

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 1997-2

No. 2 **AN ORDINANCE** AMENDING *PROVIDENCE 2000:*
THE COMPREHENSIVE PLAN, CHAPTER 1994-52, No. 798, ADOPTED ON DECEMBER
27, 1994.

Approved January 27, 1997

Be it ordained by the City of Providence:

That Chapter 1994-52, No. 798, approved December 27, 1994, also known as *Providence 2000: The Comprehensive Plan*, (hereinafter referred to as "Plan") is hereby amended, pursuant to Rhode Island General Laws Sec. 45-22.2-12. The following sections shall be considered to be a single action to amend to the Plan.

Section 1 - Amendment # 1, adopted by the City Plan Commission on June 19, 1996 (Smith Street), attached and made part of this Ordinance.

Section 2 - Amendment # 2, adopted by the City Plan Commission on June 19, 1996 (Technical Amendments), attached and made part of this Ordinance.

Section 3 - To adopt the Adult Entertainment Plan as Plan # 3 of the Comprehensive Plan Series of *Providence 2000: The Comprehensive Plan*, attached and made part of this Ordinance.

Section 4 - This Ordinance shall take effect upon passage.

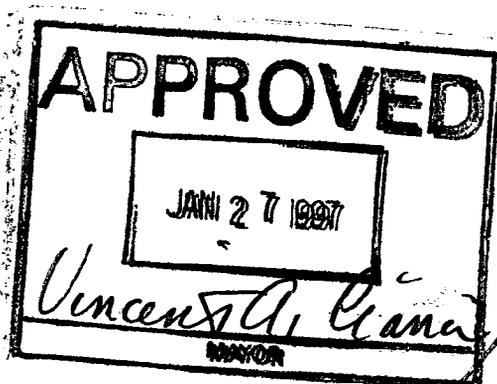
IN CITY COUNCIL
DEC 19 1996
FIRST READING
READ AND PASSED

Michael R. Clement
CLERK

IN CITY
COUNCIL

JAN 16 1997
FINAL READING
READ AND PASSED

Evelyn V. Fargnoli
PRESIDENT
Michael R. Clement
CLERK



No.

CHAPTER
AN ORDINANCE

EX-101

EX-101

JUL 29 3 32 PM '96
DEF. CLERK
PROVIDENCE, R.I.

IN CITY COUNCIL
AUG 1 1996

FIRST READING
REFERRED TO COMMITTEE ON
URBAN REDEVELOPMENT
RENEWAL & PLANNING

Michael R. Clement
CLERK

THE COMMITTEE ON

Urban Redevelopment
Recommends *Renewal + Planning*
Barbara A. Parise
Clerk

9/17/96 Continued
Set up P.H. for 10/28/96
P.H held 10/28/96

THE COMMITTEE ON
URBAN REDEVELOPMENT
RENEWAL & PLANNING
Approves Passage of
The Within Ordinance

Barbara A. Parise
12/3/96
Clerk

Council President Jargnoli

MEMORANDUM

To : Michael R. Clement, City Clerk
From : Thomas E. Deller, AICP, Deputy Director
Re : Proposed Amendment to the Providence Zoning
Ordinance
Date : July 29, 1996

Attached is an original and twenty-two copies of a proposed amendment to the Providence 2000: The Comprehensive Plan, Chapter 1994-52 No. 798.

This Ordinance is being sponsored by Council President Evelyn V. Fargnoli.

**ADULT ENTERTAINMENT REGULATIONS
IN THE CITY OF PROVIDENCE, RHODE ISLAND**

**Department of Planning and Development
400 Westminister Street
Providence, RI 02903**

June 1996

**Plan #3 of the Comprehensive Plan Series of Providence 2000: The Comprehensive Plan
Adopted by the City Plan Commission on July 18, 1996**

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INTRODUCTION

In an effort to control growth in the City of Providence, the City has adopted zoning regulations directing how land may be used and developed. The ordinance specifies eighty-six different types of land uses and designates whether they may be located in any of twenty-one different residential, commercial, mixed use, downtown, industrial, institutional, public space and open space zones. Among the regulated uses in Providence is adult entertainment, which is defined as any business or establishment offering live or reproduced performances or materials emphasizing nudity or sexual acts.

