

WHY AND HOW OUR CITY ORGANIZED A JOINT COUNTY-WIDE SEXUALLY ORIENTED BUSINESSES TASK FORCE

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I. INTRODUCTION. Public perception changes everyday in America. What was once illegal or at least taboo can slowly shift to acceptable and even commonplace. Unfortunately, this occurrence summarizes the recent history of the proliferation of sexually oriented businesses (commonly known as "SOBs"). Not long ago, pornography and prostitution lurked in the red light districts of the big cities, but today SOBs have redefined themselves, relocated their operations and have become almost as common as traditional movie theaters. Beware, these business operators have a new business strategy, sharp attorneys and the changing American sexual mores on their side. The once shabby exteriors and risque neon lights have been replaced with upscale facilities, prime rib happy hours and even valet service. However, the hard cold facts remain that pornography is a multi-billion dollar a year business that still has strong ties to organized crime and results in increasing local crime statistics. No matter how glossy the Christmas package that it comes in today, pornography and SOBs irrefutably negatively affect your community's moral core, general health and local property values. But there is no one more important in the protection of your city or county from SOBs than you. State statutes and case law give cities and counties the power to regulate such businesses, but it is all dependant on you. It is a task that is time consuming due to the precision required when organizing the necessary task force/committee and drafting the SOB ordinance, but its effects on your community will be quite astonishing.

II. EVER-EVOLVING REGULATORY ENVIRONMENT.

A. WHERE DO YOU STAND TODAY. What aspects of SOBs can your city or county regulate under current federal and state laws? Do you know what SOB regulations are in place in your city and county? When were they adopted? How detailed are the findings of the legislative body and were all of the notice and public hearing provisions fulfilled? Are the regulations geared to protect you in the future or are they barely adequate to protect your city today? These are all questions which you and your governing body need to answer before an informed decision may be made about whether a SOB ordinance needs to be adopted or your SOB ordinance needs to be amended.

B. HISTORY OF SOB ORDINANCES. Prior to the 1970's communities had to rely

on law enforcement and prosecutors to enforce various state and federal laws (largely obscenity and prostitution statutes) for protection from SOBs. But in Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976), the role of local zoning dramatically changed when the Supreme Court upheld Detroit's zoning regulations which applied only to motion picture theaters which exhibited "sexually explicit 'adult' movies." Justice Powell's opinion (as he was the fifth and deciding vote) analyzed the content-neutrality of the ordinance and validated the ordinance "despite its incidental impact on First Amendment interests" for it satisfied the four-part United States v. O'Brien test, 391 U.S. 367, 377 (1968). Thereafter, cities nationwide adopted zoning regulations to begin protecting themselves. Of course, the SOBs, who were financially strong, challenged the new local laws. But in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41, 46-48 (1986), cities received the green light again. Renton's ordinance prohibited adult motion picture theaters from locating within 1000 feet of any residential zone, single or multiple-family dwelling, church, park or school, and the court found it to be a "content-neutral" time, place and manner regulation for it was designed to serve a substantial governmental interest such as to prevent crime, maintain property values and preserve urban life and did not unreasonably limit alternative avenues of communication. Id.

III. PURPOSE OF THIS PAPER. In the last decade numerous city ordinances and county orders have been adopted regulating SOBs. Accordingly, case law grows monthly on the subject. Regarding the legality of SOB ordinances, several excellent papers and books have been written discussing topics such as content neutrality, precision of definitions, hours of operation ("time") restrictions, zoning ("place") regulations, licensing and interior ("manner") regulations, and amortization. But after several years of being involved in the drafting of SOB ordinances, I have only found one resource on "how" to make the legislative record that is often critical to the validity of your ordinance.¹ Therefore, the purpose of this paper is to provide assistance to you in the important aspects of organizing, drafting and adopting a SOB ordinance or amendment to your current SOB ordinance. Please be aware that the courts often address "how" an ordinance was adopted when discussing whether the

¹Chapter 3 "Making The Legislative Record" of Protecting Communities from Sexually Oriented Businesses by Len L. Munsil, Esq. (Southwest Legal Press, Inc. 1996). (Copyright by National Family Legal Foundation, 11000 N. Scottsdale Rd., Suite 144, Phoenix, Arizona, 85254. (602)922-9731 or toll free (888)313-2673.) [I highly recommend this book as a primer for anyone interested in drafting or amending a SOB ordinance.] There is no need to reinvent the wheel. Use your time wisely to seek the help of experts in the field. Several wonderful organizations are willing to help you complete this task. They will help educate you and your council about the choices you have.

