speech to the bounds of the Federal First Amendment, and noting that roughly a third of the states have considered the issue and only Oregon has chosen to protect obscenity);. For arguments in opposition to state constitutional judicial activism, *see* Twist & Munsil, *The Double Threat of Judicial Activism: Inventing New "Rights" in State Constitutions*, 21 Ariz.St.L.J. 1005 (1990).

9.3 – Damages Against Cities and Elected Officials

One of the common threats used by SOB lawyers against city or county officials considering time, place and manner regulations -- particularly in smaller communities -- is the threat to sue the city for civil rights violations pursuant to 42 U.S.C. § 1983. Some lawyers go even further, and attempt to intimidate individual city council or county commissioner members by telling them they will be sued and held personally liable for millions of dollars for infringing on the First Amendment rights of the SOB. Under standard laws dealing with legislative immunity, those threats are unwarranted and need not be taken seriously. *See e.g., Figueroa-Serrano v. Ramos-Alverio*, 221 F.3d 1, 4 (1st Cir. 2000) (legislative immunity extends to local legislators); *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 773 (3rd Cir. 2000) (“Legislators enjoy absolute immunity from liability for their legislative acts.”); *San Pedro Hotel Co., Inc. v. City of Los Angeles*, 159 F.3d 470, 476 (9th Cir. 1998) (“Legislators have absolute immunity when they act in their legislative capacities, not in their administrative or executive capacities.”); *B Street Commons, Inc. v. Board of County Commissioners of El Paso County*, 835 F.Supp. 1266 (D.Colo. 1993) (county commissioners had absolute immunity and qualified immunity from suit arising from their vote to deny permit to nude dancing establishment under ordinance later held unconstitutional on its face; court granted summary judgment to defendants).

While it is possible for a city to owe damages if it unconstitutionally deprives a sex business of its constitutional rights, the burden of proof is high and difficult to meet. “A plaintiff must show actual injury caused by the defendant to recover more than nominal damages.” (emphasis in original) *B Street Commons v. Bd. of Co. Commr’s of El Paso County*, 835 F.Supp. 1266, 1271. *See also Park v. Shiflett*, 250 F.3d 843 (4th Cir. 2001); *Makin v. Colorado Dept. of Corrections*, 183 F.3d 1205 (10th Cir. 1999) (“A damages award must be based on actual injuries.”); *Gilmere v. City of Atlanta, Ga.*, 864 F.2d 734 (11th Cir. 1989) (“The focus of any award of damages under § 1983 is to compensate for the actual injuries caused by the particular constitutional deprivation.”); *Monroe County, Florida v. U. S. Dept. of Labor*, 690 F.2d 1359, 1363 (11th Cir. 1982) (“For a party to recover more than nominal damages for a deprivation of procedural due process, he must show actual compensable injury”).

9.4 – Prohibiting More Than One “Adult” Use In A Single Building

A city may also enact a regulation prohibiting more than one defined "adult" use in a single building. This type of regulation prohibits a proprietor from avoiding the scatter provisions of an "adult" use zoning ordinance by simply creating a supermarket "adult" use business. It addresses the proprietor who opens an "adult" bookstore, "adult" movie theatre, "peep show" booth use, and massage parlor, all under one roof or in one structure.

The following may serve as language for such a prohibition:

No building, premises, structure or other facility that contains any sexually oriented businesses shall contain any other kind of sexually oriented businesses.

Such provisions pass constitutional muster as reasonable time, place and manner regulations. *Dumas v. City of Dallas*, 648 F.Supp. 1061 (N.D. Tex. 1986), *aff'd* 837 F.2d 1298 (5th Cir. 1988). The leading case on one building restriction is *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821(4th Cir. 1979). There, the Court upheld an ordinance identical to the language set forth above. *Edmisten* held this requirement "to be merely a regulation of the place and manner of expression. ..." *Id.* at 826. It satisfied the requirements of Young and met the O'Brien test.

Recently, the Supreme Court upheld a similar ordinance passed by *Los Angeles in City of Los Angeles v. Alameda Books, Inc.*, 122 S.Ct. 1728 (2002). Los Angeles had passed an SOB ordinance based on a 1977 study showing that multiple SOBs in an area lead to increased crime. Because of a loophole in the ordinance, SOBs could still combine multiple businesses into one building. The city amended their ordinance by adding a proscription on "the establishment or maintenance of more than one adult entertainment business in the same building, structure or portion thereof." 122 S.Ct. at 1732 (quoting Los Angeles Municipal Code section 12.70C (1983)). The Supreme Court upheld the ordinance, even though the 1977 study did not directly deal with multiple SOBs in one building. The Court, citing *Renton*, held that the city's reliance on the study was reasonable.

9.5 – Other Types of “Adult” Uses

While the primary aim of an "adult" use zoning ordinance may be to regulate the location and impact of hard-core pornography outlets, many other property uses may be classified as "adult" uses for regulation. Such uses also have harmful secondary consequences for their neighbors. They cause blight, diminution of property values, increase crime, and endanger the public health. These uses include escort agencies, nude model studios, sexual encounter centers, and certain motels or hotels.

