

ADULT BUSINESSES IN ALTA VALLEY

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The City of Alta Valle faces a serious decision on the revision of their adult business ordinance. The previous ordinance was declared unconstitutional by the State Supreme Court last year. The Court granted a one-year stay on the approval of new business licenses for adult-oriented businesses in Alta Valle. That stay will expire in three months and the City still hasn't been able to act on a replacement adult business ordinance. The issue is both complex and controversial in the community but a new ordinance must be proposed soon or the City will not be able to provide any regulation for adult businesses.

The City

Alta Valle is a mid-size city of about 200,000 population located near the southern coast of a western state. Historically, Alta Valle developed as an agricultural shipping port. The advent of the railroad brought an end to that industry in the city. In the 20th century, Alta Valle developed as a resort destination and, later, into a community with a large number of retirees. In 2002, the U.S. Army reactivated a moth-balled supply depot just east of the City as a joint-forces training center. This brought many military families to live in the City. In the late 1990s, The Coalition for Family Values relocated their national headquarters to Alta Valle and is now one of the City's largest single employers. During the mid-2000s, a consortium of developers bought up several of the existing (old) resort properties in the City and redeveloped them into a large convention center, entertainment/retail complex and several resorts. This complex is the largest employer in the City and provides over 40% of local government revenue. The population of the City is divided into three distinct groups: older retirees, families primarily employed by the Coalition for Family Values or the Convention Center Complex and younger members of the military and military families. Traditionally, conservative politics have been dominant in the City although two younger, more liberal city council members have been recently elected.

The ordinance

For many years, Alta Valle had an extremely restrictive ordinance on the opening of adult businesses. The ordinance was very specific in banning certain types of businesses from the City, including:

- Massage parlors
- Tattoo parlors
- "Head" shops
- Lingerie/adult novelty stores
- Adult bookstores/video stores
- Adult movie theaters

- Topless or nude bars or cabarets
- Private clubs

And more. The result effectively banned any adult businesses from operating within the Alta Valle city limits.

A side effect of the law was that it prevented a number of organizations from using the convention center for exhibitions or conventions. For example, Convention Center use permits were refused for:

- Reggae Fest
- Tattoo Con
- Adult Con
- U.S. Hemp Association convention
- Indie Film Fest
- Solstice Bacchanalia

The City Finance Director, responding to a query from one of the newly-elected council members, estimated that the City lost as much as \$15 million a year in potential revenue from the banned convention activities. It needs to be noted that the convention center has yet to turn a profit due to limited use.

In 2010, the Convention Center Consortium owners filed suit against the City to permit a broader variety of activities to be scheduled in the Center. That case, essentially challenging the City's adult business ordinance, was initially lost in local court but eventually overturned by the State Supreme Court. That decision produced the current issue confronting the City. The stay on permits for adult businesses allowed in the Court decision will expire in three months. If Alta Valle does not have a new ordinance, acceptable to the Court, the City will lose its ability to provide any regulation of adult businesses.

The community

There are strong emotions in the community relating to a new adult business ordinance. While the traditionally conservative philosophy of the city's residents would seem to make the development of an ordinance as restrictive as acceptable to the Court a foregone conclusion, there are other strong interests who favor a more liberal business-oriented approach to the issue. This divergence in outlook is causing substantial conflict both within the city government and the community.

The Coalition for Family Values is clearly the strongest supporter for a very restrictive ordinance. The Coalition counts the mayor of Alta Valle as a board member and two council members are also senior officials in the Coalition. Together, these city

council members have so far been successful in preventing the city council from even hearing any staff proposals for other than the most restrictive of ordinances. The Coalition has promised to legally challenge any ordinance that they feel does not meet their interests. As an ultimate response, the Coalition is threatening to move their headquarters and annual convention to another city if Alta Valle allows “depraved and immoral” businesses to locate in the City. This would cost the City as much as \$7 million a year in revenues and the loss of over 1,000 jobs directly tied to the Coalition headquarters.

