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DEPARTMENT OF  
POLICE

CITY OF SACRAMENTO  
CALIFORNIA

HALL OF JUSTICE  
813 SIXTH STREET  
SACRAMENTO, CA  
95814-2495

February 26, 1990

916-449-5121

JOHN P. KEARNS  
CHIEF OF POLICE

Law and Legislation Committee  
City Hall  
Sacramento, California

HONORABLE MEMBERS IN SESSION:

**SUBJECT: An Ordinance Amending Article VIII of Chapter 5 of the Sacramento City Code Relating to Picture Arcades**

**SUMMARY**

This report recommends that the Law and Legislation Committee recommend that the City Council adopt the attached proposed ordinance which adds the following provisions to the City's existing picture arcade regulations: prohibits the use of electronically controlled and other doors in picture arcades; elaborates on the meaning of the term "picture arcade" and on the interior visibility requirements; limits to three the number of picture arcade viewing areas; and specifies a minimum level of illumination in picture arcades.

This report summarizes the observations and findings by this Department and the Sacramento Sheriff's Department of unlawful conduct of certain patrons within adult bookstores regulated by the respective picture arcade ordinances of the County and City of Sacramento. The wording of those ordinances is virtually identical.

The report also discloses the conduct of certain bookstore operators which appears aimed at encouraging unlawful conduct in picture arcades and which increases the risk of disease spreading, including the potential spread of acquired immune deficiency syndrome ("AIDS").

The report incorporates herein by this reference the Sacramento Sheriff Department's investigation as reported by Sheriff Glenn Craig in his Feb. 23, 1990 report to the Sacramento County Board of Supervisors. That report and the Sacramento County

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Counsel's legal opinion are attached under the tab marked Exhibit "B." Exhibit "B" reveals that the Sheriff is recommending to the County Board of Supervisors the adoption of a picture arcade ordinance which is identical to the one this department is recommending be adopted by the City. Exhibit "B" also includes conclusions of the Sacramento County Health Officer regarding health and safety concerns created by unlawful conduct in picture arcades.

We have concluded that unlawful conduct occurring in picture arcades must be stopped or deterred to preserve the decency standards sought to be maintained in this community's public places. The department has determined, based upon current facts revealed by law enforcement investigations, that the factors which encourage illegal sexual activity in picture arcades, which are public places, include enclosed or partially enclosed booths, poor illumination within the viewing area and the inability of law enforcement officers to observe the interior of all booths from the entrance to the viewing area. Unless the ordinance expressly states that the interior visibility requirement is satisfied only by direct visibility with the naked eye, we believe bookstore operators will continue to devise mechanisms to frustrate the obvious crime detection, crime deterrent and safety and health concerns to which the ordinance is directed.

The reason for the department's position is set forth in this letter and Attachment "A."

### **BACKGROUND**

The history of investigation into unlawful conduct of some patrons within fully and/or partially enclosed or concealed viewing booths, located in the adult bookstores in the City of Sacramento, was briefly detailed in the June 23, 1986 report which is attached to this supplemental report as Exhibit "B". (Now there are four such bookstores in the City since one of the stores has been destroyed by fire and another was condemned for the library expansion project.) The June 23, 1986 report recommended that the City of Sacramento amend its picture arcade ordinance. The City Council amended the ordinance and the amendment became effective August 8, 1986. In a letter dated August 5, 1986, mailed to each of the six adult bookstores located in the City of Sacramento, the Police Department advised each store that the amended ordinance would be enforced "as soon as it becomes law".

Subsequent to sending the August 5, 1986 letter, and after the amended ordinance became effective as law, members of this Department's Vice Unit made compliance checks at the adult bookstores. During this subsequent investigation of the adult bookstores, the assigned detectives made the numerous reports and observations which are contined in the attached investigation summary. (Attachment "A.")

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It is hard to believe that the picture arcade operators do not know what type of sexual acts occur in picture arcades. The bookstore operators certainly know what condoms are used for and should have observed used condoms and condom wrappers in trash cans, since the detectives observed them on the floors and in the trash cans inside certain booths during their investigations. The condoning or indifferent attitude toward the conduct evidenced by the condom wrappers shows the need to require the viewing areas to be located in a viewing-configuration where the City does not have to depend on the good graces of bookstore operators to ensure that the purposes of the ordinance are not undermined.

Waiting for such good graces on the part of the bookstore operators has proven futile in the past. As this department's past experience shows, the bookstore operators that were sued failed to evidence any intent to curtail obvious illegal sexual conduct that occurs in picture arcades until the court was involved in the law enforcement process. In fact, those bookstore operators took action to further conceal illegal conduct from the observation of detectives by not only installing electronically controlled doors, but also by establishing so-called private club membership devices.

In addition, the obvious deplorable conditions some bookstore operators allowed to exist before the City intensified inspection of picture arcades demonstrates the need for continuous supervision of picture arcades. This is evidenced by the joint investigation of the Sacramento County Health Department and the City of Sacramento which was conducted on April 16, 1986, of the six adult bookstores containing picture arcades in the City of Sacramento. During this investigation, in-field testing was conducted of substances found in picture arcade viewing booths. The substances proved to be semen. The detectives also observed that many picture viewing booths were in unsanitary condition and had what appeared to be semen on the floors, walls, doors, seats, and the movie/video screen. The investigation was conducted pursuant to warrants which allowed inspection without pre-notice. During the inspection, the volume of semen observed in some of the booths was so considerable as to be caked on the wall down to the floor to which it trickled or flowed. This condition appeared to be one that management allowed to exist in the booths over an extended period of time. The conditions observed revealed that the operators chose to condone the existence of such conditions.

It appears undisputed, as documented in this report, that unlawful conduct was allowed and even condoned in each of the adult bookstores. It is well known that intercourse or masturbation in public places is unlawful whether it occurs in a public picture arcade or any other public place. Penal Code Section 647, subsections (a) and (b).

Based on the foregoing experiences and observations, this department believes that direct observation of picture arcade viewing areas should be expressly required by the ordinance. The use of a mirror surveillance system should not be allowed because the

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system is fraught with enforcement problems. Moreover, the goals of the City ordinance, crime detection and deterrence, would be circumvented if the surveillance equipment were not kept clean and in good repair. In addition, a minimum level of lighting ought to be required for health, safety, crime detection and deterrent purposes.

**FINANCIAL IMPLICATIONS**

None.

**POLICY CONSIDERATIONS**

None.

**MBE/WBE**

None.

**RECOMMENDATION**

It is recommended that the Law and Legislation Committee recommend that the City Council adopt the attached proposed ordinance which would add to the City's existing picture arcade regulations provisions which regulate the use of electronically controlled doors, the number of allowable picture arcade viewing areas, the level of required illumination, and which elaborate on the meaning of the term "picture arcade" and direct visibility requirements.

Respectfully submitted,

  
SAMUEL SOMERS

Police Captain

RECOMMENDATION APPROVED.

  
JOHN P. KEARNS  
Chief of Police

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**Person to Contact:**  
**Samuel Somers, Police Captain**  
**(916) 449-5225**

**Law and Legislation**  
**March 15, 1990**  
**D-All**

## ATTACHMENT "A"

### INVESTIGATIVE SUMMARY

1. All six adult bookstores maintained booths that violated Section 5.84 of the ordinance.

2. All six adult bookstores within the City still maintained private viewing booths (hereinafter "booths") wherein videos and movies could be viewed privately in partially or fully-enclosed or partially or fully-concealed booths.

3. All six adult bookstores maintained booths equipped with doors capable of being locked from the inside.

4. Several of the booths were in a filthy condition: condom wrappers were located on the floor of various booths; a substance resembling semen was located on the walls or partitions that form sides and/or back enclosures for various booths and on the video or movie viewing screens located in several booths; tissue that appeared soiled with a liquid substance resembling semen was located both on the floors and in trash cans located inside various booths; the floors of some of the booths felt sticky to the bottom of the detectives' shoes; and the booth areas permeated with an offensive and malodorous stench that would not be expected in a place where people only used the booths to view videos or movies.

5. Messages were located in the area of many booths soliciting all types of sexual activities. These messages, often with telephone numbers, were written on the doors and walls of the booths, and on the walls near the area where the booths were located.

6. Five of the six adult bookstores had so-called membership applications for bookstore patrons which the bookstore operators, for those stores, contended were used to allow certain patrons to view the videos and movies in viewing booths that were located in areas where the entrances thereto were obstructed or sealed by electronically controlled doors. Two bookstores had all of their viewing booths located in such areas. One of these two bookstores used a half-length electronically controlled door that was located at a spot which precluded view, from the location of that door, of the outside of all the partially or fully-enclosed or concealed booths located in the area blocked from view by that door. An L-shaped corridor was interposed between that electronically controlled door and most of the booths located in that store.

The other bookstore used a full-length electronically controlled door that had what appeared to be see-through glass in the door frame, and see-through glass walls on each side of the door frame. Two rows of fully enclosed booths (enclosed on three sides, with a door on the front, or fourth side) were located in the area behind the glass.

Three of the bookstores used full-length electronically controlled doors which appeared to be made out of a solid metal-like material. These doors prevented view into the area where the booths were located. These bookstores had more than one viewing area in which booths were located on the premises. During these compliance checks, it was observed that no adult bookstore within the City of Sacramento maintains more than three

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separate picture arcade viewing areas. In the area in which the booths were sealed from view by the full-length electronically controlled doors, all the booths were enclosed on three sides and had a door on the front, or fourth side. The booths in the other areas were partially enclosed on three sides and most of the booths in those areas were positioned in the viewing areas in such a manner as to preclude all the interior of the picture viewing area, where the movies or videos are viewed, from being visible upon entrance to such viewing areas. One of the stores had booths placed in rooms which were connected by a series of connecting corridors in a maze-like configuration.

7. In order for the detectives to gain entry into the viewing booths located in the areas of the five bookstores that were sealed or blocked with electronically controlled doors, the detectives had to request the bookstore operators to activate the mechanism which released the electronically controlled doors so the doors would open. When the opening mechanism was activated, the noise was loud enough to serve as a warning or alarm to persons inside the viewing area of the possible entry of someone into that area. Because the noise and the electronically controlled doors potentially serve as warning and blocking devices, preventing the immediate view of the areas where the pictures or videos are viewed, they undermine the crime detection and deterrent purposes of the ordinance.