Since June 27, 1994, adult entertainment uses have been restricted to two industrial zones in Providence, which allows approximately 16% (not including 200 foot setbacks from residential zones) of the city's land area to be used in this manner. (Prior to that date, adult entertainment uses were also allowed as "special exceptions" in C-4 and D-2 zones.) These restrictions are deemed necessary to counter the adverse secondary impacts of adult entertainment uses, as documented in many communities around the country: declining property values, increased crime rates, blighted physical conditions, and diminished quality of life in areas where such uses are located. Protecting neighborhood character and the public health, safety and welfare are constitutionally valid purposes of zoning. Furthermore, the city's Comprehensive Plan encourages the use of zoning to ensure orderly growth and development, to provide for appropriate land uses, and to promote the livability and quality of life in Providence's neighborhoods and its downtown.

This report first describes the city's authority to enact zoning regulations, based on state comprehensive planning and zoning enabling legislation, and the land use element of Providence's own Comprehensive Plan as the philosophical foundation for the city's current zoning ordinance. It then summarizes the experience of several other communities which have studied the secondary effects of adult entertainment uses. Next, it specifies decisions in federal Circuit Courts and the United States Supreme Court about adult entertainment ordinances that have informed the conclusions Providence has reached in drawing up its own regulations. Finally, the report discusses specific zoning regulations governing adult entertainment uses in Providence, past and present, and makes some recommendations for the future.

CITY'S AUTHORITY TO REGULATE LAND USES

Local governments have long sought to direct and control the physical, social and economic development of their communities through planning and zoning. The City of Providence adopted a city planning ordinance and created a City Plan Commission in 1913; and, after the State of Rhode Island enacted statewide enabling legislation in 1921, Providence adopted a zoning ordinance in 1923 which directed certain land uses to specific areas of the city in an effort to control growth. Both the state and the city have amended their planning and zoning laws numerous times in the succeeding decades. Most recently, the state enacted new comprehensive planning legislation in 1988, and a new zoning enabling act in 1991. The City of Providence has consistently brought its own comprehensive plan and zoning ordinance into compliance with those laws.

Comprehensive Planning

Providence has had a citywide master plan since the mid 1940s, when the newly created Department of Planning and Urban Development joined forces with the City Plan Commission to produce a series of planning reports (1946-1953) addressing postwar trends in population, economics, and housing. The master plan was augmented and updated over the next thirty-five years to include plans for downtown revitalization, historic preservation, and individual neighborhoods. By the late 1970s it was clear that a new citywide master plan was needed, and in 1980 the Providence Home Rule Charter directed the City Plan Commission to develop a citywide comprehensive plan.

In 1988 the State of Rhode Island enacted new comprehensive planning legislation. The Rhode Island Comprehensive Planning and Land Use Act (RIGL 45-22.2) required all cities and towns in the state to adopt a comprehensive plan and to coordinate planning efforts with each other and with state government. The goals of this legislation included:

- * promoting orderly growth and development;
- * promoting appropriate uses of land and a balanced pattern of land uses; and
- * ensuring the consistency of local land use regulations with the local comprehensive plan.

Under this law each community's comprehensive plan must provide a rational basis for decisionmaking regarding its long term physical development, by defining goals and policies relative to the distribution of future land uses.

The City of Providence embarked on a comprehensive planning process in 1987 that involved extensive citizen participation and culminated six years later in Providence 2000: The Comprehensive Plan (1993). The Comprehensive Plan articulates a vision for the City's future and sets goals and policies intended to guide the achievement of that vision. Consistent with the requirements of state law, Providence 2000 discusses land use, housing, economic development, natural and cultural resources, services and facilities, open space and recreation, and circulation.

The land use component of the Comprehensive Plan sets the stage for all other elements of the plan. Among the land use goals and policies are the following (Providence 2000, pages 116-120):

- * Implement the Providence 2000 land use plan through revision of the city's zoning ordinance and map.
- * Preserve the character of Providence by protecting neighborhoods from inappropriate uses in residential and commercial areas, *such as adult entertainment*, by limiting their location. (Emphasis added.)
- * Evaluate all land use and development proposals, from rezoning to variance requests, in light of this comprehensive plan to ensure that the land use or development proposal conforms to this plan and helps the city realize its future.
- * Develop a "Downtown District" as part of the zoning ordinance which recognizes: the existing building stock and development pattern; the mix of uses desired; and the need to promote orderly growth and revitalization. The District will permit a variety of uses (business, financial, institutional, public, quasi-public, cultural, residential and other related uses) that will encourage people to live, work and recreate downtown while limiting inappropriate uses, *such as adult entertainment*, that will detract from the desired environment. (Emphasis added.)
- * Preserve and protect the residential integrity of the City's neighborhoods by encouraging the development of compatible land uses that promote the livability and the quality of life aspects of the neighborhoods.