court finds the ordinance to be content-neutral; therefore, we know SOB operators like to argue a city/county had ulterior motives to ban constitutionally protected speech when it adopted a SOB ordinance. The best defense to that argument is a strong legislative record and ordinance including a clear preamble with detailed findings of fact, rational basis for adopting narrowly tailored regulations, recorded public hearings, minutes of meetings, land use studies with a map of possible sites where SOBs are allowed to locate after the adoption of the new SOB ordinance,² expert testimony including a health/disease control authority³ and a real estate appraiser,⁴ studies by other communities on the effects of SOBs and, of course, crime statistics. The courts look to whether there is sufficient evidence in the record that the purpose of the ordinance is to lessen undesirable secondary effects. While some evidence of improper motives (such as a statement in the newspaper by a council member about how the immoral acts performed at such businesses wreck moral havoc on the town) is not enough to invalidate an ordinance, a clean, well-established legislative record is worth the effort when the SOB operator is crying to a district court jury about his constitutional rights. Moreover, why needlessly invest the energy and expense to appeal this point to an

² There is no exact answer to this question of “how much land is enough.” For years, the Renton standard of 5% of your city’s total acreage being available for SOB sites was the safe answer, but it is arguably more important today to look at whether the number of reasonably available sites (meaning they are not at the airport, not underwater, et cetera but need not be the most economically alluring) is greater than the number of current SOBs. See Woodall v. City of El Paso, 49 F.3d 1120 (5th Cir. 1995)(“Woodall III”), 959 F.2d 1305 (“Woodall II”), amending 950 F.2d 255 (“Woodall I”). Some cities, such as Cleburne which has two or less SOBs, include a few “extra” sites under the Woodall III test and satisfy the 5% test just to be cautious.

³ This person is very important for he will explain about the rise in STDs and HIV and how by their general nature SOBs have a high incident rate of unprotected sex and other dangerous activities (including drug use) on the premises. This evidence is important in establishing the reasoning for interior restrictions such as proper lighting, “no touch” between the employees and the patrons, and continuous walls in the arcades in order to prevent “anonymous sex” with unknown partners between the booths.

⁴ This testimony will normally include his analysis of real estate studies conducted by other cities (which are cited in the preamble of the SOB ordinance) concerning decreasing property values (and thus loss of tax revenues for the city and loss of value to the owner of the property) for properties located near SOBs. Also his testimony may cover SOB signage and its effects on property values if your city is interested in passing a sign ordinance such as Houston, Texas’ “simple sign” ordinance which limits the number and size of signs that a SOB may have on its property. A copy of this ordinance is also available from IMLA with the copy of the SOB ordinance mentioned herein.

appellate court when you have the opportunity to position yourself to win this issue at the lower level.

IV. WHY OUR CITY DECIDED TO UPDATE ITS SOB ORDINANCE AND THE MISSION OF THE TASK FORCE. In February 1997, based on media coverage of Houston's and Dallas' plans to revise their SOB ordinance, recent cases affirming cabaret restrictions such as buffer zones⁵ and "no-touch" provisions,⁶ prohibition of topless dancing in locations where alcoholic beverages are served or consumed,⁷ and our city's concern with the infiltration of the Dallas-Fort Worth SOBs into our city, the Cleburne City Council selected five SOB Task Force members (and myself as an ex-officio member) to serve on a committee to study the City's current regulations of SOBs. We accepted our mission to look at the current ordinance with regard to its strengths and weaknesses in how effectively it protected the interests of the citizens of Cleburne without denying the SOBs a reasonable opportunity to operate in the City as the Constitution allows them to do. We were to then recommend any necessary amendments to the current ordinance. The Task Force met in public meetings which were posted on the Cleburne City Hall bulletin board in accordance with the Open Meetings Act under the Texas law. [Due to the maximum allowable number of pages of this paper, IMLA has agreed to maintain and make available upon your request a copy (hard copy or diskette) of all agendas and minutes of all meetings mentioned herein. If you plan to hold committee meetings and later make a presentation to council, I urge you to order a copy. These agendas and minutes are very thorough and will serve as an invaluable resource for they may be easily modified to eliminate your need to draft such agendas and to give you an outline of issues to discuss at the Task Force meetings. To order a copy please contact: Mr. Rodney Willett, IMLA, 1110 Vermont Avenue, N.W., Suite 200, Washington, D.C. 20005. (202)466-5424.] ✓

V. HOW WE ORGANIZED A JOINT COUNTY-WIDE SOB TASK FORCE.

A. WHY THE JOINT TASK FORCE SEEMED REASONABLE. In March, 1997, after a few of the above-described meetings, the Task Force asked me to contact the Johnson

⁵DLS, Inc. v. City of Chattanooga, 107 F.3d 403, 411 (6th Cir. 1997); T-Marc v. Pinellas County, 804 F.Supp. 1500 (M.D.Fla. 1992).