8. On September 24, 1986, an inspection was conducted of the bookstore that used an electronically controlled door which appeared to be a full-length glass door. During that inspection, a plainclothes detective observed a sign on the electronically controlled door which stated only members were allowed. The detective communicated with the bookstore clerk on duty about the use of glass walls, the electronically controlled glass door, and the "members only" sign, which separate the booths from the other areas in the bookstore. The bookstore clerk replied, essentially, that this change was made "about five or six months ago" in order to try and circumvent the City's picture arcade ordinance. When asked why the change was made, the bookstore clerk responded as follows: "It's the only way we could keep the doors on" the booths. The detective informed the bookstore clerk that he wanted to join the alleged membership club and the clerk produced a membership application. The detective then filled out his name, address, date of birth, and then produced his covert driver's license. He paid the five dollar membership amount and was given, in exchange for his five dollar membership fee, five dollars in quarters for which he could view movies in the "members only" area and a lifetime membership card. This lifetime membership card was immediately given to the detective, even though the membership application has the following language printed on it in bold-faced capitals:

**"ALL APPLICATIONS WILL BE HELD 24 HOURS FOR APPROVAL. THERE ARE NO EXCEPTIONS TO THIS POLICY."**

The five bookstores which had so-called membership systems established for the purpose of using private viewing booths in areas obstructed or concealed by electronically

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controlled doors, had membership applications that allowed entrance into such areas, which contained the following language:

"Due to our city's recent change in ordinances, we have decided to start a new concept in viewing and enjoying the many movies we now show ... [The membership application of L'Amour Shoppe deleted the word "the".]

The membership applications also contained language which inquired whether the applicant was "affiliated with any law enforcement organization."

The detectives did not identify themselves as being "affiliated with any law enforcement organization" and easily joined the alleged membership clubs by using assumed names to obtain membership cards. The purchase price of the card at the various bookstores was one to five dollars, depending on the price set in the respective bookstores. In exchange for the purchase price, a membership card and coins or tokens worth the value of the purchase price of the card were received by the detectives. The coins or tokens were suitable for deposit in the video or picture viewing machines. In addition, the membership card allowed patrons the privilege of having the bookstore operators open the above-mentioned electronically controlled doors so the patrons could view, at their own expense, the movies or videos in viewing booths located in the "members only" area of the bookstore.

9. During the investigation, only one of the six bookstores expressed a willingness to comply with the ordinance. That bookstore commenced making changes in the viewing area where the video or movie machines were located. Although the changes made did not evidence strict compliance with the ordinance, the bookstore operator evidenced a willingness to make changes without being forced to do so through a lawsuit. Changes made caused the three-sided booths in use to be angled towards the entrance so as to make most areas where people actually view the motion or still pictures visible at the point where the viewing area room is entered. The willingness of this bookstore operator to make changes without being forced to do so in a lawsuit is the reason this was the only bookstore not sued in the injunction lawsuit commenced against the other five bookstores.

However, on July 13, 1987, approximately a year after the decision was made not to seek an injunction against that bookstore, a subsequent investigation revealed that the location of the three-sided booths in that bookstore had changed drastically since the bookstore was last inspected. The positions of the booths had been physically changed in a way that prevented all but two of the three-sided booths from being angled toward the entrance to the viewing area. This change evidences a need to strictly enforce the language in the ordinance prohibiting the maintenance of partially or fully-enclosed booths or partially or fully concealed booths in a picture arcade. In addition, the detective also discovered that other changes had been made in that bookstore since his previous

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investigation: the lighting in the private viewing area where the booths were located had been decreased or turned down to such a degree that the detective did not feel safe making the investigation until the lighting was increased or turned up.

Problems concerning that bookstore which prompted the subsequent investigation of July 13, 1987, had been brought to the attention of the Vice Unit by the City Attorney's Office. That office made the Vice Unit aware of a declaration filed by defendants in opposition to the City's motion for a permanent injunction in the pending case of City of Sacramento v. Goldie's Bookstores, Inc., Superior Court Case No. 343906, against the other bookstores. In that declaration, an investigator for the defendants declared under penalty of perjury as follows:

On July 3, 1987, I . . . visited a sixth adult bookstore . . . that . . . has not been cited as violating the city's picture arcade ordinance, and the operator is not being sued in this lawsuit. At this store, the booth area is almost pitch black. There are booths lining the walls to the left and right as one enters the arcade. I could not see the interiors of any of the booths when I first entered, because the arcade is so dark in comparison to the retail portion of the store that even after several minutes my eyes did not adjust enough to let me see clearly into the booths. Only the first two or three booths can be made out in the darkness as one stands inside the entrance. The booths further down the walls can barely be seen, and the interiors of those booths cannot be seen at all. As dark as the room is near the entrance, it is even darker toward the back. A few steps from the entrance I could not tell with my eyes alone whether there were doors on any of the booths; I had to feel along the side of the booth to assure myself that there were no doors. There are no mirrors reflecting the interiors of booths farther from the entrance, and even if there were the room is so dark that it would be impossible to see any reflections. (Emphasis added.)

During the above-referenced July 13, 1987 investigation, the detective discerned from his communications with a bookstore employee that the bookstore no longer evidenced a willingness to comply with the ordinance. The Department concludes that the action taken in that bookstore subsequent to that bookstore's indication of a willingness to cooperate and make changes without being forced to do so in a lawsuit, demonstrates the problems the Department anticipates encountering if explicit regulations concerning visibility and lighting are not enacted.

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10. The experience the Police Department had with this bookstore and the Department's concern that other picture arcade viewing areas could also become dangerously poorly illuminated, prompted the Vice Unit to conduct an inspection of all the bookstores to ascertain what level of illumination existed in those bookstores on the date of the inspection. On February 29, 1988, between the hours of 2:30 p.m. and 4:15 p.m., business checks of the picture arcade viewing areas in the City were conducted by the Vice Unit. The Chief Electrical Inspector for the City of Sacramento accompanied the Vice Unit detectives during the business checks, in order to measure what level of light existed in the picture arcade viewing areas regulated by the ordinance. The Chief Electrical Inspector used an illumination meter to measure the intensity of the light in footcandles. As explained by the Chief Electrical Inspector, this measuring instrument makes measurements of light based on the International Candle, which is measurement in footcandles.

L'Amour Shoppe was the first store checked. After detectives obtained the bookstore operator's permission to conduct an inspection, the Chief Electrical Inspector measured the intensity of light in the picture arcade viewing area. The viewing area was well-illuminated in most places, and in some locations the level of illumination was as high as eight (8) footcandles.

Despite the level of light in L'Amour, and the installation of an overhead mirror surveillance system, the investigation revealed that masturbation was still occurring in this store. As one vice detective reports, during the referenced time period he observed a man inside a three-sided booth engaged in an action that was consistent with masturbation. Although the detective did not look down to see if the patron had his penis exposed, he did see the patron move one of his arms back and forth in a manner consistent with someone holding a penis and masturbating.

The next store inspected was the Goldie's store on Stockton Boulevard. After obtaining the bookstore clerk's permission to conduct an inspection, the three picture arcade viewing areas in that store were inspected. One picture arcade viewing area had an illumination with an intensity of approximately one-tenth (.1) footcandle of light; another had an illumination with an intensity ranging from approximately fifteen hundredths (.15) footcandle to approximately two-tenths (.2) footcandle of light. In the latter viewing area, a Vice Unit detective observed a patron viewing a picture arcade viewing machine who was leaned over and engaged in action consistent with pulling up the zipper to his trousers. In the third viewing area, where one of the viewing machines was being used by a patron, illumination was of an intensity of approximately one footcandle.

The next store inspected was the Adult Discount Center bookstore located at 1800 Del Paso Boulevard. After obtaining the permission of the bookstore operator to inspect the picture arcade area, detectives approached that area and observed that the room in which the picture arcade viewing machines were located was separated from the other part

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of the business by double full length hanging black curtains. The lower portion of one of the curtains was raised in a folded manner and affixed to the lower portion of the doorway frame to which the curtains were hung. The light which was admitted into the arcade area from the partially folded curtain was the only light emitting inside the picture arcade viewing area. The picture arcade viewing area was practically pitch dark, and a detective used his flash light to ascertain whether it was safe to enter that area. The Chief Electrical Engineer concluded that the total darkness present in that area did not provide sufficient light for him to make a measurement; thus, the area was too dark even to be tested. As he explained, the illumination meter is photo sensitive and has to have enough measurable light shown on it before a meaningful measurement could be taken. Therefore, the inspection was concluded without any measurement results.

The next store inspected was the Goldie's bookstore located at 2138 Del Paso Boulevard. The bookstore employees at that store appeared reluctant to allow City officials to conduct a business check of the picture arcade viewing areas. One of the bookstore operators indicated that he wanted to make a telephone call to higher-up management personnel before City officials were allowed to inspect the picture arcade viewing areas open to the public. After making the telephone call, that bookstore operator requested the business cards of certain City officials conducting the inspection and allowed the inspection to take place in the three picture arcade viewing areas located in that store. One of the picture arcade viewing areas contained picture arcade viewing booths with light having an intensity of approximately one footcandle. In that area, detectives observed what appeared to be a sticky substance smeared on the viewing screens in three viewing booths; they also observed what appeared to be a soiled tissue located on the floor in one of the picture arcade viewing booths.

The lighting in the other viewing areas of the bookstore was then checked. In one of those areas, the lighting ranged from approximately one-tenth (.1) footcandle to two-tenths (.2) footcandle of light. In the other area, on the average, the lighting was approximately four-tenths (.4) footcandle. In that area, the detective observed a patron in one of the booths with his penis exposed. This patron was in the process of placing his penis back into his pants. That area also had an overhead mirror which was ineffective for reflecting the interior of booths. It was evident that the mirror did not deter the above-mentioned patron from exposing his penis in a public place since that patron was in the booth which was supposed to be observed through that mirror. The angling of the mirror was poor, and the elevated red lights used in that area did not emit enough light to yield any meaningful reflections in the mirror. On previous business checks, the detective observed that the lighting fixtures into which the red lights were placed had been equipped with higher wattage uncolored bulbs. The detective had to wait a few seconds for his vision to adjust to the darkness. However, even after the passage of that amount of time, the detective had difficulty viewing the mirror reflections which he presumed were intended to be seen in the overhead mirror.

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Next, an inspection was conducted of the Goldie's Adult Book Store located at 201 North 12th Street. Operators in that bookstore questioned whether City officials had authority to conduct an inspection of the public areas of that business. Despite the fact that the detectives explained they were merely viewing picture arcade viewing areas, the operator in that store wanted to know whether the detectives had a search warrant, and indicated that City officials were not welcomed to view public areas in that store.

During the inspection, it was noted that changes had been made in the store since the last time an inspection of the premises occurred. The last time the store was inspected there was only one picture arcade viewing area. Two additional picture arcade viewing areas had been added for a total of three.