The consortium of developers that own the convention complex provided the, ultimately successful, challenge to the old ordinance. Their position is that denying permits for convention center use to organizations that are readily accepted in other convention cities simply makes it impossible for the convention center to turn a profit, thereby threatening the financial solvency of the center itself. To reinforce its desire for a less restrictive ordinance, the consortium has been actively soliciting more business-friendly candidates for city council and both the planning commission and zoning board. Their financial support was instrumental in securing the election of two new council members who are strongly on the side of a less restrictive ordinance. The developers are providing very significant financial backing for two more city council candidates and several potential planning commission and zoning board members for the election to be held later this year (after the ordinance grace period expires, however.) The consortium is claiming that without significantly more business for the convention center, they will be forced to declare bankruptcy and shutter the entire convention center complex. This would result in the loss of several thousand jobs in the city and eliminate the single largest source of city tax revenues at a time when Alta Valle finances are marginal at best.

The executive side of the City government, led by the new City Manager and the Finance Director, see the ordinance conflict as potentially devastating to the City’s finances. The Finance Department recently released a report detailing the revenues provided by the convention center complex and the potential revenues lost over the last five years through denial of permits for convention center use. In sum, the report estimates a loss of over \$15 million per year in potential revenues, just from the convention center. If Alta Valle adopted an ordinance similar to that in force in many similar-sized cities in the state, the City could expect an additional \$2 to \$3 million in tax revenues. The report estimated that Alta Valle would increase its commercial business occupancy rate by up to 15% and could add as many as 1,500 new jobs. According to the Finance Director, the new revenues would effectively end Alta Valle’s financial problems and put the city in a far more stable financial situation.

The perspective of the City Attorney is also one of serious concern. While the City Attorney’s office has not raised any legal objections to a less restrictive ordinance, she

has two concerns: First, the City's legal reserves were completely drained in the last legal battle. If the new ordinance is challenged in the courts, for any reason, the City will not have the money to defend it. Second, the City Attorney, citing the case-loads from cities with less restrictive adult business ordinances, foresees a significant increase in her office's workload from both increased crimes (mostly misdemeanors) and code enforcement cases. She is concerned her office will not be provided the financial resources or manpower to deal with the increase.

The local Chamber of Commerce is also dealing with internal conflicts on this issue. Several members who are owners of retail/commercial buildings with low occupancy are pushing for a much less restrictive ordinance. It is their view that a less restrictive ordinance would encourage more business to open in their buildings, increasing occupancy and income. Other members are opposed to allowing adult-type businesses in the community.

The Council of PTAs for the local schools, the various scouting organizations in the community and all of the "fraternal" organizations (e.g. Lions, Masons, etc.) are siding with the position of the Coalition for Family Values in opposing any adult businesses.

In a recent poll taken by one of the local TV stations, an almost perfect 3-way split was found concerning adoption of a less-restrictive adult ordinance. In favor: 34%, opposed: 35%, no opinion: 31%. To the surprise of no one, many supporters were found to be younger, better educated and more liberal in their politics in general. What was surprising was the substantial support for a less restrictive ordinance from the retiree population, where overall support was a little over 52%.

The New Ordinance

Since the State Supreme Court ruling, the City Planning Department and City Attorney's office have been working to produce an ordinance that will be acceptable to all sides of the conflict. This has not been easy. Extensive research was conducted on existing and model adult business ordinances (see Appendix A for sample URLs.) It became clear early in the process that there was a clear bias in published model ordinances favoring a very restrictive approach. City planners continue to have a very difficult time finding an "adult business" ordinance that is not designed to be severely restrictive. Cities that are more permissive to adult businesses often have no specific ordinance but regulate such businesses as part of the normal business licensing and zoning procedures. (See Appendix B for sample URLs.) Clearly, the city of Alta Valle faces a complex and politically explosive task in dealing with this issue. This is made all the more critical by the short, three month period remaining in the Court's stay of license approvals. If the City desires to provide any direct regulation of adult businesses, a new ordinance must be developed and adopted quickly.