Escort agencies, nude model studios, and sexual encounter centers are subject to regulation and restriction under an "adult" use zoning ordinance. Such businesses are not entitled to First

Amendment protections. *Stansberry v. Holmes*, 613 F.2d 1285 (5th Cir. 1980), *cert. denied* 449 U.S. 886 (1980); *Purple Onion, Inc. v. Jackson*, 511 F.Supp. 1207, 1227 (N.D. Ca. 1981) (nude modeling studios may be pervasively regulated, as they contain no element of "expression"). A city may lawfully restrict the location of such establishments. *Schope v. State*, 647 S.W.2d 675 (Tex.Civ.App. 1982). Escort agencies have no protection under the First Amendment. *California v. Katrina*, 136 Cal.App.3d 145, 185 Cal.Rptr. 869 (1982). Such agencies merely provide a commercial service for finding a companion. *15192 Thirteen Mile Road, Inc. v. City of Warren*, 626 F.Supp. 803 (E.D. Mich. 1985).

An "adult" use zoning ordinance may also regulate the location of hotels or motels which are used as houses of prostitution. Such an ordinance can define for regulation any such place which rents and vacates a room two or more times within 10 hours. This may create a rebuttable presumption that the establishment is being used for prostitution activities. However, it is essential that a city base such a regulation on evidence under Renton that this type of property use has adverse secondary effects. If this is done, the regulation should pass constitutional muster. *Dumas v. City of Dallas*, 648 F.Supp. 1061, 1076 (N.D. Tex. 1986), *aff'd* 837 F.2d 1298 (5th Cir.1988) ("The City did indeed make sufficient findings to justify restriction on adult motels"); *cf Patel & Patel v. City of South San Francisco*, 606 F.Supp. 666, 671 (N.D. Cal. 1985) (holding that an adult hotel ordinance was unconstitutional, because there were no findings about adult hotels' secondary effects).

The Supreme Court's holdings on state power to regulate morality and private consensual activity are probably broad enough to encompass regulations on "adult" motels. *See Bowers v. Hardwick*, 478 U.S. 186 (1987) (no privacy right to consensual homosexual, and arguably, heterosexual sodomy); *Baker v. Wade*, 769 F.2d 289 (5th Cir. 1985) (en banc), *cert. denied*, 478 U.S. 1022 (1986) (prohibiting deviant, homosexual acts is not unrelated to state's goal of morality and thus is not a violation of the 14th Amendment). *See also FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), affirming *Dumas* on this issue. However, some courts have taken a more restrictive view on the state's power to regulate morality and "private" consensual activity. *See e.g., Jegley v. Picado*, 2002 WL 1453664 (Ark. July 5, 2002) (holding sodomy law violates state's constitution); *Powell v. State*, 510 S.E.2d 18 (Ga. 1998) (holding that criminalizing private, consensual acts between adults in private violates state constitution); *Commonwealth v. Wasson*, 842 S.W.2d 487, 496 (Ky. 1992) (ruling that Kentucky's state constitution puts "immorality [done] in private" out of state's regulatory reach).

9.6 – Regulation of Outside Advertising for SOBs

A city may restrict the nature of public advertising of regulated SOBs. Specifically, the ordinance may restrict the language and pictorial display on outdoor signs advertising the establishment. *See Hamilton Amusement Center v. Verniero*, 716 A.2d 1137 (N.J. 1998) (upholding an ordinance restricting size, number, and content of SOB ads as content neutral, narrowly tailored, and aimed at government interests); *City of Pasco v. Rhine*, 753 P.2d 993, 997 (Wash.App. 1988) ("We hold the advertising restrictions placed on the [adult] use involve the same substantial interest of mitigating the secondary impacts of 'adult' theater location as upheld

in Northend and Renton"); *SDJ Inc. v. City of Houston*, 636 F.Supp. 1359, 1384-85 (S.D. Tex. 1986); *Basiardanes v. Galveston*, 682 F.Supp. 1203, 1219 (5th Cir. 1982) (a ban on outside advertising serves a substantial governmental interest, and is permissible, but the total prohibition of even a simple sign announcing the theater's existence went too far); *11126 Baltimore Blvd. v. Prince George's County*, 886 F.2d 1415 (4th Cir. 1989), *vacated* 496 U.S. 901 (1990) (ordinance requiring outside windows be blackened to prevent those outside from seeing in and limiting outside advertising to one sign was permissible time, place and manner regulation).

As with all content neutral restrictions, regulations must leave open reasonable alternative avenues of communications. In *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002), the court upheld various restrictions on the outward appearances of sexually oriented businesses, including regulating on exterior signs. The court found that the restrictions were "narrowly tailored to combat urban blight and to prevent a decline in the value of surrounding properties." *Id.* at 1002. However, the court struck down that portion of the ordinance that "limits signage to only the legal name of the [sexually oriented business]" on grounds that it unnecessarily overburdened protected speech and was not narrowly tailored.. *Id.* at 1002. *See also, Wolff v. City of Monticello*, 803 F.Supp. 1568 (D.Minn. 1992) (ordinance, on its face, was a total ban on advertising and violated the First Amendment.).

Requirements regarding outside signs and exterior portions of sexually oriented businesses are valid if they are directed at the signs themselves rather than at the protected activities. *SDJ Inc.*, 636 F.Supp. at 1369; *Borrigo v. City of Louisville*, 456 F.Supp. 30, 32 (W.D. Ky. 1978). A restriction on the signs and exterior portions of "adult" establishments which allows modest, subdued advertising is appropriate in order to prevent a decline in the values of surrounding properties, and thus prevent deterioration of neighborhoods. *See Basiardanes*, 682 F.2d at 1219. Hence, it is permissible to place limits on the number, size and detail of exterior signs. *Id.*; and *Borrigo*, 456 F.Supp. at 32. Furthermore, municipalities have broad powers to prohibit commercial signs for aesthetic reasons. *Naegele Outdoor Advertising, Inc. v. City of Durham*, 844 F.2d 172 (4th Cir. 1988).