An inspection was first conducted of the picture arcade viewing area closest to the entrance to the bookstore. In checking that area, another change was observed: two video game machines had been placed in the center of that picture arcade viewing area in a manner which obstructed the view into the viewing booths located in that area. The viewing booths in that area revealed various levels of illumination. One booth had an illumination intensity of approximately eight-tenths (.8) footcandle; another had six-tenths (.6) footcandle; one had two-tenths (.2) footcandle; three had an illumination of approximately four-tenths (.4) footcandle; and one booth had an illumination of approximately two (2) footcandles. The illumination level of the various booths was affected in part by the manner in which light was emitted into the picture arcade viewing booths from the bookstore merchandise display area.

The other two picture arcade viewing areas were located in the rear of the store. In one of those viewing areas was located three viewing booths. The interior of one of the booths located in that area could not be seen from the entrance to that picture arcade viewing area. Two of the booths in that area had illumination with an intensity of approximately two and five-tenths (2.5) footcandles, and the other booth had illumination with an intensity of approximately eight-tenths (.8) footcandle. The other picture arcade viewing area, located in the rear of the business, contained one viewing booth which had an illumination level of approximately nine-tenths (.9) footcandle of light.

Lastly, a business check was conducted of the picture arcade viewing areas located at Sacramento Film Exchange on J Street. After the operator of that store consented to the inspection, it was determined that the average level of illumination in the picture arcade viewing area ranged between approximately one-tenth (.1) and two-tenths (.2) footcandle of light. Although the detectives observed several overhead light fixtures in the picture arcade viewing area which were available for additional illumination, light bulbs had not been placed in those fixtures.

The Vice Unit's concern about poor illumination caused by many factors, including the use of red and low wattage bulbs, prompted contact with the City of Los Angeles and

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City of Modesto. This contact was for the purpose of ascertaining what minimum level of illumination in picture arcades, if any, was required by those cities. It was ascertained that the City of Los Angeles has a one footcandle light requirement for picture arcades; the City of Modesto has a five footcandle light minimum requirement.

The five footcandle minimum illumination requirement of the City of Modesto is lower than the high level of illumination the Vice Unit observed in the picture arcade viewing area of L'Amour Shoppe. Since L'Amour has operated its picture arcade above the five footcandle minimum illumination level and Brian Bilts, the electrical engineer with Sacramento County, recommends the five footcandle minimum level for safety concerns, this Department recommends the establishment of the five footcandle minimum level of illumination in the ordinance. The adoption of this minimum level of illumination should foster the health, safety and crime deterrence and detection purposes of the ordinance.

11. Amending the City Code is recommended since pursuing further enforcement of the existing regulations through the courts does not appear to be a viable alternative at this time. The City's attempt to enforce the ordinance through the criminal process in the Sacramento Municipal Court, in the case of People v. Vasquez, Case Number 86M14235, (January 26, 1987), resulted in the Court interpreting the visibility requirement of Section 5.84 of the City Ordinance so as to disregard the requirement that the interior of each booth be visible from the entry to the picture arcade. Instead, the Court interpreted this provision to require total visibility from the entry to each booth. This interpretation totally emasculates the City Code section which was intended to prohibit enclosed or partially enclosed booths. The Court's interpretation provides that there are no restrictions on the construction of picture arcade viewing areas, that three-sided booths are authorized, and that each three-sided booth is a separate and distinct area.

12. Because of the ruling in People v. Vasquez, the Department relied on a civil injunction remedy to enforce the ordinance. However, the Department's hopes of dealing with the problem through a civil remedy dimmed when the City's summary judgment motion for permanent injunctive relief in City of Sacramento v. Goldie's Bookstores, Inc., Case Number 343906 was denied on July 30, 1987. In denying the City's request for permanent injunctive relief, the judge stated:

"[T]here is a triable issue of material fact as to whether [the bookstores' respective] mirror surveillance system renders the complete interior of the picture arcade where the pictures are viewed as visible as if observed directly from the entrance to the picture arcade."

The problem presented as a result of this decision is that under the existing ordinance the City would have to litigate on a case by case basis whether a surveillance system by an individual bookstore meets the ordinance requirement of visibility. There

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would be numerous disputes and evidentiary hearings on whether the surveillance systems devised by the various picture arcade operators satisfy the Court's interpretation of the visibility requirements of the ordinance. The use of alternative surveillance measures will undermine the crime detection and deterrent purposes of the ordinance. A surveillance system can easily break down or be vandalized. Law enforcement and other health and safety officials would be dependent on the bookstore operators to keep such surveillance devices functional.

Justification for this concern is demonstrated by the difficulty City officials encountered when they attempted to view the lighting in the picture arcade viewing areas in Goldie's at 201 North 12th Street. Following the encounter at that location, a detective observed that two video game machines had been placed in a picture arcade viewing area; that the placement had been made since their last inspection of that store; and, that those game machines obstructed the view of the viewing booths located in that area.

13. In addition, in November 1988, the Vice Unit communicated with the Vice Unit in the City of Los Angeles and learned that the City of Los Angeles is experiencing ongoing problems with the alternative surveillance system of mirrors and cameras. The Los Angeles Vice Unit reported that mirrors are being damaged, painted, covered with material, and that some of the mirrors cast poor reflections because of lighting conditions and/or the shape of the mirrors. The camera surveillance systems observed by the Vice Unit in Los Angeles also failed to satisfy the visibility requirements of the ordinance. Such surveillance systems can become an ineffective means of crime detection due to breakage, angle movement, or other modifications such as an application of paint or lipstick. Also, the surveillance equipment could easily be covered by cloth or other obstacles, preventing crime detection. Our detectives have also stated that several of the surveillance mirrors installed in local bookstores were ineffective in terms of viewing the interior of the picture arcade booths. Bookstore owners seek to litigate the issue. Even if a Court sides with our detectives on this question, the bookstores could create another surveillance system which could result in additional time consuming litigation.

14. Based on the department's past experiences with adult bookstore picture arcade operators and operators of other adult movie establishments, this department does not believe the bookstore operators will cooperate with its officers' efforts to ensure compliance with the law. The indifferent and permissive attitude displayed by the bookstores before the above-mentioned injunction order was issued will most likely be the attitude with which the department is confronted if the department attempts to continue enforcing the existing regulations.

# ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

## AN ORDINANCE AMENDING ARTICLE VIII OF CHAPTER 5 OF THE SACRAMENTO CITY CODE, RELATING TO PICTURE ARCADES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

### SECTION 1.

Article VIII of Chapter 5 of the Sacramento City Code is hereby amended to read as follows:

### ARTICLE VIII. PICTURE ARCADES

#### § 5.80. Intent.

It is intended that this Article shall apply to any picture arcade, irrespective of whether its patrons utilize it as a private or membership club or by virtue of any similar or related arrangement. The law enforcement and public health and safety concerns which form the basis for this Article do not vary depending upon whether the premises are open to the public or are operated under a private or membership arrangement.

#### § 5.81. Findings.

Based upon the written material contained in and attached to the Police Department's report, and the staff and public testimony presented to the City Council at its public hearing on Ordinance No. 86-077, which was adopted by the Sacramento City Council on July 15, 1986, the City Council made the following pertinent findings:

(1) There are significant public health and safety concerns created by the occurrence of masturbation and sexual acts within enclosed booths. Specifically, there is an increased danger to other patrons and to employees posed by the presence of body fluids as to which they could come in contact. The danger is the potential for spread of the AIDS virus and the Hepatitis B virus, among others. The unsanitary condition of the booths as described by the police and by the County Health Department is intolerable in any event.

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ORDINANCE NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

(2) All six adult bookstores within the City have private viewing booths wherein adult-oriented videos and movies can be viewed privately.

(3) All of these booths were equipped with doors capable of being locked from the inside.

(4) The viewing booths were in a filthy condition, with body fluids (semen) on the floors, walls, doors and screens.

(5) Many of the booths were furnished with tissue in dispensers, and trash cans containing tissues soiled with semen. From this fact and others set out above, the detectives concluded that masturbation and sex acts were occurring within the booths.

(6) In the booths there were many messages soliciting all types of sexual activities. These messages, often with telephone numbers or other means of contact, were written on doors, walls and screens of the booths.

(7) The detectives observed actual sexual activity occurring in their presence.

(8) The detectives were solicited to participate in sexual activity in the privacy of the booths.

(9) The detectives made a total of five (5) arrests of individuals during the investigation, for charges of violation of prostitution laws or commission of lewd acts.

(10) The detectives contacted representatives of the Vice Units of the Sacramento Sheriff's Office, the San Francisco Police Department, and the Los Angeles Police Department. In the resulting discussions, the detectives learned that those Vice Units have had similar experience to that set out above, within enclosed viewing booths in adult-type arcades or adult bookstores. Each jurisdiction cited law enforcement problems relating to prostitution and lewd acts in those facilities. Representative reports were obtained from these jurisdictions.

Based upon written reports from the Police Department and City Attorney, the reported experiences of other jurisdictions, and the staff and public testimony presented to the City Council at its public hearing on this ordinance, the City Council makes the following additional findings:

(11) In order to address the City's public health and safety concerns and to accomplish the City's crime detection and deterrent purposes in connection with picture arcades:

(a) A requirement that the complete interior of each picture arcade viewing area be visible by direct view with the retina of the unaided eye (except for the aid of corrective lenses) is necessary. Any other system of achieving visibility or maintaining surveillance of the interior,

such as with cameras or mirrors, is not trustworthy and can be easily made ineffective by deliberate or negligent failure to maintain the system.

- (b) A requirement that all picture arcade viewing areas be illuminated with light having an intensity of not less than five (5) foot candles is necessary. This level of lighting will not unduly interfere with the viewing of movies by patrons, will permit law enforcement officers to effectively inspect the business premises, and will deter criminal conduct by patrons. Failure to set a minimum lighting level would allow picture arcade operators to frustrate the City Council's legitimate police power purposes.
  - (c) A prohibition against doors or other blocking devices which prevent immediate and unassisted entry into picture arcade viewing areas is necessary. The existence of doors or other blocking devices impedes law enforcement detection and deterrence of criminal activity and may encourage some patrons to believe that the management intends to provide a safe place for masturbation and other wrongful sexual conduct.
  - (d) A prohibition against maintenance of partially or fully enclosed or concealed booths in a picture arcade is necessary. Even after electronically controlled doors blocking or slowing law enforcement access to picture arcade viewing areas were removed and lockable doors were removed from existing booths, illegal sexual conduct continued in picture arcades with partially enclosed or concealed booths.
- (12) Three was the maximum number of picture arcade viewing areas being maintained by any of the picture arcades within the City as of February, 1988. Maintenance of more than three picture arcade viewing areas within one picture arcade encourages private and secret viewing and undermines the purposes of this ordinance.
- (13) The regulations imposed by this ordinance are reasonably necessary to protect the health, safety and general welfare of picture arcade patrons and other members of the public. This ordinance is an effective remedial measure designed to deal directly with the law enforcement and health and safety issues.