- * Promote the development of vacant land and adaptive reuse of buildings, eliminating blighting conditions in the neighborhoods and ensure better and more economical use of properties.
- * Evaluate proposed land changes for their sensitivity to visual and functional impacts on neighboring uses and position buffers between incompatible land uses where changes are not appropriate.

The Comprehensive Plan clearly categorizes certain land uses, such as adult entertainment, as inappropriate in residential, commercial and downtown areas, and stresses the importance of limiting the location of such uses in order to promote revitalization and orderly growth and development. The experience of other communities around the country, as well as decisions handed down by the U.S. Supreme Court, form the rationale behind the development of Providence's adult entertainment zoning regulations, and will be discussed in more detail later in this report.

Zoning

The land use element of Providence 2000 is also the basis for the City's zoning ordinance. Zoning regulations are based on land use goals that express the needs and desires of city residents, as articulated in the Comprehensive Plan, and are consistent with good planning practice.

Statewide zoning enabling legislation in Rhode Island dates back to 1921, with major revisions done in 1956 and 1970. By 1990 the character and practice of land development had changed substantially, and so the General Assembly, recognizing that the statewide zoning law was outdated, enacted a new Rhode Island Zoning Enabling Act in 1991 (RIGL 45-24). This law requires every community to amend its zoning ordinance and zoning maps to conform with its comprehensive plan, and "empowers each city and town . . . to employ contemporary concepts, methods and criteria in regulating the type, intensity, and arrangement of land uses, and provides authority to employ new concepts as they become available" (RIGL 45-24-29.b).

Providence's early zoning ordinance had been substantially revised in 1951, and that law (with amendments) was in effect for forty years. The City began updating its zoning ordinance in the late 1980s under the guidance of the Providence Zoning Commission, which included three members of Providence's City Council and was chaired by the late Superior Court Justice Thomas R. Paolino. The redrafting process ran concurrently with the State Land Use Commission's work on the Rhode Island Zoning Enabling Act. Not willing to wait for the new enabling legislation, the City of Providence drafted a new zoning ordinance in 1990, held public hearings, and adopted it in October 1991, just months after the General Assembly passed the Zoning Enabling Act. While

Providence's 1991 zoning ordinance substantially conformed to the new state law, the City amended it in 1994 and again in 1995 to be consistent with both the Zoning Enabling Act and Providence 2000.

Providence's current zoning ordinance contains a purpose statement taken verbatim from the 1991 state zoning enabling act. These purposes include:

- * Promoting the public health, safety and general welfare.
- * Providing for a range of uses and intensities of use appropriate to the character of the City and reflecting current and expected future needs.
- * Providing for orderly growth and development which recognizes the goals and patterns of land use contained in the Comprehensive Plan as defined.
- * Promoting implementation of the Comprehensive Plan. (Chapter 1994-24, Section 100, p. 1-2.)

Constitutionality of Zoning Regulations

For over seventy years the City of Providence has used zoning, in a manner consistent with state law, to regulate the use of land. The U.S. Supreme Court has validated the concept of zoning on numerous occasions, beginning with a landmark decision in 1926, *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926). In reporting this case the Court noted that because urban life had grown increasingly complex,

problems have developed, and are constantly developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. . . . While the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. (Weaver, p. 15.)

Government efforts to regulate adult entertainment raise legal questions because the First Amendment to the U.S. Constitution guarantees freedom of speech and expression. Such regulations have been tested numerous times in state and federal courts,

and several important decisions are discussed later in this report. While it is clear that non-obscene sexually-oriented materials or performances are indeed protected expression (Weinstein 1994, p. 3), the concept of protecting the “health, safety, morality and welfare” of a community through zoning has also been determined to be an appropriate exercise of the government’s police power (Rose, p. 76). The challenge for governments aiming to restrict adult entertainment uses is to demonstrate how such uses affect the welfare of the community.

EFFECTS OF ADULT ENTERTAINMENT USES

The U.S. Supreme Court has ruled, in *City of Renton v. Playtime Theaters, Inc.* (1986), that local governments may, in lieu of studying the effects of adult entertainment business in their own communities, rely on evidence gathered by other communities about the negative economic, physical and social impacts of adult entertainment businesses, if such evidence may reasonably be assumed to be relevant to their own experience. Reducing the effect of these negative impacts is well within the scope of legitimate government interest.

