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DEPARTMENT OF
POLICE

ARTURO VENEGAS, JR.
CHIEF OF POLICE

CITY OF SACRAMENTO
CALIFORNIA

February 25, 1998

900 - 8TH STREET
SACRAMENTO, CA
95814-2506

PH 916-264-5121
FAX 916-448-4620
E-MAIL
spdcau@sacpd.org
www.sacpd.org

Law and Legislation Committee
Sacramento, California 95814

Honorable Members in Session:

**SUBJECT: AB 726 (BAUGH) REGARDING SEXUALLY ORIENTED
BUSINESSES**

LOCATION AND COUNCIL DISTRICT: City-wide.

RECOMMENDATION:

It is recommended that the Law and Legislation Committee support AB 726.

CONTACT PERSON: Jack Crist, Deputy City Manager, 264-5802
Lynne Ohlson, Permits & Licenses, 264-5787

FOR THE COMMITTEE MEETING OF: March 17, 1998

SUMMARY:

AB 726 eliminates the exemption for theaters, concert halls and similar establishments from local regulation of sexually oriented businesses, and allows local prohibition of live nude performances and of tipping dancers or entertainers.

BACKGROUND:

AB 726 would clarify existing law, as set forth in Penal Code Section 318.6, that cities and counties, by ordinance, may prohibit certain live acts, demonstrations or exhibitions in public places involving the exposure of specified anatomical areas. This includes prohibiting total nudity, or the direct solicitation or giving of gratuities. Such acts are neither expressly authorized nor prohibited by the Penal Code.

The League of California Cities states that AB 726 will greatly assist local governments by clarifying issues causing considerable problems. By eliminating the "theater" exemptions, which has been used as a loophole by adult businesses to create havoc in the courtrooms, AB 726 intends to simply clarify the authority of local entities to enact reasonable time, place, and manner restrictions relating to adult businesses.

The League of California Cities fully recognizes that exotic dancing is a protected form of expression. Nothing in AB 726 can be construed to ban or prohibit adult businesses. AB 726 only applies to establishments determined, by local ordinance, to be adult or sexually oriented businesses. Infrequent or incidental displays of nudity will not, by themselves, convert a non-adult business into an adult business subject to AB 726.

The primary goal of AB 726 is to reduce the threat of costly litigation faced by hundreds of cities attempting to achieve a reasonable balance between competing interests, in accordance with established constitutional standards. AB 726 does not ban or prohibit adult businesses. It simply provides local governments with the necessary tools to impose regulations essential in mitigating the harmful secondary effects long associated with these uses.

ENVIRONMENTAL CONSIDERATIONS:

This activity does not constitute a "project" and is therefore exempt from the California Environmental Quality Act (CEQA), CEQA Guidelines Sections 15061 and 15378.

FINANCIAL CONSIDERATIONS:

Not applicable.


POLICY CONSIDERATIONS:

AB 726 could expand local government control in a public policy area in which the City of Sacramento has consistently sought greater control. Additionally, the Law and Legislation Committee can take positions on proposed legislation for the full City Council. As such, it is recommended that the Law and Legislation Committee support AB 726.

MBE/WBE EFFORTS:

Not applicable.

Respectfully submitted,

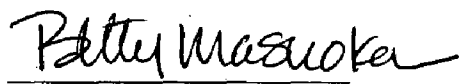


ARTURO VENEGAS, JR.
CHIEF OF POLICE



JACK CRIST
DEPUTY CITY MANAGER

RECOMMENDATION APPROVED:



BETTY MASUOKA
DEPUTY CITY MANAGER

Attachment: Text of AB 726 (as amended on January 26, 1998)

AV:mmm
REF: 2-31

BILL NUMBER: AB 726 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JANUARY 26, 1998
AMENDED IN ASSEMBLY APRIL 16, 1997

INTRODUCED BY Assembly Member Baugh
 (Principal coauthor: Assembly ~~Member Caldera~~
 Members Caldera, Havice, and Napolitano)
 (Coauthors: Assembly Members Ackerman, Baldwin, Bordonaro,
Bowler, Campbell, Margett, Miller, Morrissey, Morrow, Oller,
Ortiz, Runner, Thompson, and Woods)

FEBRUARY 26, 1997

An act to amend Sections 318.5 and 318.6 of the Penal Code,
relating to adult entertainment.

LEGISLATIVE COUNSEL'S DIGEST

AB 726, as amended, Baugh. Sexually oriented businesses: local
regulation.

Under existing law, the legislative body of any county or city may regulate, pursuant to a content neutral zoning ordinance, the time, place, and manner of operation of sexually oriented businesses, as specified. Existing law separately provides that nothing in specified provisions shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a county or city, if the ordinance directly regulates the exposure of the genitals or buttocks of or the breasts of any person who acts as a waiter, waitress, or entertainer, as specified.