#### **§ 5.82 Definitions.**

As used in this article:

- (a) A "picture arcade" shall mean any place to which the public is admitted, or any public place, wherein one or more picture viewing devices are operated or maintained.
- (b) A "picture arcade viewing area" shall mean a portion of a picture arcade where one or more picture viewing devices are located or actually viewed.
- (c) A "picture viewing device" is any image producing or image reflecting device, including but not limited to still or motion picture machines or projectors, video players, and video screens, which is operated or maintained to show still or motion pictures or images to five (5) or fewer persons per device at any one time.

**§ 5.83 Visibility of Interior and Other Requirements.**

- (a) No picture arcade shall be maintained or operated unless all of the following requirements are met:
  - (1) The complete interior of each picture arcade viewing area shall be visible from the entrance to such picture arcade viewing area.
  - (2) The picture arcade shall be constructed such that the individuals who view the still or motion pictures or images are visible from head to toe from the entrance to each picture arcade viewing area.
  - (3) No partially or fully-enclosed booths or partially or fully-concealed booths shall be maintained in a picture arcade viewing area.
  - (4) No more than three picture arcade viewing areas shall be maintained in a picture arcade.
  - (5) No doors or other blocking devices shall be utilized inside the premises to prevent immediate and unassisted entry into any picture arcade viewing area.
- (b) For the purposes of this article, a person, place or thing shall be deemed visible only if the person, place, or thing is visible by direct view with the retina of the unaided eye (except for the aid of corrective lenses). No alternative surveillance system or systems, such as use of mirrors or cameras, may be used to satisfy the visibility requirements of this article.

**§ 5.84 Lighting.**

During hours of operation, all picture arcades and picture arcade viewing areas shall be illuminated with light having an intensity of not less than five (5) foot candles at any location on any plane. No dimmer switches or other means of dimming shall be installed, used, or maintained in picture arcade viewing areas. Any switching devices installed in a picture arcade or picture arcade viewing area pursuant to Title 24, Part 2, Section 2-5319, Subsection (c) of the Code of California Regulations, or any successor provision, shall not reduce the level of lighting below a minimum of five (5) foot candles at any location on any plane in any picture arcade or picture arcade viewing area.

**§ 5.85. Application.**

The applicability of this article shall not be affected by the utilization or maintenance of a membership or club format or any similar arrangement or form of doing business, if this article would otherwise be applicable. (Ord. No. 86-077, §4)

**§ 5.86. Severability.**

This article and the various parts thereof are hereby declared to be severable. Should any section of this article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the article as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

**§ 5.87. Time for Compliance.**

This article shall be applicable to any picture arcade which opens for business after the effective date of this article.

Any picture arcade in existence prior to the effective date of this article, and made illegal hereby, shall conform to the provisions of this article within three (3) months after the effective date of this article.

**DATE PASSED FOR PUBLICATION:**

**DATE ENACTED:**

**DATE EFFECTIVE:**

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MAYOR





**OFFICE OF THE  
CITY ATTORNEY**

JAMES P. JACKSON  
CITY ATTORNEY

THEODORE H. KOBAY JR.  
ASSISTANT CITY ATTORNEY

SR. DEPUTY CITY ATTORNEYS:  
SAMUEL L. JACKSON  
WILLIAM P. CARNAZZO  
GARLAND E. BURRELL, JR.

Law and Legislation Committee  
City Hall  
Sacramento, California 95814

**CITY OF SACRAMENTO**  
CALIFORNIA

January 24, 1990

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DEPUTY CITY ATTORNEYS:  
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KATHLEEN L. MCCORMICK  
TIMOTHY N. WASHBURN  
SABRINA M. THOMPSON

Honorable Members in Session:

**SUBJECT: Proposed Ordinance Amending Picture Arcade Regulations**

**SUMMARY:**

This report discusses the background that leads to the necessity of amending the picture arcade ordinance, the terms of the proposed amendments, and the legal analysis supporting the recommendation that the City Council adopt the Ordinance attached to the Police Department's report.

**BACKGROUND:**

The Police Department's report describes some of the Department's efforts to regulate sexual misconduct occurring in picture arcades located within the City. In particular, that report reveals that virtually the same law enforcement and health concerns, which existed before the Ordinance was amended in 1986 continue to exist. Public masturbation continues to occur in picture arcade booths. The report evidences that picture arcade operators, through their respective employees, have exhibited a passive, indifferent, and permissive attitude with respect to the wrongful conduct, including public masturbation, engaged in by some of the patrons using these viewing booths. This attitude has been unyielding both in the City and in the County.

The City filed an action on October 7, 1986, in which it sought to enjoin several picture arcade operators from violating the City's picture arcade regulations. The City sought to enjoin, among other things, the defendants' use of the electronically controlled doors to create fort-like areas within which their patrons were encouraged to use picture

arcade viewing booths. All the defendants sued in the case had devised purported private picture arcade club membership applications for the express purpose of avoiding the "City's recent change in ordinance." All membership applications contained the following type of language:

"Due to our City's recent change in ordinances, we have decided to start a new concept in viewing and enjoying the many movies we now show."

The defendants in the suit did not cease maintaining fully enclosed booths in areas sealed or blocked by electronically controlled doors until after the Sacramento Superior Court granted the City's request for issuance of a preliminary injunction.

The defendants' disagreement with the City's effort to preclude illegal public sex acts is revealed in their opposition papers to the City's request for injunctive relief as follows:

"No thought has been given to methods of determining that more than one person is present in a booth so that actual types of intercourse, which may lead to the spread of the disease, as opposed to the mere presence of semen, which has no evidentiary support as leading to disease, could be prevented. . . . [I]t seems beyond dispute that stepping on semen is not going to give anyone disease. [Defendants' opposition on page 8, lines 24-26, and page 9, lines 5-6; emphasis added.]"

This statement shows defendants' condonement of public masturbation in picture arcade viewing areas, and a need for explicit regulations to reduce its incidence and to facilitate effective law enforcement efforts.

Subsequent to the Court's issuance of the preliminary injunction, the defendants established their respective elevated mirror surveillance systems as their purported means of satisfying the "interior visibility" requirements of the ordinance. The City challenged this construction of the ordinance in a motion for summary judgment in which it sought issuance of a permanent injunction. That motion was denied by the Court on the ground that there was a need for trial on the following factual issue: whether the surveillance systems devised by picture arcade operators "renders the complete interior of the picture arcade where the pictures are viewed as visible as if observed directly from the entrance to the picture arcade." The Court further stated that the City Council should amend its ordinance to express its intention in words if it expects the Court to "outlaw the use of indirect viewing mechanisms such as cameras, mirrors, anything other than direct eye sight." The Court also indicated that the City Council should express its intent in words if it wants picture arcades to "be well illuminated."

Since potential litigation on the various alternative means of surveillance which could be devised by picture arcade operators seems endless, and minimum lighting conditions are not established in the ordinance, this office recommended to the Police Department that consideration be given to the Court's admonition that the City amend its ordinance as the Court indicated. It is recommended that this intent be expressly stated in the ordinance. The specter of being subjected to repeated litigation to determine whether or not the surveillance systems devised by picture arcade operators operate sufficiently to satisfy the visibility requirements of the ordinance, as interpreted by the Court above, is part of the reason for this recommendation in favor of the amendment.

The Police Department's concerns about this recent construction of the ordinance are well-taken. As the Police Department explains, the Court's interpretation of the ordinance can result in the bookstores' use of surveillance systems that can easily be rendered ineffective. Reasonable anticipation of such problems is itself sufficient to justify the passage of this proposed ordinance to prevent the use of surveillance devices. County of Sacramento v. Superior Court (1982) 137 Cal.App.3d 448, 455. Therefore, to head off continuous litigation, it is advisable to resolve these issues through passage of the proposed ordinance which clarifies what is in fact required of the operator and which sets forth specifically the intent of the Council.

**ORDINANCE TERMS:**

It is proposed that the City Council enact a new picture arcade ordinance. The new ordinance retains all components of the existing regulations, adding additional provisions to clarify the Council's intentions. The proposed ordinance confirms the requirement that the complete interior of each picture arcade viewing area be visible upon entrance to the picture arcade viewing area. The proposed ordinance also continues the requirement that no partially or fully enclosed or concealed viewing booths be maintained.

The visibility requirements of the new ordinance have been written to expressly state the intent of the City Council that direct and complete visibility by use of the naked eye is required. The new ordinance specifically prohibits the use of electronically controlled doors, and other such blocking devices or mechanisms in the arcade viewing areas that undermine the crime deterrent and detection purposes of the ordinance. It establishes a minimum level of lighting for the arcade. In addition, the ordinance limits to three the number of areas in the picture arcade where the regulated movies or pictures can be shown. This limitation is intended to prevent the regulated bookstores from frustrating or undermining the purposes of the ordinance by maintaining numerous viewing areas and maze-like configurations located in various parts of the premises.

Further detail to the meaning of the term "picture arcade" is provided to ensure that the scope of the ordinance includes video machines and video tapes. It is recommended that the term be expanded so that it is clear that any type of visual presentation is covered, not just movie projections.

It is anticipated that these recommended amendments will prohibit bookstore operators from escaping and/or frustrating the purposes of the ordinance by eliminating any potential for a court to construe the ordinance contrary to the clear intent of the City Council. That purpose is the prevention and/or deterrence of public masturbation and other wrongful conduct in picture arcades, thereby reducing crime and maintaining public health and decency standards. Safety and the general welfare of patrons and the public is also a concern of the Council and that purpose is evidenced by, among other things, the minimum level of illumination required by the ordinance.

**LEGAL ANALYSIS:**

The City's police power to regulate picture arcades was observed by the Court in People v. Perrine (1975) 47 Cal.App.3d 252, 258:

"A picture arcade is a business, carried on in a place which the public generally is invited to enter and use. Since it is a place of entertainment, its patrons are not expected to enter with the solemnity of a business visitor at a mercantile establishment. Ordinarily, those entering picture arcade[s] are seeking amusement, relaxation or excitement, possibly sexual stimulation or gratification, depending on the taste or moods of the individual and the kind of pictures exhibited. Among such visitors it is foreseeable that some will be predisposed to conduct which is offensive, dangerous to others and even unlawful. The potential for misuse of the premises for law violation, and for bodily harm to law-abiding patrons, is obvious, as is the concomitant need for continuous supervision. (Emphasis added.)