In determining how to regulate adult entertainment locations in Providence, the Department of Planning and Development studied reports on the impacts of such uses issued by other communities, notably Manatee County, Florida; New Hanover County, North Carolina; and Indianapolis, Indiana. These reports themselves cite studies conducted by a number of other cities across the country, including Austin, Texas; Los Angeles, California; Phoenix, Arizona; Detroit, Michigan; and Saint Paul, Minnesota.. The experience of these other communities has shown that adult entertainment uses (e.g. adult bookstores, theaters, arcades, video rental stores, bars, cabarets, and the like offering performances or merchandise emphasizing nudity and sexual acts) have demonstrable negative secondary impacts on surrounding areas: increased crime rates, stagnant or declining property values, and diminished quality of life. These impacts are particularly significant in residential areas, but adversely affect commercial areas as well.

Property Values

Manatee County reported on a number of communities that surveyed local real estate appraisers to ascertain their professional opinion about the effect of adult entertainment businesses on surrounding property values. All of these surveys indicate that adult entertainment businesses have a negative influence on both residential and commercial property values within a one block radius of the adult entertainment use. This impact persists up to three blocks away, affecting residential properties more than commercial, but tends to dissipate as the distance increases beyond three blocks. In

addition, mortgage underwriters are reluctant to lend money for properties in areas with adult businesses, believing that such areas are in decline (Manatee, p. 9-14).

New Hanover County cited a Los Angeles study concluding that areas with a concentration of adult businesses tend to have lower market and rental values, and that these adverse effects diminish with distance (New Hanover, p. 2). It also noted that the City of Detroit's documentation of deteriorating property values and depressed neighborhood conditions associated with adult entertainment uses helped it successfully defend a legal challenge to its zoning ordinance before the U.S. Supreme Court. (New Hanover, p. 2).

Both the Manatee and New Hanover reports cite a study conducted by the City of Indianapolis, Indiana. Indianapolis's survey of the American Institute of Real Estate Appraisers and the Member Appraisers Institute, both national organizations, confirmed the negative impact on residential and commercial property values within a one-block radius of an adult business (over half of the respondents foresaw an immediate depreciation of more than 10% of the property's value), and the dissipation of that effect with distance. Furthermore, in areas with adult entertainment uses, housing values appreciated at only half the rate of values in areas without such uses, and twice the expected number of houses were placed on the market at substantially lower prices than would be expected in a typical real estate market (Indianapolis, p. 31).

All of these negative economic impacts are of interest to a local government seeking to protect the welfare of the community.

Crime Rates

Many communities, including Los Angeles, Indianapolis, Phoenix, St. Paul, Austin, Beaumont, Texas, and Fayetteville, North Carolina have compared crime rates in areas containing adult entertainment uses and with rates for areas without such uses. Some communities only studied rates for sex-related crimes (rape, child molestation, indecent exposure, prostitution), while others examined rates for major crimes such as robbery, burglary, assault, murder, and narcotics, in addition to sex-related crimes.

While it is not always clear that the presence of adult businesses is the cause of increased crime rates, these studies all indicate that both sex-related crimes and major crimes tend to occur more frequently in areas containing adult businesses. In Indianapolis,

for example, sex-related crime rates were 26% higher in areas with adult entertainment uses, and major crime rates were 77% higher (Indianapolis, p. 18). Crime rates also tend to be higher in areas with concentrations of adult businesses, lending credence to the theory that such businesses should be dispersed within a community to control crime (Manatee, p. 12).

Sexually-oriented businesses, which are traditionally at a low risk for prosecution and command huge profits -- *Newsweek* magazine reported in 1988 that the adult entertainment industry grossed \$8 billion nationwide that year (Weinstein 1994, p. 3) -- may also attract organized crime interests seeking outlets for money laundering and for the distribution of pornography and narcotics. (New Hanover, p. 4)

Local government's interest in controlling crime and promoting safety is clearly a function of the police power inherent in the authority to enact zoning ordinances.

Neighborhood Character

The impacts of adult businesses on both the physical character of a community and on its reputation and quality of life have also been well documented in Los Angeles, Detroit and other cities. Adult businesses have a tendency to locate in areas that are already somewhat deteriorated, and can contribute to the further blighting of a neighborhood as surrounding property values diminish and owners neglect to maintain their properties. Amarillo, Texas reported increased traffic congestion, noise and glare in areas containing adult businesses, particularly at night (New Hanover, p. 3). Public perception that an area containing adult businesses is unsafe, unsavory and unattractive can contribute to a decline in community pride and in the quality of life for those who live in or near such areas.