⁶Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995)(Touching between nude performer and a customer is not protected expression).

⁷Robinson v. City of Longview, 936 S.W.2d 413 (Tex.App. - Tyler 1996), reh'g denied. See also Goldrush II v. City of Marietta, No. S 96 A 1494 (Ga. March 17, 1997).

County Attorney to find out if our county had a SOB order and, if not, whether they would consider adopting such regulations. Once it was discovered that the county did not have such an order, the Task Force decided to invite the county to join us in researching and drafting these regulations.⁸ With the Cleburne City Council's approval, an invitation was made in May, 1997 to all cities in the county and to the Johnson County Commissioners Court to appoint task force members to join Cleburne's SOB Task Force.

B. EDUCATING THE ELECTED OFFICIALS AND CITY STAFFS ABOUT THE IMPORTANCE OF A STRONG UNITED FRONT. On May 27, 1997, a luncheon was held to discuss the possibility of a joint county-wide SOB task force. Cleburne SOB Task Force members, county commissioners, representatives from several cities and the press attended. The purpose of the meeting was three-fold:

1. Education. We wanted to educate the attendees about the negative secondary effects of SOBs and how it was entirely possible that the county, despite its small size, was not immune to the location of such a business;

2. Fear. We stressed that proactive legislation was the best defense and that if Cleburne passed a new SOB amendment other cities may be more vulnerable to being chosen as a possible site for they were now the place of least resistance; and

3. Offer of Assistance. We wanted to offer our assistance in organizing a county-wide SOB Task Force that would draft a proposed ordinance/order and hold a public hearing for all legislative entities to attend.⁹ In total, we offered a win-win proposition where each city and the county had the opportunity to merely appoint task force members to serve as

⁸ The Task Force believed that if Cleburne adopted a strong new SOB ordinance, a SOB would be more likely to locate right outside our city limits. We felt SOBs in surrounding areas of the county would still have negative secondary effects on the citizens of Cleburne and on the whole county, but Cleburne would be powerless to regulate areas outside of its jurisdiction according to Texas Local Government Code. Therefore, although I could not locate anyone else in other counties that had attempted such a task, we all agreed it was critical to have a county-wide approach to SOB regulations for the last thing we wanted to do was push our problems onto one of the outlying cities.

⁹ After discussion with attorneys with expertise in this area, I decided it would be best if we held a joint public hearing where experts would testify (so they did not have to attend 10 different public hearings in each city), but then each planning and zoning ("P&Z") commission (since zoning is involved and by state law SOB regulations are given every public hearing that normal zoning matters would receive), council and the commissioners court would later hold separate, individual hearings to discuss adoption of SOB regulations in their individual jurisdiction. At those later meetings, zoning and other issues individual to each area would be discussed and voting would occur at that time. This procedure worked very well for us.

their representatives on a county-wide SOB Task Force that would meet and bring a package proposal to them without much effort/staff time on their part. Plus they had the chance to show the public how much they supported protection of the community from SOBs in this proactive move.

C. RESULTS OF THE INVITATION TO ENLARGE OUR TASK FORCE TO BECOME COUNTY-WIDE IN SCOPE. The reception of our idea was spectacular. The luncheon and its proposals became front page news thanks to the media which wholeheartedly support the idea.¹⁰ The attending city officials and the public had seen the problems faced by neighboring communities in the metroplex and were eager to take a stand now to prevent such effects through the county. As a result of the luncheon, numerous cities and the county appointed task force members; the Cleburne SOB Task Force voted on June 2, 1997 to join with the appointees from other cities in the county and the County itself to form a Joint County-Wide SOB Task Force.¹¹

VI. STEPS TAKEN BY THE JOINT SOB TASK FORCE IN PREPARATION FOR THE PUBLIC HEARING TO PRESENT THE DRAFT ORDINANCE/ORDER.

A. TECHNICAL DETAILS. Joint SOB Task Force meetings were held on June 2, 1997, June 9, 1997, June 23, 1997, June 30, 1997 and July 15, 1997. Thirty-one people faithfully served on this Joint Task Force.¹² As questions arose during these meetings

¹⁰ When investing the time in organizing a task force, do not forget the rewards of educating the media and inviting them to all of your meetings. We received great publicity on the front page for the reporters were informed and accurately presented the Task Force's ideas to the public.