In People v. Adult World Bookstore (1980) 108 Cal.App.3d 404, the Appellate Court ruled that local governmental agencies may attempt to directly control the wrongful conduct that is engaged in by some of the patrons in picture arcades; and may go so far as to close these arcades if certain legal requirements are satisfied. The Court indicated that if local agencies in charge do not assume an active role in preventing such sexual misconduct, law-abiding bookstore patrons may be reluctant or unwilling to exercise their first amendment freedoms in picture arcades because these patrons are offended by public masturbation and other wrongful conduct. The Court indicated that:

"Not everyone who enters a dirty bookstore (euphemistically adjectived "adult"), expects to be molested, propositioned, or subjected to an open view of live homosexual acts of others. Indeed, in entering such a store, a member of the public exercises his or her own right of privacy and the First Amendment right to see, read, and observe on film sexually explicit, even sordid, activities. This is what the store purports to offer. To attribute to each incoming customer the concurrent expectation inter alia that he or she will be solicited to perform sexual acts through the "glory hole" of an adjoining motion picture booth would have a chilling effect upon such fundamental rights. It follows that those who perform sexual acts within view of neutral customers of the stores, or who expose themselves to them or solicit them to perform or participate in sexual activity, undeniably do so in a place open to the public and with the reasonable expectation that the customers (at least certain of them) are likely to be offended." Id. at 410.

A local government's interest in ensuring that the interior visibility requirements of its ordinance are enforced was succinctly expressed as follows in Ewap, Inc. v. City of Los Angeles (1979) 97 Cal.App.3d 179-190:

"A city has substantial interest in preventing the kind of dangerous or unlawful conduct as well as the health and safety problems, which may be anticipated in a picture arcade where the booths are concealed or enclosed. The prohibition of such booths furthers the city's interest in deterring and detecting the use of the premises for such unlawful activity.

"That governmental interest is unrelated to the suppression of free expression and the requirement that the interior of the booth be visible does not restrict First Amendment freedoms. There is no restriction on either the content of the pictures or their dissemination."

Section 103.101(i) of the Los Angeles Municipal Code has a "visibility of interior" requirement practicality identical to the "visibility of interior" requirement of the City of Sacramento's picture arcade ordinance. Despite the fact that the visibility requirement in Los Angeles Municipal Code Section 103.101(i) merely stated, "the permittee shall not maintain any picture arcade unless the entire interior of such premises wherein the pictures

are viewed is visible upon entering into such premises," the Appellate Department of the Superior Court refused to construe the ordinance as permitting anything other than direct visibility with the naked eye. People v. B&I News, Inc. (1984) 164 Cal.App.3d Supp.1.

Plaintiff Arcade Operators argued that:

"[V]isibility could be maintained by means of a surveillance system of mirrors or cameras which would reveal the interior of booths without exposing customers to the unwanted scrutiny of other customers or passersby." Id. at Supp.8.

In responding to plaintiff's argument, and upholding a prohibition against the use of surveillance devices, the Court stated:

"We question whether such alternative procedures would be any less intrusive than that which the City Council chose. In any event, these contentions are properly addressed, not to this Court, but to the City Council which enacted the ordinance in question. Under the police power, a municipality may impose regulations upon the construction and maintenance of business premises reasonably necessary to protect the health, safety and general welfare of the business patrons and other members of the public. 'Every presumption favors the reasonableness of a legislative enactment.' Courts should not set aside or disregard the legislative body's determination of a need for the exercise of a police power regulation and the type of regulation necessary to meet the need 'unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted, and of which courts may properly take notice.'" (Emphasis added.) Id.

The B&I News, Inc. case reveals that the City may require the interior visibility requirement of the ordinance to be satisfied only by direct visibility with the naked eye, unaided by other mechanisms which could be devised by the operators of picture arcades. The proposed ordinance amendment is intended to abrogate judicial construction of the City's ordinance which could permit the use of cameras or mirrors, and, in this manner, permit the ordinance to be applied without reference to the health, welfare, and safety concerns the City seeks to remedy.

As observed by the United States Supreme Court in City of Renton v. Playtime Theaters, Inc. (1986) 106 S.Ct. 925, 931:

"[T]he city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems."

Under the City's police power the City "may impose regulations upon the construction and maintenance of business premises reasonably necessary to protect the health, safety and general welfare of patrons of the business and other members of the public." Antonello v. City of San Diego (1971) 16 Cal.App.3d 161, 167; emphasis added. Antonello v. City of San Diego reveals that even though the operation of picture arcades involves constitutionally protected activity:

"[The Constitution] does not guarantee the right to operate them in places and under conditions detrimental to the public health, safety and welfare. To the contrary, the premises upon which plaintiff's engage in business, even though utilized for the exercise of First Amendment rights, are subject to reasonable regulation under the police power." Id. at 166.

Antonello v. City of San Diego also supports the establishment of a minimum lighting level in picture arcade viewing areas. The facts of that case show that the illumination could not be "less than ten (10) foot candles at floor level." (See generally People v. Adult World Bookstore, supra, 108 Cal.App.3d 404, at 410, where bookstore operators were ordered, among other things, to provide higher levels of lighting.)

The proposed ordinance by its terms is designed to prevent crime and generally protect and preserve the quality of the City's neighborhoods, commercial districts, and the quality of urban life, not to suppress the expression of unpopular views. City of Renton v. Playtime Theaters, Inc., supra, at 929. As the United States Supreme Court indicated in Arcara v. Cloud Books, Inc. (1986) 92 L.Ed. 568, 577, linking together the words sex and video viewing booths is not enough to extend First Amendment protection to illegal sexual activity: "The First Amendment is not implicated by the enforcement of a public health [and safety] regulation of general application against the physical premises" in which books happen to be sold and movies or videos are shown.

The proposed ordinance is accordingly a constitutionally valid regulation. See County of Sacramento v. Superior Court, supra, 137 Cal.App.3d 448, at 454.

Re: Proposed Ordinance Amending Picture Arcades Regulations  
February 22, 1990  
Page 8

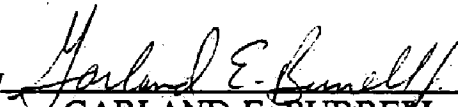
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**RECOMMENDATION:**

It is recommended that the Law and Legislation committee endorse the ordinance attached to the Police Department's report for enactment by the City Council.

Respectfully submitted,

JAMES P. JACKSON, City Attorney

By   
GARLAND E. BURRELL, JR.  
Sr. Deputy City Attorney

GEB/jg

Law and Legislation  
March 15, 1990  
D-All

SACRAMENTO COUNTY



SHERIFF'S DEPARTMENT

Glen Craig  
Sheriff

February 23, 1990

Chairperson and Members  
Board of Supervisors  
County of Sacramento  
700 H Street, Room 2450  
Sacramento, CA 95814

RE: Regulation of Picture Arcade Booths; Amendment of the County's Picture Arcade Ordinance to: Prohibit Electronically Controlled Doors, More Specifically Define the Term "Picture Arcade", More Specifically Define Visibility Requirements, Limit the Number of Picture Arcade Viewing Areas on the Premises, and to Specify a Minimum Level of Illumination.  
Agenda - March 6, 1990 - Item No. \_\_\_\_\_

SUMMARY

It is recommended that the Board of Supervisors adopt the proposed picture arcade ordinance which makes the following changes in the existing ordinance: Prohibits the use of electronically controlled doors and all other doors in picture arcades; elaborates on the meaning of the term "picture arcade" and on the interior visibility requirements; limits to three the number of picture arcade viewing areas; and specifies a minimum level of illumination for the arcade.

This report summarizes the observations and findings of recent investigation by this Department and the Sacramento City Police Department into unlawful conduct of certain patrons within adult bookstores located in the unincorporated area of Sacramento County and the City of Sacramento. The report covers the conclusions of the Sacramento County Health Officer as to health and safety concerns created by unlawful conduct in picture arcades. The Department has concluded, based upon current facts revealed by these investigations, that certain factors encourage unlawful conduct and increase the risk of serious public health concerns, including the potential for spread of Acquired Immune Deficiency Syndrome ("AIDS") in these picture arcades. These factors include enclosed, or partially enclosed viewing booths, poor illumination within the viewing area, and the failure to observe the interior of all booths from the entrance to the arcade. Unless the ordinance expressly states that the interior visibility requirement is satisfied only by direct visibility with the naked eye, we

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Chairperson and Members  
Board of Supervisors

believe bookstore operators will continue to devise mechanisms to frustrate the obvious crime detection, crime deterrent and safety and health concerns to which the ordinance is directed. The report incorporates herein by this reference the Sacramento City Police Department's investigation as reported by Chief Kearns in his February 26, 1990, report to the City Council. Such report is included herein as Exhibit "A". Exhibit "A" reveals that the Police Chief is recommending to the City Council the adoption of a picture arcade ordinance which is identical to the one this Department is recommending be adopted by the County and said exhibit includes a copy of the City's proposed ordinance and a copy of the City Attorney's legal analysis.

#### BACKGROUND AND INVESTIGATION

From April, 1987 through September, 1988, investigators from the Vice Unit of the Sacramento County Sheriff visited two adult bookstores located within the unincorporated area of Sacramento County, i.e., the "Adult Supermarket" located at 4177 Florin Road, and "Adult World Books and Video" located at 5138 Auburn Boulevard. The detectives made sporadic checks of these two picture arcades and did not carry on a surveillance continuously over this period of time. During these investigations, Sheriff's investigators made the following reports and observations:

1. Both adult bookstores maintain booths that violate Section 4.54.160 of the Sacramento County Code (the visibility of interior and booth prohibition requirements).
2. Both adult bookstores operate viewing booths where adult-oriented videos and movies are viewed privately in partially enclosed or partially concealed booths. The booths were so positioned so as to preclude all the interior of the picture viewing area from being visible upon entrance to such viewing areas. No bookstore in Sacramento County has more than one viewing area. Most of the viewing areas contain about fifteen (15) booths.
3. The booths are often in a filthy condition. Condom wrappers are found on the floor of booths. A substance resembling semen is found on the viewing screens, the walls of partitions that form sides, and on back enclosures for various booths. Tissue or paper towels that appear soiled with a liquid substance resembling semen is found on the floors and in trash cans located in the picture arcade. The floors of some of the booths

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feel sticky to the bottom of the investigators' shoes. The booth areas are permeated with an offensive and malodorous stench that would not be expected in a place where people only use the booths to view videos or movies.

4. In the Auburn Boulevard store, "Adult World Books and Video," investigators observed on ten different occasions males viewing videos and masturbating within these booths. On six different occasions, male and female investigators were solicited for sex acts on the premises and in the parking lot right outside the premises.