While no specific ordinance proposal has yet been heard by City Council, the analysts from the City Planning Department and City Attorney's Office have developed several alternative strategies that could be pursued:

Most restrictive.

The most restrictive option would be a modification to the previous ordinance that still seeks to ban most adult businesses from the City. This approach would specifically define all the types of adult business that would be prohibited or restricted. While the State Supreme Court made it clear that banning all adult businesses from a city was not acceptable, no mention was made of severely restricting the issuance of multiple business licenses for the same type of adult business. This approach would restrict both zoning and the number of licenses that could be issued. Zoning would confine any adult businesses to very limited areas in industrial parks, prevent any advertising and limit the issuance of more than one license for the same type of business. This strategy would continue to prohibit the convention center from booking adult-oriented exhibits and conventions since the center itself would not be in the adult-zoned area. While this approach is favored by the Coalition, the City Attorney is afraid it would immediately generate lawsuits that the City could not afford to defend. Following this approach would add very little to the City's revenue.

The "Red-light District" approach.

This approach essentially confines adult businesses to a specific "red-light" district and prohibits any from locating outside of the special zoning area. This approach has been documented over the years and used in cities such as Amsterdam, Boston, Toronto and Chicago. Once a popular way of controlling adult businesses, the red-light district has fallen out of favor with most urban planners and many cities once host to such districts (such as Boston and Washington, D.C.) have seen the businesses move from the cities to less zoning-restrictive suburbs. One difficult point in attempting to adopt this approach in Alta Valle is the convention center. The Consortium has made it clear they will not accept any ordinance that includes the convention center complex in a special red-light district. This approach is also opposed by the Chamber of Commerce and the Coalition. The value to City revenues is difficult to calculate since much would depend on the location chosen.

Exclusionary Zoning

One approach that can be used to both limit and disperse adult businesses within a city is the use of exclusionary zoning practices. In this approach, the zoning code is modified to prevent the location of adult business within a certain distance of "sensitive" sites. These sites usually include schools, churches, parks and sometimes, hospitals. By creating no-permit zones around these sites, the City is able to significantly restrict

where adult businesses may open. Different cities employ different buffer zones. For example, the zone may be 1,000 feet from a school, 500 feet from a park or church or vary by specific topography. The common use of GIS systems makes establishing these zones very easy and cities can use GIS to simulate multiple buffer zone options until they find one that works. This approach would clearly get around the State Supreme Court ruling while still offering substantial control of business location. Of course, no business are banned outright under this approach but each application must pass extremely stringent location testing that effectively limits the issuance of business permits. The Coalition for Family Values opposes this approach since it would allow some adult businesses in the City. Local business owners fear it would be too restrictive and would not offer much aid in filling empty stores. The Convention Center Consortium faces a problem since the convention center is located very close to a park, an elementary school and two churches. Employing exclusionary zoning would likely catch the convention center as well, unless a specific exemption is granted. In recent years, exclusionary zoning practices are coming under increased legal pressure (see Appendix C) and may prove extremely difficult and expensive for the City to defend.

No Ordinance

The approach most favored by the Convention Center Consortium, local business real-estate owners and potential adult business owners is simply treating adult business applications like any other business permit application. In this approach, there is no need for an adult business ordinance since each permit is considered on individual merits. This approach has the support of the Zoning Board since it would essentially give the Board final say. The City Finance Director estimates that the City would significantly improve its revenue base under this approach. The estimates are between \$12 million and \$18 million per year. This would effectively eliminate the City's current financial crisis and prevent further service cutbacks or employee layoffs. The Coalition for Family Values has threatened to move their headquarters and national convention to a more "moral" city if this approach is adopted.

Clearly, this is a critical issue for Alta Valle, with serious consequences whichever way the City decides to go. The issue is further complicated by the short time remaining for the City to act.