¹¹ The City of Cleburne's original Task Force (and the other individual Task Forces) did retain the right to break off from the Joint Task Force to meet individually on the draft SOB ordinance, and eventually, individually take forward to the City of Cleburne City Council (or the appropriate city council) a draft ordinance which had been approved by the Task Force of the City of Cleburne, Texas (or whichever city the individual task force represented) without the need for approval from the whole joint SOB Task Force. This decision is reflected in the Task Force's minutes and actually did prove useful for the Cleburne Task Force did recommend one slight change in the draft SOB ordinance that went to the Cleburne City Council.

¹² Of course, by now you have figured out that you (or your appointee) must coordinate the location of these meetings, post all of the agendas, copy and distribute of all of the reading materials, take and type the minutes, answer questions, and do anything else that is necessary to the success of this Task Force. While I will admit it was a large task to coordinate 10 governmental entities, I managed to do all of this with a staff of one legal secretary and myself so I know that it is possible for you to also succeed at this mission. Later it is equally important that

numerous professionals across the United States in many areas of expertise were contacted and/or served as consultants to the Task Force. Moreover, considerable time was spent by these Task Force members researching and discussing the statutes, case law, studies prepared by other cities and a collection of sample ordinances from other cities. After such preparation, the Task Force members discussed and drafted an ordinance/order which was presented at the July 15th public hearing.¹³ Therefore, the Task Force presented this ordinance to the city councils and commissioners court only after thorough investigation of SOBs, the negative secondary effects of such businesses and which time, manner and place regulations were narrowly tailored to protect the governmental interests in our area.¹⁴

B. OUR SOURCE OF GUIDANCE IN HOW TO CONDUCT SUCH TASK FORCE MEETINGS; WHAT EVIDENCE TO PREPARE FOR THE PUBLIC HEARING; AND HOW TO CONDUCT THE PUBLIC HEARING AND LATER MEETINGS OF THE P&ZS AND COUNCILS. After consulting with other city and county attorneys who have personally experienced this procedure and studying the case law, we decided to rely on the following steps which were roughly outlined by the 5th Circuit in Lakeland Lounge v. City of Jackson, Mississippi, 973 F.2d 1255 (5th Cir. 1992), *reh'g and reh'g en banc denied* November 4, 1992, *cert. denied*, 113 S.Ct. 1845)¹⁵, to be sufficient to withstand a challenge in court:

- 1) Ordinance is drafted by the city's office of planning, city attorney's office and the

you and/or the chairman of the Task Force appear at the individual meetings of the P&Zs and councils to represent the Task Force and its proposals.

¹³ Again, due to the maximum allowable length of this paper, you may obtain a copy (hard copy or diskette) of this SOB ordinance from IMLA. [Contact Mr. Rodney Willett at (202)466-5424.] We believe the ordinance is very unique for it combines several recent court-approved regulations (as will be briefly discussed herein) and will be useful to you when you are drafting SOB amendments or a new SOB ordinance.

¹⁴ Remember that cities/counties/states may not regulate SOBs based on disgust with the message these businesses convey (because that would be an unconstitutional restraint of speech based on its content), but cities/counties/states may restrict SOBs in order to control the negative secondary effects (i.e. increased chance of transmission of disease, decreased property values, increased crime rates and decreased retail trade) that these businesses often cause. City of Renton v. Playtime Theaters, Inc. 475 U.S. 41 (1986).