At the Florin Road adult bookstore, "Adult Supermarket," two (2) male patrons were observed masturbating while observing videos in the booths, and male and female investigators were solicited for sex acts on the premises on three (3) occasions.

Not included  
in City Council  
packet

Attached to this report and incorporated herein by reference is the Red Light Abatement action filed by the Sacramento County District Attorney on December 9, 1988, as Exhibit B. The action is against Adult World Books and Video located in the unincorporated area of the County on Auburn Boulevard. Attached thereto are declarations of these undercover detectives in support of a preliminary injunction which more specifically details their findings of illegal sexual conduct in these picture arcade booths.

5. On three occasions at both adult bookstores in the unincorporated area of the County, paper towels and tissue soaked with what appeared to be semen were taken from the booths to the District Attorney's Crime Lab for testing; and, on three occasions the substance proved positive for human semen.
6. In an interview held on May 17, 1988, by investigators with the Manager of the adult bookstore located on Auburn Boulevard, "Adult World Books and Video," the Manager indicated that he presently works and has worked in that store for approximately the last 3 1/2 years and has worked for a period of these 3 1/2 years as Manager of "Adult Supermarket" on Florin Road. He indicated that during this period of time, in both stores, he has regularly observed patrons masturbating and has observed sex acts between, male and male, female and male, patrons

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in the booths. He indicated that the viewing booths are open twenty-three (23) hours a day, and are closed one (1) hour a day for cleaning. Cleanup includes washing down the fronts of the machines, the glass, the screens, and the floors, with disinfectant as there is often semen located on these areas of the booths. He indicated he has often found wadded tissue, paper towels, and condoms in the booths.

7. Various business owners located within the same business complex on Auburn Boulevard where "Adult World Books and Video" is located, indicate that they have observed within the common parking lot shared by these businesses and "Adult World Books and Video", the following conduct: Various males cruising the parking lot in vehicles, one male store owner was solicited for sexual acts by one of these male cruisers; adult magazines discarded in the parking lot depicting sexual acts by males and females, males and males; condoms in the parking lot; dildos and other sexual rubber "toys" and apparatus in the parking lot; and homosexual activity, such as solicitation for sex acts, actual sex acts, and "necking" by males in parked cars in the parking lot.
8. After consultation with Betty G. Hinton, M.D., M.P.H., Sacramento County Health Officer, she advised that semen is a potentially infectious material capable of transmitting both the Hepatitis B virus and the HIV virus (the AIDS virus, Acquired Immune Deficiency Syndrome). She indicated that a dangerous health risk to contracting the above two viruses does exist as semen can be easily introduced by touch from the video machine screen or other place of deposit into the body through mucous membrane contact, i.e., hand to eye, hand to mouth, or hand to penis. (See letter from Dr. Hinton dated July 7, 1988 attached hereto as Exhibit C and incorporated herein by this reference.)

The Department's effort to enforce the County ordinance has been difficult and frustrating. Numerous citations have been issued to these two bookstores for the existence of booths which are enclosed or partially enclosed and which are not visible upon entry to the arcade. To date, both bookstores still do not comply with the code. Bookstores have been cited, and the bookstore operators have pled guilty, have paid their fines, and have had discussions with detectives regarding the requirements of the ordinance. As the same violations continue to reoccur, regardless

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of this citation process, detectives have concluded that the operator of these two bookstores does not willingly seek to comply with the County ordinance. Despite the fact that the Vice Unit has acted in good faith and tried to get bookstores to comply with the ordinance over a significant period of time, said action has proven futile.

The lack of good faith effort on the part of adult bookstore owners is exemplified by the conduct of the operators of the Adult World Books and Video store located on Auburn Boulevard. That bookstore and picture arcade was sued by the Sacramento County District Attorney on October, 1985. As a result of that lawsuit a permanent injunction was issued against the bookstore requiring the operators to prevent "lewd acts" from occurring on the premises of any business they maintain or operate within the County of Sacramento. The People of the State of California v. Reliable Enterprises, Inc., et al., Superior Court File No. 303062; People v. Adult World Bookstore (1980) 108 Cal.App.3d 404; also see County of Sacramento v. Superior Court (Goldie's Bookstores, Inc.) (1982) 137 Cal.App.3d 448. The lawsuit was the result of lewd and open sexual acts occurring in the picture arcade booths and the Court's order was an attempt to prevent that conduct. Now, three years later the same situation has reoccurred and the District Attorney is again filing suit under the Red Light Abatement laws to prevent the operators of the bookstore from condoning such illegal sexual conduct in a public place. See the attached Exhibit B, The People of the State of California v. Janra Enterprises, a California corporation, d.b.a. Adult World and formerly d.b.a. Reliable Enterprises, Inc., et al., Superior Court File No. 505893, filed December 8, 1988.

Pursuing further enforcement through the courts in the form of an injunction to require proper booth construction does not appear to be a viable alternative at this point until the ordinance is amended as proposed. The City of Sacramento's experience in the Sacramento Courts in an attempt to enforce a similar City ordinance provides our concern in this area.

Enforcement of the City ordinance through the criminal process in the Sacramento Municipal Court in the case of People v. Vasquez, Case No. 86M14235, (January 26, 1987) led the Court to interpret the visibility requirement of Section 5.84 so as to disregard the requirement that the interior of each booth be visible at once from the entry to the entire picture arcade. Instead, the Court interpreted the Code to require total visibility only from the entry to each individual booth. This interpretation totally emasculates the City Code section which was intended to prohibit

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Chairperson and Members  
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enclosed or partially enclosed booths. The Court's interpretation, therefore, allows for no restrictions on the construction of picture arcade viewing areas, authorizes three sided booths, and defines each three-sided booth as a separate and distinct arcade.

In the case of City of Sacramento v. Goldie's Bookstores, Inc., Case No. 343906, the City sought injunctive relief. The Superior Court ruled in that case that the visibility section of the City Code could be satisfied by the use of mirrors or other surveillance systems as opposed to visibility from the entrance to the picture arcade with the unaided eye. The problem presented as a result of this decision is that the City, and the County, must now determine on a case by case basis when a surveillance system by the individual bookstores will meet the Court's requirement of visibility. This Court ruling is likely to result in numerous disputes and evidentiary hearings on whether the surveillance systems devised by the various picture arcade operators satisfy the Court's interpretation of the visibility requirements of the ordinance. The use of alternative surveillance measures, as well as electronically controlled doors that sound like alarms when opened, will undermine the crime detection and deterrent purposes of the County ordinance. A surveillance system can easily break down or be vandalized. The Court's interpretation of visibility therefore allows for the use of an overhead mirror or surveillance device and an unending maze of four-sided booths with lockable doors. Such a physical construction will definitely undermine crime detection.

In November, 1988, the Department's Vice Unit communicated with the Vice Unit of the City of Los Angeles and learned that the City of Los Angeles is experiencing ongoing problems with the alternative surveillance system of mirrors and cameras. The Los Angeles Vice Unit reported that mirrors are being damaged, painted, covered with material, and that some of the mirrors cast poor reflections because of lighting conditions and/or the shape of the mirrors. The camera surveillance systems observed by the Vice Unit in Los Angeles also fail to satisfy the visibility requirements of the ordinance. the surveillance systems can become an ineffective means of crime detection due to breakage, paint or lipstick. Also, the surveillance equipment could easily be covered by cloth or other obstacles, preventing crime detection. City Police Department detectives have stated in the pending injunctive action that several of the surveillance mirrors were ineffective in terms of viewing the interior of the picture arcade booths.

It is hard to believe that the picture arcade operators do not know what type of sexual acts occur in picture arcades. The

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bookstore operators certainly know what condoms are used for and should have observed used condoms and condom wrappers in trash cans, just as the detectives observed them on the floors and in the trash cans inside booths during their investigations. It is well known that intercourse or masturbation in a public place is unlawful whether it occurs in a public picture arcade or any other public place. Penal Code Section 647, Subsection (a) and (b). The condoning or indifferent attitude toward the sexual acts occurring in these booths as evidenced by the condom wrappers establishes the need to require the viewing areas to be located in a viewing-configuration where the County does not have to depend on the good graces of bookstore operators to ensure the County Code Section 4.54.160 is enforced. In fact, the manager of the "Adult World Books and Video" acknowledged that sexual activity occurs regularly in these arcades and the bookstore's sole response seems to be to use disinfectant to clean the premises. There seems to be no willingness to cooperate with this Department and to conform to the requirements of the County Code.

The Department has had experience with adult bookstore operators in this community where bookstore operators have given the public a signal or message that the movie or picture arcade viewing areas is generally a safe place for sexual conduct without interference by management. In People v. Adult World Bookstore, 108 Cal.App.3d 404, 407-408 (1980), investigators from the Vice Units of both the Sacramento County Sheriff's Department and the Sacramento City Police Department experienced problems with bookstore operators in Sacramento that were continually supplying their patrons "with kleenex tissues and a wastepaper basket". Id. at 407. Moreover, in one of the bookstores, "an instance of posted instructions (was located) on the outer side of a door of one booth pertaining to the proper signal for a specific form of sexual activity". Id. Also involved was "an instance of an employee of ... (a bookstore) warning patrons within the store of the potential presence of a police officer." Id.

Based on the experience of the City of Sacramento, as explained in the Police Chief's report, Exhibit A, and this Department's experience, it is recommended that a minimum level of lighting for picture arcades should be included in the ordinance for safety reasons and for crime prevention and detection. Investigation by detectives included contact with Bryan Dilts, Electrical Engineer with Sacramento County. Mr. Dilts has a degree in electrical engineering and his duties with the County include setting the levels of lighting for use in County buildings, e.g., garages, office building interiors, computer and video rooms, etc. He has recently recommended a level of 30 foot candles for a

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Sacramento County office where lighting is necessary for spaces with visual display terminals.

Mr. Dilts discussed generally that the recommended practice for lighting spaces with visual display terminals in offices is a maximum average level of 30 foot candles as discussed by the Illuminating Engineering Society Lighting (IES) Publication. Such standards found in the IES Publications are generally accepted as the standard used in the engineering profession and the lighting industry. For comparison purposes, Mr. Dilts indicated that IES standards also provide for recommended average levels of light from 5-10 foot candles for inactive areas of warehouses; 20-50 foot candles for general office use; commercial businesses - clubs and lodge rooms, 20-50 foot candles; commercial businesses - merchandising such as department stores, 30 foot candles for high activity areas, 20 foot candles medium activity, and 10 foot candles for low activity; 20-50 foot candles for reading at a desk.