Discussion Questions:

1. What is the central policy issue in this case study? What are the dimensions/boundaries of the issue? Is this more of an economic or political issue? Why?

2. Who are the key stakeholders for this issue? What are their positions, degree of influence and preferred policy outcome?
3. What are the policy alternatives proposed in the case study? Are there worthwhile alternatives that were not presented? If so, what are they and what positions would the key stakeholders take on the new alternatives?
4. How significantly should the threats posed by the Consortium and the Coalition be taken by the City in arriving at a final policy solution?
5. What would be a good analytical strategy for the City to use in assessing each of the proposed policy alternatives? Which solution is most likely to be chosen? Why?

Appendix A: Model Adult Business Ordinances

1. www.ohioattorneygeneral.gov/adultentertainmentestablishments.aspx
2. www.pittcountync.gov/bcc/ordinance/planning/2.pdf
3. http://naturistaction.org/Local_Issues/Thousand_Oaks/1KOaks_memo_re_adult_business/1KOaks_Adult_business_ordinanc/1koaks_adult_business_ordinanc.html
4. http://www.co.cass.mn.us/ordinances/200001_adult.pdf
5. <http://www.maine.gov/spo/landuse/docs/techassist/AdultEntertainmentEstablishments.pdf>

Appendix B: Planning and Zoning Regulation of Adult Businesses

1. http://www.moralityinmedia.org/full_article.php?article_no=324
2. Linda Kimbell, *First Amendment: Zoning of Adult Business No Cure-All*, 6 Loy. L.A. Ent. L. Rev. 183 (1986).
Available at: <http://digitalcommons.lmu.edu/elr/vol6/iss1/14>

3. http://articles.baltimoresun.com/2010-07-06/news/bs-md-co-adult-business-ban-20100706_1_adult-businesses-tattoo-and-body-piercing-shops-family-facilities
4. <http://www.wave3.com/story/14383024/clarksville-town-council-approves-new-adult-businesses-zoning-guidelines>
5. <http://learningstore.uwex.edu/Zoning-and-Adult-Entertainment-Businesses-020211-P1564.aspx>
6. http://cama.ctbar.org/2_5_10_7.pdf
7. http://www.twosheds.com/detroitOrdinance/documents/20110222-plaintiffs_response_to_motion_for_judgement_on_the_pleadings/C-2.pdf

Appendix C: Exclusionary Zoning for Adult Businesses

1. http://lawprofessors.typepad.com/land_use/2011/03/smith-and-bailey-on-restrictive-zoning-for-adult-usessexually-oriented-businesses.html
2. <http://www.directessays.com/viewpaper/95321.html>
3. <http://www.ga-lawyers.pro/Zoning/A-Survey-of-Recent-Federal-Zoning-Cases.pdf>
4. [http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4782&context=flr&sei=
=redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dexclusionary%2520zoning%2520for%2520adult%2520businesses%26source%3Dweb%26cd%3D17%26ved%3D0CGwQFjAGOAo%26url%3Dhttp%253A%252F%252Fir.lawnet.fordham.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D4782%2526context%253Dflr%26ei%3DRVytT8ThJKbSiAKW5MmVBA%26usg%3DAFQjCNF6oxwP8_oF9nxWcJ7CPj_96IlyzQ#search=%22exclusionary%20zoning%20adult%20businesses%22](http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4782&context=flr&sei=redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dexclusionary%2520zoning%2520for%2520adult%2520businesses%26source%3Dweb%26cd%3D17%26ved%3D0CGwQFjAGOAo%26url%3Dhttp%253A%252F%252Fir.lawnet.fordham.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D4782%2526context%253Dflr%26ei%3DRVytT8ThJKbSiAKW5MmVBA%26usg%3DAFQjCNF6oxwP8_oF9nxWcJ7CPj_96IlyzQ#search=%22exclusionary%20zoning%20adult%20businesses%22)