¹⁵ Note that the 5th Circuit reversed the district court's decision regarding the issue of whether the amendment to Jackson's zoning ordinance was content-neutral. The district court had ruled the council had "insufficient factual predicate by which to base its ordinance upon secondary effects." 973 F.2d at 1258.

ordinance review committee (a subcommittee of the planning board). While drafting the ordinance, case studies as to secondary effects of SOB's must be considered and relied upon. Also the majority of the council members must receive information about the secondary effects.¹⁶ (In Lakeland Lounge, Chief Judge Politz's dissent notes he believes the council must have the actual studies, not just the ordinance, before them. He points out that in his opinion the City of Jackson did not prove council members saw the studies or attended public hearings at which "any empirical study data were orally recited or meaningfully discussed." Id. at 1262. He also lists his preference that the council officially adopt a specially compiled report of community effects like Houston did in SDJ, Inc. v. City of Houston, 837 F.2d 1268, 1272 (5th Cir. 1988), *cert. denied sub. nom.*, 489 U.S. 1052 (1989). Id.)

2) Public hearings are held to discuss the proposed SOB ordinance. It is recommended in several opinions that a record be made to preserve the testimony, studies, maps, statistics and other evidence that is presented to the legislative body.¹⁷

3) The preamble of the ordinance must indicate the council's concern with the secondary effects. For example, the preamble in Jackson, Mississippi's ordinance in Lakeland Lounge states:

"[T]he Planning Board and the City Council of the City of Jackson, Mississippi, find that there is substantial evidence, including numerous studies, reports, and findings on the potential harmful effect of adult entertainment uses made by other cities, experts, city planners, etc., which document that such uses adversely affect property values, cause an increase in crime, encourage businesses to move elsewhere, and contribute to neighborhood blight.

It then asserts that it is 'necessary, expedient and in the best interest' of the citizenry:

to regulate the operation and location of adult entertainment establishments for

¹⁶ In our case, numerous files of information were gathered and the Task Force completed extensive study of the issues before recommending a proposed SOB ordinance/order. We handed out several but not all selections from these materials and instructed the council members and commissioners that all material were available for their review in the City of Cleburne City Attorney's office.

¹⁷ Remembering that the court in City of Renton, 475 U.S. at 51, allows us to rely on other cities' studies. The governing body establishes its "substantial interest" by compiling a record with evidence that shows the problems the entity is addressing. SDJ, Inc., 837 F.2d at 1274.

the purpose of stemming a potential increase in the criminal activities and disturbances of the peace and good order of the community, maintaining property values, preventing injuries to residential neighborhoods and commercial districts, and protecting and preserving the quality of life through effective land use planning.”973 F.2d at 1259.

4) Nothing in the record should suggest impermissible motives on the part of the council members; constitutional content-neutral restraint is the only motive for passing the ordinance.

5) The restrictions in the ordinance may not unreasonably limit "alternative avenues of communication," meaning the ordinance must designate sufficient areas in the city limits that are open to the location of SOBs. The subcommittee/task force and council should therefore consider how many acres and how many sites will be available once the proposed ordinance is adopted. Lakeland Lounge suggests the courts do not have a minimum acceptable percentage of available land for the location of SOBs, but 5% is arguably an extremely safe number based on past U.S. Supreme Court and 5th Circuit cases. However, it is more important that the city be able to present evidence that after considering the distance requirements and other restrictions such as in which zoning districts the SOBs can operate,¹⁸ the number of "available" sites must exceed the demand for such sites. If the City meets this totality of zoning impact test, then the ordinance properly provides alternate channels of communication for SOB operators.¹⁹

6) If the council desires to implement a licensing/permit system, the restrictions must be narrowly drawn to serve legitimate state interests and not restrict First Amendment freedoms. SDJ, Inc. v. City of Houston, 837 F.2d at 1275. Generally, the public does not understand that due to the First Amendment you have to let the SOB operate if it meets all of the requirements of the ordinance. There is however, very detailed objective requirements which must be met before a license will be issued by

¹⁸ Like many other cities, Cleburne and several other Johnson County cities require SOBs to locate in M2 ("Heavy Industrial") Zoning Districts. National case law and Texas statutes support our ability to require this restriction. ✓

¹⁹ The Engineering Department of the City of Cleburne presented a detailed map of the City of Cleburne at the July 15th public hearing to show the other cities an example of the site study that is required on this issue. These maps take a great deal of effort (for you must locate all of the protected areas such as schools, churches, and government buildings and then draw circles of protection around them based on the distance (i.e. 1000 feet is most common) that your city proposes to use). But these maps are critical to later prove that the council considered the impact of the SOB ordinance and at that time sufficient alternative sites existed. This map was again discussed at the P&Z meeting and at the City Council meeting.

the City and there are other detailed requirements that must be met while the business is open for operation.