Having in mind the necessity of law enforcement to view the picture arcade area in order to deter and detect criminal conduct therein and to provide for the safety of patrons in the picture arcade as well as providing for proper viewing of the video, movie, or other viewing medium, it is this Department's opinion that a minimum level of lighting of 5 foot candles is recommended in the picture arcade. Such minimum level of lighting is also recommended by Mr. Dilts. See Exhibit D attached hereto.

Based on the foregoing experiences and observations, this Department believes that direct observation of the viewing area of the picture arcade should be expressly required by the ordinance. The use of a mirror surveillance system should not be allowed because the system is fraught with enforcement problems. A minimum level of lighting ought to be required for safety and crime detection and deterrent purposes.

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RECOMMENDATION

It is recommended that the Board of Supervisors adopt the proposed ordinance enclosed with County Counsel's report dated February 23, 1990, which regulates the use of electronically controlled doors, the number of allowable picture arcade viewing areas, the level of required illumination, and which elaborates on the meaning of the term "picture arcade" and direct visibility requirements.

Very truly yours,



GLEN CRAIG, Sheriff

GC:EPD:mcs  
1-adult books, 145

Exhibit B  
Part 2 of 4



# COUNTY OF SACRAMENTO

HEALTH DEPARTMENT  
RONALD L. USHER, Ph. D., DIRECTOR

PUBLIC HEALTH DIVISION  
BETTE G. HINTON, M.D., M.P.H.  
COUNTY HEALTH OFFICER  
3701 Branch Center Road  
Sacramento, California 95827  
(916) 366-2181

July 7, 1988

To: Terrence Brown  
Sacramento County District Attorney's Office  
Consumer Fraud Division

Bob Armstrong  
Sacramento County Sheriff's Office

From: Bette G. Hinton, M.D., M.P.H. *BGH*  
Health Officer

I have been asked to write to you concerning the health risks of certain practices which may be taking place in local video shops. My understanding is that these shops have small booths which contain a viewing screen activated by quarters, and that it is common practice to masturbate in the booth while viewing pornographic movies.

- Semen is a potentially infectious material - capable of transmitting both Hepatitis B and HIV. If these booths contain semen in areas which are likely to be touched by the next customer (such as on the video screen or the quarter receiver), the semen could certainly be unconsciously introduced into the body through mucous membrane contact - i.e., hand-to-eye, hand-to-mouth or hand-to-penis. This would be particularly dangerous if there is a high turnover rate of customers such that the semen would be relatively fresh when a new customer enters the booth.

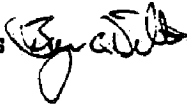
If I can be of further help in this matter, please feel free to call.

EXHIBIT "C"

**COUNTY OF SACRAMENTO**  
Inter-Department Correspondence

March 31, 1989

To: Elaine DiPietro

From: Bryan Dilts 

Subject: Lighting Levels for Picture Arcade Video Viewing Areas

You have requested a review of specifics for lighting levels that should be mandated by the County in commercial video viewing areas. I will attempt to delineate the issues and the technical responses for each of the issues.

Issue	Response
Safety	<p>It is desirable for lighting in the video viewing area to be as bright as possible if the objective is to solely provide the ability to identify an activity taking place in that area. The <u>maximum</u> level would be 10 x the surrounding light level.</p> <p>In a discussion of safety, there is a table in the IES handbook that shows minimum levels for safety. With a setup for a video parlor it could be demonstrated that there is a high level of activity and with the limited space a high degree of hazards requiring visual detection. With these conditions the absolute minimum light level is 5 footcandles on all surfaces. This would require a design for an average light level to be higher than 5 footcandles. In reality the average level could be as high as 20 footcandles.</p>
Viewing Comfort	<p>The viewer needs the clearest view without the interference from background glare or levels of light that would tend to wash-out the image on the video monitor. To eliminate a glare problem video screens should be positioned such that there are no fixtures that would be visible by the viewer while looking at the screen. This can be accomplished by positioning the monitor with the screen facing a wall with no fixtures between the screen and the wall or by the use of cut-off (parabolic) type fixtures that limit the angle of direct illumination. In any instance the IES (Illumination Engineering Society) <u>maximum</u> light level in an area around a video display</p>

device is 30 foot-candles. Ideally the only light would be for exiting purposes from the video display area. This goes back to the minimum safety levels of 5 footcandles on any surface.

**Recommendation**

It is recommended that the standard be a minimum of 5 footcandles at any point in the room. The lighting level should be designed to provide this minimum level at the end of the life of the lamp/luminaire combination.

Verification of these levels should be by a calibrated meter with readings taken normal to the surfaces. If the system has just been relamped when the measurements are taken the system measurement should factor in the expected lamp life characteristics.

The lighting design should not allow dimming switches for the area. Given the requirements of the California Administrative Code Title 24 for the ability to switch 50% of the lights off and maintain adequate lighting throughout, the lighting should be designed to have the 5 footcandle minimum level with half the lamps switched off. This would apply to new construction only and should be as part of the building code compliance check.

The lighting should be required to be on during all normal business hours to provide for public safety.

BD:bd

cc: File S8996  
Ken Murai  
Fred Mason

Exhibit B  
PART 4 OF 4  
**RECEIVED**  
MAR 0 8 1990  
CITY ATTORNEY'S OFFICE

COUNTY OF SACRAMENTO  
Inter-Department Correspondence

February 23, 1990

**To:** CHAIRPERSON AND MEMBERS  
Board of Supervisors  
**From:** ELAINE P. DiPIETRO  
Deputy County Counsel  
**Subject:** Picture Arcade Ordinance Amendments  
Agenda - March 6, 1990 - Item No. \_\_\_\_\_

RECOMMENDATION:

Enclosed herewith are: (i) an ordinance the enactment of which would effectively outlaw booths within adult bookstores and arcades for the viewing of films; and (ii) a letter to the Board by the Sheriff dated February 23, 1990, recommending enactment of the ordinance and explaining his reasons.

The Board of Supervisors may alternatively, either: (i) introduce the enclosed ordinance during its meeting on March 6, 1990, and enact it on March 13, 1990, or (ii) schedule a public hearing for a later date and direct the Sheriff to notify businesses impacted by his proposed regulations thereof and of the hearing so that they may appear and comment.

DISCUSSION:

The discussion herein covers the terms of the proposed ordinance, the background that has led to the necessity of the amendment of the picture arcade ordinance, and a legal analysis of that proposed ordinance.

I

ORDINANCE TERMS

It is proposed that the Board of Supervisors enact an amended picture arcade ordinance with detailed factual findings and a purpose clause. The new ordinance retains components of the existing regulations, adding additional provisions to clarify the Board's intention. The proposed ordinance confirms the requirement that the complete interior of each picture arcade viewing area be visible upon entrance to the picture arcade.

viewing area. The proposed ordinance also continues the requirement that no partially or fully enclosed or concealed viewing booths be maintained.

The visibility requirements of the new ordinance have been written to expressly state the intent of the Board of Supervisors that direct and complete visibility by use of the naked eye is required. The new ordinance specifically prohibits the use of electronically controlled doors, and other such blocking devices or mechanisms in the arcade viewing areas that undermine the crime deterrent and detection purposes of the ordinance. It establishes a minimum level of lighting for the arcade. In addition, the ordinance limits to three the the number of areas in the picture arcade where the regulated movies or pictures can be shown. This limitation is intended to prevent the regulated bookstores from frustrating or undermining the purposes of the ordinance by maintaining numerous viewing areas in maze-like configurations located in various parts of the premises.

Further detail to the meaning of the term "picture arcade" is provided to ensure that the scope of the ordinance includes video machines and video tapes. It is recommended that the term be expanded so that it is clear that any type of visual presentation is covered not just movie projections.

It is anticipated that these recommended amendments will prohibit bookstore operators from escaping or frustrating the purposes of the ordinance by eliminating any potential for a court to construe the ordinance contrary to the clear intent of the Board of Supervisors. That purpose is the prevention and deterrence of public masturbation and other wrongful conduct in picture arcades, thereby reducing crime and maintaining public health and decency standards and the safety of the public.

## II

### BACKGROUND

The Sheriff Department's report dated February 23, 1990, discusses some of the Department's efforts to regulate sexual misconduct occurring in picture arcades located in the unincorporated area of the County of Sacramento. In particular, that report reveals that virtually the same law enforcement and health concerns, which existed before the ordinance was drafted in 1983 continue to exist. Public masturbation continues to occur in partially enclosed picture arcade booths, as well as in fully enclosed booths. The report evidences that picture arcade operators, through their respective employees, have exhibited a

passive, indifferent, and permissive attitude with respect to the wrongful conduct engaged in by some of the patrons using these viewing booths. This attitude has been unyielding both in the City and in the County. The Sacramento County District Attorney, in the face of such recalcitrance, filed on December 8, 1988, a lawsuit under the Red Light Abatement Law (Penal Code §11225), against a picture arcade operator in the unincorporated area of the County in order to halt such illegal sexual conduct. In that action, Adult World Bookstore is charged with contempt, based on the Court's previous 1985 order that no lewd acts occur in the picture arcade. The operator is also charged with the creation of a nuisance. People of the State of California v. Reliable Enterprises, Inc., et al., Sacramento County Superior Court File No. 303062. Pending the outcome of that lawsuit, the Superior Court has issued an injunction prohibiting the operation of a picture arcade at that site due to the lewd conduct occurring in that facility.

Coupled with the recalcitrant attitude of picture arcade operators, recent rulings by the Sacramento County Superior Court have made enforcement of the ordinance difficult. In a recent case where the City sought to enforce its picture arcade ordinance by securing an injunction against the use of doors and enclosed booths in viewing areas, City of Sacramento v. Goldies Bookstores, Inc., et al., Court File No. 343906, the Court ruled that such doors were permissible as long as alternative methods of visibility were used to see into the viewing area or booths. These alternative methods include mirrors, cameras, or other surveillance techniques. The City's intent in passing the ordinance was to require visibility of the entire viewing area from the entrance to that viewing area with the naked eye so that such surveillance equipment would be unnecessary. The City ordinance is virtually the same as the County ordinance. The County, therefore, as a result of this Court ruling, may be subject to repeated litigation to determine whether or not the surveillance systems invented by picture arcade operators function sufficiently to come within the visibility requirements of the statute as interpreted by the Court above.