Protecting neighborhood character and preventing blight is a legitimate function of zoning, as confirmed by the U.S. Supreme Court in *Young v. American Mini-Theatres* (1976). In that decision, Justice Powell wrote, "Zoning, when used to preserve the character of specific areas of the city, is perhaps the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of 'quality of life'." (New Hanover, p. 4)

COURT DECISIONS ON ADULT ENTERTAINMENT REGULATIONS

Between 1976 and 1991 the U.S. Supreme Court decided five major cases relating to the regulation of adult entertainment businesses. Several federal courts have also

weighed in with decisions clarifying standards for judging the constitutionality of local regulations on adult entertainment. These cases clearly establish that while First Amendment protection extends to sexually explicit materials and performances, local governments “may single out adult entertainment uses for special regulation, if the municipality can show a substantial public interest in regulating such uses unrelated to the suppression of speech and if the regulations allow for a reasonable number of alternative locations” (Weinstein 1994, p. 4). Governments must be careful, however, not to over-regulate or ban such uses altogether, which would violate the First Amendment.

Three of the Supreme Court decisions have involved municipal land use ordinances, and one involved a public indecency statute (the fifth involved a licensing ordinance and will not be discussed herein). That none of the Supreme Court decisions were unanimous illustrates the complexity of the issue.

Land Use Regulations

***Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976), 28 ZD 329**

In *Young*, the U.S. Supreme Court upheld a Detroit zoning ordinance aimed at deterring the negative secondary effects of adult entertainment by requiring such businesses to be separated from each other by 1,000 feet. Detroit supported its ordinance with studies of local conditions demonstrating declining property values, deteriorating neighborhoods, and increased crime rates in areas with concentrations of adult entertainment businesses. Justice Stevens, writing for a plurality of four, found the ordinance to be reasonable because:

“1) there was a factual basis for the city’s conclusion that the ordinance would prevent blight; 2) the ordinance was directed at preventing “secondary effects” of adult-establishment concentration rather than protecting citizens from unwanted “offensive” speech; 3) the ordinance did not greatly restrict access to lawful speech; 4) the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems.” (Minnesota, p. 31)

Justice Powell, in a concurring opinion, applied the four-part test of *United States v. O’Brien* (391 U.S. 367, 377, 88 S.Ct. 1673, 1679 (1968)), which decided the constitutionality of a law prohibiting the burning of a draft card) to the Detroit ordinance. Powell noted that under *O’Brien*,

a governmental regulation is sufficiently justified, despite its incidental impact upon First Amendment interests, “if it is within the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on . . . First Amendment freedom is no greater than is essential to the furtherance of that interest.” (Minnesota, p. 32).

Both the *Young* decision and the *O'Brien* test have also been used in later decisions on adult entertainment regulations.

***Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981), 33 ZD 254**

The courts are not at all hesitant to strike down zoning ordinances that do not meet First Amendment standards. In *Schad*, the U.S. Supreme Court invalidated a New Jersey town’s zoning ordinance banning all live entertainment, which had been used to shut down an adult bookstore offering live nude dancing in a commercial zone. The Court found the ordinance to be overbroad and inherently vague because it did not distinguish between constitutionally permitted and unpermitted forms of live commercial entertainment, and thus deterred protected activities. “Mt. Ephraim failed to establish that the restriction furthered a sufficiently substantial government interest. . . . nor was the Court satisfied that any unusual problems were presented by live entertainment, or that the restricted form of expression was incompatible with the normal activity of the area” (Allen, p. 55).

It is important to note that *Schad* did not reach the question of whether an ordinance would be upheld if it restricted only commercial live nude entertainment. “To the extent that such entertainment was not “obscene” as defined repeatedly by U.S. Supreme Court decisions, the result would be the same unless the municipality could prove that restricting this non-obscene adult entertaining furthered a substantial government interest” (Allen, p. 55).