C. SUMMARY OF THE TASK FORCE'S CONCLUSIONS AFTER OUR MEETINGS. Based on Renton, the SOB Task Force studied in detail numerous studies which have been conducted by other cities. (Several of the summaries including Oklahoma City, Phoenix, Beaumont, Indianapolis, Amarillo, & Los Angeles were included in the proposed "whereas" clauses of the draft ordinance and the complete studies were introduced into evidence at the July 15th public hearing.) All of the studies concurred in their documentation that major and sex-related crime rates are substantially higher in areas within the vicinity of a SOB.²⁰ Moreover, the property values of areas surrounding SOBs are seriously depreciated when a SOB opens and over time such areas do not increase in value at the same rate as other areas not surrounding SOBs. The spread of communicable diseases (including HIV and STDs) is another threat to the public related to local SOBs. Due to such detrimental effects of SOBs, regulation, including licensing,²¹ was necessary in order to protect the citizens of each city and in the unincorporated areas of Johnson County. The

²⁰ The most recent study that we used was from Houston, Texas. Pages 7 to 9 of the "Sexually Oriented Business Ordinance Revision Committee Legislative Report" which was presented to the Houston City Council on January 7, 1997 (which was an exhibit at the July 15th public hearing) outlined Houston Police Department Vice Division's testimony at Houston's public hearings including that facts that between July 1, 1995 and August 31, 1996, the Vice Department recorded 517 arrests at SOBs resulting in 355 convictions. Prostitution, public lewdness, narcotics and indecent exposure made up the majority of these violations. Officers testified modeling studios and similar SOBs were "merely fronts for prostitution" and "performance is based specifically on the amount of money a patron is willing to spend." Credit card fraud (altered and/or bogus charges are sent through for payment) is also common. Moreover, "vice officers testified that 'bookstores are nothing more than just blatant open sexual contact between people with complete anonymity.' With professionally cut 'glory holes', random sexual activity between males is rampant. One officer went as far as testifying that in his eleven years with Vice he does not ever recall seeing anyone go into a booth, watch the movie for thirty minutes and walk out."

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²¹ The Houston Police Department Vice Division testified that "licensing and criminal background checks will assist in the regulation of the entertainers behavior" since the dancer is often arrested under a different or "stage" name. "A license will ensure an individual's true name, thus avoiding the use of stage name. This will ensure that individuals who are arrested and convicted are properly identified in the event of future criminal arrests. Page 8 of the "Sexually Oriented Business Ordinance Revision Committee Legislative Report" which was presented to the Houston City Council on January 7, 1997. See TK's Video, Inc. v. Denton County, Texas, 24 F.3d 705 (5th Cir. 1994).

U.S. Supreme Court has firmly stated that such SOB regulations are constitutional as outlined in *Renton*, 475 U.S. 41 (1986): a content-neutral time, place or manner restriction must (1) be justified without reference to the content or regulated speech; (2) be narrowly tailored to serve significant or substantial government interest; and (3) preserve ample alternative means of communication.

VII. THE JOINT PUBLIC HEARING.

A. AT LEAST ONE MONTH BEFORE THE PUBLIC HEARING. While it is important to use the steps outlined in Section VI(B). of this paper, you will also need to coordinate the details of this public hearing. At the second or third Joint Task Force meeting you will want to set a goal of when the public hearing will be. Decide on an appropriate location²² and time, and then check on the availability of the same. Reserve the site now and send out notices to all affected city secretaries/county clerks so they can calendar the event as a special meeting. Contact your city secretary to arrange to have the hearing videotaped. Do not put off any of these steps for your next step is to immediately line up expert witnesses in the fields of law enforcement (the local sheriff or police chief plus if possible a vice officer who deals with SOBs and thus knows about the problems and which regulations are effective),²³ a real estate appraiser or realtor (as mentioned in the above footnote), health officer/county health official (as also mentioned above), representative of a concerned citizen group who is informed about the overall effects of SOBs in a community, and a representative of the Joint Task Force who will summarize the draft SOB ordinance. I recommend that all of these items be completed a month before the date of the public hearing so that the experts have time to prepare²⁴ and everyone has plenty of notice so that no conflicts arise which prevent a quorum of each P&Z commission, council and commissioners court from attending.

You will also need to coordinate with each city secretary/county clerk about the posting of the notice for this public hearing. This notice is extremely important. Send the agenda to them and call back to verify that they have posted it in compliance with your state and their local laws. This is imperative for the whole purpose of the joint hearing is so that

²² We picked Cleburne's civic center since Cleburne is the county seat and thus accessible to all cities in the county and chose an evening which did not conflict with any council meetings.