Existing law further provides that nothing in the Penal Code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance relates to any live acts, demonstrations, or exhibitions occurring in public places, places open to the public, or places open to public view and involve the exposure of specified body parts and if the ordinance prohibits an act or acts that are not expressly authorized or prohibited by existing law. Existing law exempts from these provisions any theater, concert hall, or similar establishment which is primarily devoted to theatrical performances.

This bill would delete the exemption for theaters, concert halls, and similar establishments. The bill would further provide that nothing in the Penal Code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance prohibits the presentation of live, nude performances at any adult or sexually oriented business, as defined, or if that ordinance prohibits any patron from directly paying or giving any gratuity to any dancer or entertainer, or prohibits any dancer or entertainer from soliciting any pay or gratuity from any patron, in any adult or sexually oriented business or similar establishment. The bill would declare that its provisions shall not be interpreted to require the adoption of any ordinance, but is instead intended to be declaratory of existing law, and that it shall not be construed to preempt the legislative body of any city or county from regulating an adult or sexually oriented business, or similar establishment in the manner, and to the extent permitted by, the United States Constitution and the California Constitution.

This bill would make findings and declarations relating to the regulation of sexually oriented businesses including that any city,

county, or city and county may prohibit live nude performances in adult or sexually oriented businesses, consistent with the legislative body's authority to regulate these businesses to the extent permitted by the United States and California Constitutions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares as follows:

(a) The presentation of live nude entertainment within adult or sexually oriented businesses creates undesirable secondary effects including, but not limited to, an increase in criminal activities such as prostitution and drug dealing in the vicinity of the property on which the entertainment is being provided.

~~(b) The Legislature acknowledges that in Barnes v. Glen Theatre, Inc. (1991) 501 U.S. 560, 115 L. Ed. 2d 504, 1115 Ct. 2456, the United States Supreme Court upheld as constitutional a prohibition against live nude performances occurring within adult entertainment or sexually oriented businesses as a means to reduce or eliminate undesirable secondary effects. The Legislature therefore finds and declares that cities, counties, and cities and counties within California may, by ordinance, prohibit live nude entertainment within adult or sexually oriented businesses. For purposes of this section, an "adult or sexually oriented business" includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.~~

(c) The solicitation or payment of money or gratuities by and between patrons and entertainers in sexually oriented businesses is an inducement to, and often results in, disorderly conduct, including, but not limited to, lewd or dissolute conduct, acts of prostitution, or illicit dealing of controlled substances.

~~(d) Cities, counties, and cities and counties within California may, by ordinance, prohibit any patron from directly paying or giving any gratuity to any dancer or entertainer, or any dancer or entertainer from soliciting any pay or gratuity from any patron in any adult or sexually oriented business.~~

~~(e) Any city, county, or city and county may adopt an ordinance or ordinances prohibiting the presentation of live nude performances at any adult or sexually oriented business.~~

~~(f)~~

(d) This act shall not be construed to require the adoption of any ordinance, but is instead intended to be declaratory of existing law authorizing cities and counties to adopt these ordinances.

~~(g)~~

(e) This act shall not be construed to preempt the legislative body of any city or county from regulating adult or sexually oriented businesses or similar establishments in the manner, and to the extent permitted by the United States Constitution and the California Constitution.

SEC. 2. Section 318.5 of the Penal Code is amended to read:

318.5. Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a county or city, if that ordinance directly regulates the exposure of the genitals or buttocks of any person, or the breasts of any female person, who acts as a waiter, waitress, or entertainer, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to that person to perform the activity, in an adult or sexually oriented business. For purposes of this section, an "adult or sexually oriented business" includes any

establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person, or specified sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.

This section shall be known and may be cited as the "Quimby-Walsh Act."

SEC. 3. Section 318.6 of the Penal Code is amended to read:

318.6. (a) Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance relates to any live acts, demonstrations, or exhibitions occurring within adult or sexually oriented businesses and involve the exposure of the genitals or buttocks of any participant or the breasts of any female participant, and if that ordinance prohibits an act or acts which are not expressly authorized or prohibited by this code.

(b) Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance prohibits the presentation of live nude performances at any adult or sexually oriented business located within the jurisdiction of the local agency. This section shall not be interpreted to require the adoption of any ordinance, but is instead intended to be declaratory of existing law authorizing the adoption of these ordinances by cities and counties.

(c) Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if that ordinance prohibits any patron from directly paying or giving any gratuity to any dancer or entertainer, or prohibits any dancer or entertainer from soliciting any pay or gratuity from any patron, in any adult or sexually oriented business or similar establishment.

(d) For purposes of this section, an "adult or sexually oriented business" includes any establishment that regularly features live performances which are distinguished or characterized by an emphasis on the exposure of the genitals or buttocks of any person, or the breasts of any female person or sexual activities that involve the exposure of the genitals or buttocks of any person, or the breasts of any female person.

(e) This section shall not be construed to preempt the legislative body of any city or county from regulating an adult or sexually oriented business, or similar establishment, in the manner and to the extent permitted by the United States Constitution and the California Constitution.