***City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), 38 ZD 310**

A decade after *Young*, the Supreme Court clarified the standard on which adult business regulations could be tested. *Renton* upheld an ordinance requiring a 1,000 foot separation between adult businesses and a residential zone, dwelling, church, park or school. The Court analyzed the ordinance as a form of “time, place and manner” regulation, and concluded that it was constitutional as long as it was content-neutral, served a substantial government interest (that of preserving the quality of urban life), and “did not unreasonably limit alternative avenues of communication” (Minnesota, p. 33-34). The Court especially noted that although Renton city officials did not conduct their own studies of the secondary effects of adult entertainment businesses,

the First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses. (Minnesota, p. 34)

Subsequent challenges to this “reasonable belief” standard have confirmed that a municipality must document that it has considered the findings of other communities, for example through written reports and recommendations and through testimony at a public hearing, before adopting a proposed adult entertainment ordinance; and that if the municipality relies on studies done in other communities, it must demonstrate the relevance of those studies to its own problems (Weinstein 1994, p. 4).

Finally, while *Renton* concluded that locational restrictions on adult entertainment are constitutional if such businesses are given a reasonable opportunity to operate, the Court did not define how to determine whether the local real estate market contains an adequate number of potential sites for adult businesses once the locational restrictions take effect. Two recent federal cases have helped to evolve a standard for judging the reasonableness of locational restrictions with respect to physical, legal and economic availability.

***Woodall v. City of El Paso*, 959 F.2d 1305 (5th Cir. 1992), 44 ZD 359**
***Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), 45 ZD 273**

In *Woodall*, the Fifth Circuit Court declared that “land with physical characteristics that render it unavailable for any kind of development, or legal characteristics that exclude adult businesses, may not be considered “available” for constitutional purposes under *Renton*.” (Weinstein 1994, p. 5). The Ninth Circuit Court took on the economics question in *Topanga Press*, ruling that the economic viability of a site is relative to the relevant real estate market, not to the commercial viability of an adult business on that site. Specifically, property is not “potentially available” when it is unreasonable to believe that it would ever become available for any commercial enterprise; sites in manufacturing or industrial zones may be considered part of the commercial market if they are reasonably accessible, have a proper infrastructure, and are generally suitable for some form of commercial enterprise; and commercially zoned locations are part of the real estate market.

These three factors have become known as the *Topanga Press* test, under which “municipalities may impose significant locational restrictions on adult businesses to avoid undesirable secondary effects, but . . . [may not exile] them to locations that present insuperable physical, legal, or economic barriers to operation or development” (Weinstein 1994, p. 5). Ordinances that also impose spacing criteria -- not permitting adult businesses to operate within a certain distance from each other or from specific other uses -- must be sure to account for the reduced availability of land where adult entertainment uses are permitted.

Public Indecency Laws

In 1988 the State of Indiana banned public nudity, including totally nude dancing as a form of live entertainment, as an act of public indecency. Two challenges to that statute found their way to federal court, and one went to the U.S. Supreme Court. The Seventh Circuit Court ruled in *Miller v. Civil City of South Bend*, 904 F.2d 1081 (7th Cir. 1990) that non-obscene nude dancing performed for entertainment is a form of erotic expression protected by the First Amendment. The Court found the intent of the Indiana statute to be the prevention of the message of sexuality and eroticism conveyed by the dancers, and declared the law unconstitutional. Shortly thereafter, in *Barnes v. Glen Theatres*, 111 S.Ct. 2456 (1991), the U.S. Supreme Court reversed this judgement and upheld the Indiana statute.

Barnes was again a closely decided case with Chief Justice Rehnquist writing for a plurality of three; two other justices concurred in separate opinions, and four dissented. Rehnquist argued that the Indiana statute banned all public nudity, not just nude dancing, and therefore should be judged as a “time, place or manner” restriction under the standards set forth in *O'Brien*. The Chief Justice found that the statute furthered a substantial government interest in protecting order and morality by banning public nudity, and that the statute, far from proscribing nudity because of the erotic message, only made the message “slightly less graphic” by requiring dancers to be minimally clothed in pasties and G-strings (Weinstein 1994, p. 6).

Justice Scalia concurred with the plurality’s conclusion even though he found the public indecency statute to be directed at conduct, not expression, and therefore not subject to First Amendment scrutiny. Justice Souter found that nude dancing was subject to a degree of First Amendment protection, but concurred with the plurality ruling because “performance dancing is inherently expressive, [but] nudity per se is not. It is a condition, not an activity . . .” (*Barnes v. Glen Theatres*, 111 S.Ct. 2456, 1991). Souter also declared that the government interest at issue was not public morality, but combating the secondary effects of adult entertainment businesses on the health, safety and welfare of the community. “Justice Souter’s concurring opinion has strongly influenced subsequent court decisions because he cast the fifth crucial vote to uphold the statute. . . . As a result,

courts have routinely upheld ordinances prohibiting nude dancing in adult entertainment establishments based on a showing that the ordinance was aimed at avoiding undesirable secondary effects” (Weinstein 1994, p. 7).