²³ This officer may also mention that lap-dancing and touching patrons encourages activities such as prostitution and unprotected sexual activity.

²⁴ You will need to drop off copies of the SOB case studies for the realtor, law enforcement representative and health officer early enough that they may review them.

the evidence submitted that night serves as part of the legislative record for all entities that attend the hearing (assuming a quorum of each body is present).

B. ONE WEEK BEFORE THE HEARING. Call or send reminders of the meeting to all Task Force members, all witnesses, all city attorneys/county attorneys, all mayors/court judges and all city secretaries/county clerks.

When our Task Force made its presentation at the public hearing, I submitted into evidence a detailed memoranda which outlined the history of the Task Force, our conclusions and included a "memorandum of law" section that explained (in detail with case cites) the legal basis for the proposed SOB regulations. If you plan to submit such a paper, it is a good idea to have it completed a week before the hearing so that you may distribute it to your Task Force members for their approval as the official communication from the Joint Task Force.

Of course, the draft SOB ordinance should be done and proofread by as many people as you can find willing to read a 30 page document.²⁵ Also send a copy to the planning and zoning department, the inspections department, the police department and any other department affected by the ordinance. At the hearing you will then be able to state that these departments have reviewed the proposed ordinance and have no objections.

C. THE DAY OF THE JOINT PUBLIC HEARING. Like any important event in your life, something will go wrong, but with proper planning it will still all fall together to be a huge success. Remember that while you have spent a few months learning all about SOB regulations, the majority of the attendees are very unfamiliar with the subject. Keep the presentations moving to keep the audience's attention.²⁶ At least twice, thank everyone for being concerned enough about this subject to attend this meeting. Remember your goal is to educate them about secondary effects, available SOB regulations and overcome their "not us, we are a small town" naivete. It is up to them to decide whether there is sufficient proof that regulation is necessary and that the proposed regulation is a "content-neutral time, place and manner" ordinance as the case law requires.

We also felt that this was an ideal opportunity to mention that there are other ways to also protect the health, welfare and public safety of the cities and county from SOBs, such

²⁵ If you are lucky enough to know any experts in the field of SOB matters, ask them to read it as well. Please note that the National Family Legal Foundation ("NFLF") recently began its Community Ordinances Protect Everyone (C.O.P.E.) Program. Under this project, NFLF attorneys are available for ordinance review and revision. NFLF also has copies of negative secondary effects studies and other relevant resources. For more information call (888)313-2637.

²⁶ The Task Force agreed 90 minutes was the maximum desired length for after that most people lose interest and patience, especially if they know other meetings on the same subject will be held later. Remind all of the speakers to assume the audience knows very little about SOBs.

as the enforcement of public nuisance laws and the diligent prosecution of any obscenity or sexual offense cases that may be filed in the county and district courts. The Task Force also recommended that local police officers and deputy sheriffs receive specialized training in these areas. We stressed that strong regulations and community involvement are the keys to success in preventing crime and blighting associated with SOB's.

VIII. THE "ROAD SHOW"/SUBSEQUENT PUBLIC HEARINGS BEFORE EACH ENTITY. After the joint public hearing, one of the key steps occurred: each P&Z commission, council and the commissioners court held separate public hearings/meetings to discuss the application of the proposed SOB ordinance/order to their jurisdiction.²⁷ Be sure that you follow all of the steps outlined in Section VI.(B) for this is a critical stage for the media will be there and a recorded history of all of these meetings will exist which could later be questioned by a SOB which challenges your ordinance.

The end result is that while other cities in the Dallas-Fort Worth metroplex experience problems with SOB's negative secondary effects, our county stands prepared for their entrance into our county. We also stand united in our choice of specific forms of SOB regulations including hours of operations restrictions, licensing of both the businesses and the employees, and numerous interior restrictions. We are proud that our county and nearly all of the communities of Johnson County, Texas now have a very modern, progressive SOB ordinance in place which is uniform and drafted and adopted in accordance with all laws. We wish you the same success.

²⁷ I lovingly referred to this as the "road show" for most of the Task Force members asked me to appear before their councils to help walk them through the procedure. The chairman of the Joint Task Force and I also appeared before the county commissioners court. While this might have constituted a bit of extra effort, we all agreed it was necessary in order to complete the process and ensure that each entity properly adopted the ordinance.