This judicial construction of the ordinance totally emasculates the express prohibition found in the ordinance against the use of partially or fully-enclosed booths. This ruling, in effect, would allow the use of partially or fully-enclosed booths so long as mirrors or some other type of camera or movie monitoring system is found by the Court to allow visibility from the entrance of the viewing area into each booth. Thus, the language in the existing ordinance that "no partially or fully-enclosed booths shall be maintained," becomes:

unenforceable and meaningless. The Court stated that the City Council should amend its ordinance to express its intention in words if it expects the Court to "outlaw the use of indirect viewing mechanisms such as cameras, mirrors, anything other than direct eye sights." The Court also indicated that the City Council should express its intention in words if it wants picture arcades to "be well illuminated."

The Sheriff Department's concerns about this recent construction of the ordinance are well taken. As the Sheriff Department explains, the prohibition of enclosed and/or concealed booths under the Court's interpretation of the ordinance, can result in the bookstores' use of surveillance systems that can easily be rendered ineffective. Reasonable anticipation of such problems is itself sufficient to justify the passage of this proposed ordinance to prevent the use of surveillance devices. County of Sacramento v. Superior Court, 137 Cal. App. 3d 448, 455 (1982). Therefore, to head off continuous litigation, and to follow the Court's recommendation, it is wiser to resolve these issues through passage of the proposed ordinance which clarifies what is in fact required of the operator and which sets forth specifically the intent of the Board.

### III

#### LEGAL ANALYSIS

The operation of a picture arcade is an activity protected by the free speech and free press tenets of the First Amendment. The fact that a picture arcade is a profit oriented commercial enterprise or that it may exhibit pictures which are offensive or lacking in social worth does not dilute the protection of these rights. EWAP, Inc. v. City of Los Angeles, 97 Cal. App. 3d 179, 184 (1979); People v. Perrine 47 Cal. App. 3d 252, 257 (1975); People v. Glaze, 27 Cal. 3d 841 (1980). Thus, a local governmental entity cannot: unreasonably control the hours of operation of a picture arcade, People v. Glaze, 27 Cal. 3d 841 (1980); cannot deny an individual a permit or license to operate a picture arcade solely because the individual has been convicted of a crime, EWAP, Inc., supra, 97 Cal. App. 3d 179, Perrine v. Municipal Court, 5 Cal. 3d 656 (1971); and cannot close a bookstore because it exhibits an obscene book or movie, People ex rel. Busch v. Projection Room Theater, 17 Cal. 3d 42 (1976).

However, a local governmental entity may impose reasonable regulations upon the conduct of an economic enterprise including the business of operating a picture arcade. The premises upon which is engaged a business, even though utilized for the

exercise of First Amendment rights, is subject to reasonable regulation under the police power. Under this authority, local government has the power to reasonably regulate and license picture arcades to protect the health, safety, and general welfare of patrons of the business and other members of the public. Antonello v. City of San Diego, 16 Cal. App. 3d 161, 166, 167 (1971); Burton v. Municipal Court, 68 Cal. 2d 684, 689 (1968). Incidental regulation of free speech pursuant to regulation of a business is permitted by the First Amendment if the regulation is necessary to further significant governmental interests, if the governmental interest is unrelated to the suppression of free expression, and if the incidental restriction is no greater than is essential to the furtherance of that interest. Young v. American Mini Theatres, 427 U.S. 50, 63, 49 L. Ed. 2d 310 322, 324, 96 S. Ct. 2440 (1976); EWAP, Inc. v. City of Los Angeles, 97 Cal. App. 3d 179, 189 (1979); United States v. O'Brien, 391 U.S. 367, 377, 20 L. Ed. 2d 672, 680, 88 S. Ct. 1673 (1968). Thus, a local government entity may: close an adult bookstore found to be used as a place for prostitution and lewdness, Arcara v. Cloud Books, Inc., 478 U.S. 697, 92 L. Ed. d2 568, 106 S. Ct. 3172 (1986); require that a licensed manager be present to supervise the premises of an adult bookstore, People v. Perrine, 47 Cal. App. 3d 252; prohibit closed or concealed picture arcade viewing booths, EWAP, Inc. v. City of Los Angeles, 97 Cal. App. 3d 179; require a certain level of lighting, 10 foot candles in an adult bookstore and picture arcade, Antonello v. City of San Diego, 16 Cal. App. 3d 161 (1971); require a license be obtained and a fee paid before an individual engages in such business, Sunset Amusement Co. v. Board of Police Commissioners, 7 Cal. 3d 64, 72 (1972), Burton v. Municipal Court, 68 Cal. 2d 684, 690 (1968); zone picture arcades and adult theaters to certain districts and locations, City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 89 L. Ed. 2d 29, 106 S. Ct. 925 (1986), Young v. American Mini Theatres, Inc., 427 U.S. 50, 49 L. Ed. 2d 310, 96 S. Ct. 2440 (1976); and in some cases, prohibit adult businesses to operate between the hours of 2 a.m. and 6 a.m. Sundance Saloon, Inc. v. City of San Diego, 213 Cal. App. 3d 807 (1989).

Clearly, the County has the police power to regulate picture arcades. As observed by the Court in People v. Perrine, 47 Cal. App. 3d 252, 258:

"A picture arcade is a business, carried on in a place which the public generally is invited to enter and use. Since it is a place of entertainment, its patrons are not expected to enter with the solemnity of a business visitor at a mercantile establishment. Ordinarily those

entering picture arcade[s] are seeking amusement, relaxation or excitement, possibly sexual stimulation or gratification, depending on the taste or mood of the individual and the kind of pictures exhibited. Among such visitors it is foreseeable that some will be predisposed to conduct which is offensive, dangerous to others and even unlawful. The potential for misuse of the premises, for law violations, and for bodily harm to law-abiding patrons, is obvious, as is the concomitant need for continuous supervision." (Emphasis added.)

In People v. Adult World Bookstore, 108 Cal. App. 3d 404 (1980), the Appellate Court ruled that local governmental agencies may attempt to directly control the wrongful conduct that is engaged in by some of the patrons in picture arcades; and may go so far as to close these arcades if certain legal requirements are satisfied. The Court indicated that if local agencies in charge do not assume an active role in preventing such sexual misconduct, law-abiding bookstore patrons may not be able to exercise their First Amendment rights in picture arcades because these patrons are offended by public masturbation and other wrongful conduct. The Court indicated that:

"Not everyone who enters a dirty bookstore (euphemistically adjectived 'adult'), expects to be molested, propositioned, or subjected to an open view of live homosexual acts of others. Indeed, in entering such a store, a member of the public exercises his or her own right of privacy and the First Amendment right to see, read, and observe on film sexually explicit, even sordid, activities. This is what the store purports to offer. To attribute to each incoming customer the concurrent expectation inter alia that he or she will be solicited to perform sexual acts through the 'glory hole' of an adjoining motion picture booth would have a chilling effect upon such fundamental rights. It follows that those who perform sexual acts within view of neutral customers of the stores, or who expose themselves to them or solicit them to perform or participate in sexual activity, undeniably do so in a place open to the public and with the reasonable expectation that the customers (at least certain of them) are likely to be offended." People v. Adult World Bookstore, at 410.

The Board of Supervisors may directly legislate to prevent masturbation and other wrongful acts which bookstore management personnel know or should know occurs in the picture arcade

viewing areas. See generally People v. Adult World Bookstore, 108 Cal. App. 3d 404, 410 (1980), where bookstore operators were ordered, among other things, to provide higher levels of lighting.

A local government's interest in ensuring that visibility requirements of its ordinance are enforced was succinctly expressed as follows in EWAP, Inc. v. City of Los Angeles, 97 Cal. App. 3d 179, 190 (1979):

"A city has substantial interest in preventing the kind of dangerous or unlawful conduct, as well as the health and safety problems, which may be anticipated in a picture arcade where the booths are concealed or enclosed. The prohibition of such booths furthers the city's interest in deterring and detecting the use of the premises for such unlawful activity."

That governmental interest is unrelated to the suppression of free expression and the requirement that the interior of the booth be visible does not restrict either the content of the pictures or their dissemination." (Emphasis added.)

Section 103.101(i) of the Los Angeles Municipal Code has a "visibility of interior" requirement practically identical to the "visibility of interior" requirement of the County of Sacramento's picture arcade ordinance. The Appellate Department of the Superior Court refused to construe the ordinance as permitting anything other than direct visibility with the unaided eye. People v. B & I News, Inc., 164 Cal. App. 3d Supp. 1 (1984). Plaintiff arcade operators argued that:

"... [V]isibility could be maintained by means of a surveillance system of mirrors or cameras which would reveal the interior of booths without exposing customers to unwanted scrutiny of other customers or passersby."  
Id. at Supp. 8.

In responding to plaintiff's argument, and upholding a prohibition against the use of surveillance devices, the Court stated:

"We question whether such alternative procedures would be any less intrusive than that which the city council chose. In any event, these contentions are properly addressed, not to this court, but to the city council which enacted the ordinance in question. Under the

police power a municipality may impose regulations upon the construction and maintenance of business premises reasonably necessary to protect the health, safety and general welfare of the business' patrons and other members of the public. "Every presumption favors the reasonableness of a legislative enactment." Courts should not set aside or disregard the legislative body's determination of a need for the exercise of a police power regulation and the type of regulation necessary to meet the need "unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted, and of which courts may properly take notice." (Emphasis added.) Id.

The B & I News, Inc. case above reveals that it is appropriate for the County to require the interior visibility requirement of the ordinance to be satisfied by direct visibility with the naked eye, unaided by other mechanisms which could be devised by the operators of picture arcades. The proposed ordinance amendment is intended to abrogate judicial construction of the County's ordinance which could permit the uses of cameras or mirrors, and, in this manner, permit the ordinance to be applied without reference to the health, welfare, and safety concerns the County seeks to remedy.

The proposed ordinance by its terms is designed to prevent crime and generally protect and preserve the quality of the County's neighborhoods, commercial districts, and the quality of urban life; not to suppress the expression of unpopular views. City of Renton v. Playtime Theatres, Inc., at 929. As the United States Supreme Court indicated in Arcara v. Cloud Books, Inc., 92 L. Ed. 568, 577 (1986), linking the words sex and video viewing booths is not enough to extend First Amendment protection to illegal sexual activity: "The First Amendment is not implicated by the enforcement of a public health [and safety] regulation of general application against the physical premises" in which books happen to be sold, and movies or videos are shown. And see Antonello v. City of San Diego, 16 Cal. App. 3d 161, 167 (1971), which holds that "it is elementary, under the police power that a municipality may impose regulations upon the construction and maintenance of business premises reasonably necessary to protect the health, safety, and general welfare of patrons of the business and other members of the public."

The ordinance is accordingly a constitutionally valid regulation.

L. B. ELAM, County Counsel

By Elaine P. DiPietro

ELAINE P. DIPIETRO  
Deputy County Counsel

EPD:irb  
m-adult books,,145