Clearly local governments have a legitimate interest in minimizing the negative secondary impacts of adult entertainment uses through regulating their location. The courts have declared that such regulations are constitutional only if they do not unreasonably impinge on an adult business purveyor’s freedom of expression.

EVOLUTION OF ADULT ENTERTAINMENT ZONING IN PROVIDENCE

Perhaps because adult entertainment businesses were not particularly common in the city at that time, Providence’s 1951 zoning ordinance (Chapter 544, approved September 21, 1951, as amended) did not provide a definition of adult entertainment uses, or specify where such uses could be located. Therefore, since bookstores, theaters, hotels, bars and the like were permitted in various commercial zones in both the neighborhoods and downtown, nothing in the zoning law could prevent adult-oriented bookstores, movie theaters, motels, clubs, etc. from being established in these commercial zones.

Adult entertainment uses expanded in Providence over the next forty years, and it became clear that specific regulations restricting their location were necessary. The Department of Planning and Development researched the issue in 1990 and found two models for regulating the location of adult entertainment uses, the “Boston model,” or concentration type ordinance, and the “Detroit model,” or dispersal type ordinance.

The “Boston model” ordinance concentrates all adult entertainment businesses into one zoning district, and was developed to control the expansion of adult uses in Boston by requiring them all to locate in the Combat Zone, where such uses had long existed. The secondary effects found to evolve from this type of ordinance include increased crime, decreased property values, increased office vacancy rates, and increased liquor licenses.

The “Detroit model” disperses adult entertainment uses by requiring that they be located at set distances from each other and from residential and other sensitive uses. The dispersion method also tends to reduce the negative secondary impacts of adult entertainment, as demonstrated by the findings of other communities. Providence chose to

use the Detroit model, which had been upheld by the U.S. Supreme Court in *Young v. American Mini-Theatres Inc.* in 1976.

In addition to researching the experience of other communities, both as to the secondary effects of adult entertainment uses and the methods developed to control them, Providence relied on legal precedents set by the Supreme Court in *Young* and *Barnes*, as well as decisions by lower courts, in formulating its regulations on adult entertainment uses.

In creating a definition of adult entertainment for the City's updated zoning ordinance in 1991 (Chapter 1991-29, No. 564, effective October 24, 1991), the Department of Planning and Development used language contained in a Palm Beach County, Florida statute enacting an adult entertainment code, which had been successfully defended in court. Providence defined adult entertainment as follows:

Adult entertainment: Any commercial establishment or business where any individual, employee, operator or owner exposes human genitals, pubic regions, buttocks, anus, or female breasts below a point immediately above the tops of the areolae for viewing by patrons. (Chapter 1991-29, Section 1000.3, p. 77.)

The new ordinance also designated where adult entertainment uses were to be permitted. Such uses were permitted outright in industrial (M-1) and heavy industrial (M-2) zones. By special exception from the Zoning Board of Review (to ensure compliance with development requirements), adult entertainment uses would also be permitted in a heavy commercial (C-4) or downtown mill district (D-2) zone. In all four zones, adult entertainment uses had to be located more than 200 feet from any residential zone. The Department of Planning and Development determined that approximately 20% of the City's land area was thus made available for adult entertainment uses.

In barring adult entertainment uses from residential and most commercial zones, including the central business district, and requiring buffers between adult entertainment uses and any adjacent residential zones, the 1991 zoning ordinance complies not only with the *Young* decision but also with policies articulated in Providence 2000: The Comprehensive Plan, which was then in draft form and making its way through a series of public hearings prior to City Council approval. As noted earlier in this report, Providence 2000 specifically promoted protecting residential and neighborhood commercial areas from inappropriate uses such as adult entertainment.

The Comprehensive Plan also encouraged the development of special downtown zoning districts which would recognize downtown's unique historic character and promote revitalization through a mix of compatible uses, including residential; again, adult entertainment was specifically cited as inappropriate in the downtown. (This concept

derived from an earlier plan, Providence Development Strategy, prepared by Carr Lynch Associates and approved by the City Plan Commission in 1986.) The 1991 zoning ordinance created new zoning classifications for Providence's downtown: the D-1 zone, covering the central business district, and the D-2 zone, covering the mill (jewelry) district. Adult entertainment uses were only permitted by special use permit in the D-2 zone downtown.

Within two years after these revisions were made to the zoning ordinance, Providence 2000 was completed and adopted along with four subsidiary reports addressing historic preservation, downtown revitalization, parks and recreation, and the Old Harbor area of downtown. In 1993, the Department of Planning and Development began preparing revisions to the zoning ordinance in order to comply with state law and the Comprehensive Plan. The Assistant City Solicitor advised the Department of Planning and Development to reexamine the ordinance's definition of adult entertainment in light of a recent U.S. Supreme Court case, *Barnes v. Glen Theatres, Inc.* (1991). As noted above, *Barnes* upheld an Indiana public indecency statute barring nude dance performances because it attempted to regulate conduct -- to control the condition of nudity while dancing -- and not the expression of eroticism in the dance itself. The Department concluded that the 1991 zoning ordinance's definition of adult entertainment did not adequately distinguish between erotic expression, which is protected by the First Amendment, and the condition of nudity, which relates to conduct and may be regulated.

Meanwhile, by 1993 the Department had also produced several subsidiary plans as part of the Comprehensive Plan. The I-195/Old Harbor Plan (1992) described a proposal to relocate a portion of Interstate 195, which would make 44 acres of waterfront land adjacent to the downtown core available for new development; the plan recommended appropriate uses for this area, including residential, commercial, and recreational waterfront uses. The Downcity Master Plan and Implementation Plan (1993) described revitalization strategies for the historic downtown core, encouraging housing, arts and entertainment, and institutional uses as well as appropriate related retail and service activities. Neither of these plans identified adult entertainment uses as appropriate or compatible with other uses being promoted anywhere in the downtown.

The zoning ordinance enacted in 1994 (Chapter 1994-24, No. 365, effective June 27, 1994) contains a revised definition of "adult entertainment" that attempts to parallel that contained in the Indiana statute upheld in *Barnes*, and also expands the definition to include not only live entertainment but other media such as film, video and books:

Adult Entertainment: Any commercial establishment or business where any individual, employee, operator or owner works or performs in the nude. Nudity means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or below, or the showing of the covered male genitals in a discernibly turgid state. Adult entertainment shall also be construed to mean actual or simulated acts of sexual activity by clothed or nude individuals and includes both "live" exposure and film, video, or any type of reproduction of such human anatomy and sexual activity. (Chapter 1994-24, Section 1000.8, p. 107.)

The 1994 ordinance also reduced the locations in which adult entertainment uses could be located in Providence. Such uses are now only permitted in industrial (M-1) and heavy industrial (M-2) zones, and must be buffered from adjacent residential zones within 200 feet. Approximately 16% of the City's land area, minus buffer zones, remains available for adult entertainment uses -- a reduction of only 4% from the 1991 ordinance. These restrictions are justified not only by the decisions of the Supreme Court in *Young and Barnes*, but also by the evidence gathered in other communities across the country about the impact of adult entertainment uses on the surrounding areas.

In 1996 the Rhode Island Superior Court upheld the City's 1991 and 1994 zoning laws against two separate challenges by the Satin Doll and the Sportsmen's Inn, two adult entertainment businesses in downtown Providence. Both plaintiffs had charged that the zoning ordinance's restrictions on adult entertainment were an unconstitutional infringement on free speech and were adopted improperly. The cases are now on appeal to Rhode Island Supreme Court.

CONCLUSION

As court decisions have shown, local governments are within the scope of their police powers to regulate growth and development through zoning, and to include in zoning ordinances restrictions on adult entertainment uses that are aimed at reducing the secondary effects of such uses in order to protect the health, safety and welfare of the community. Such regulations may not be intended to eliminate adult entertainment uses because of a desire to suppress erotic expression, nor may the regulations restrict adult entertainment uses so harshly that businesses are essentially prevented from operating at all. Local government officials who choose to rely on the findings of other communities

about the effects of adult entertainment uses must demonstrate that they gave reasonable consideration to those findings, and that those findings are relevant to problems faced in the community where restrictions are to be enacted.

Providence's current zoning ordinance defines "adult entertainment" on the basis of a definition included in the Indiana public indecency statute upheld by the Supreme Court in *Barnes*. Adult entertainment uses, although confined only to industrial zones within the city, are permitted in areas which are generally suitable for some form of commercial enterprise (approximately 16% of the land area of the city), and the requirement for a 200-foot buffer zone between adult entertainment uses and any residential zone is reasonable given the 1000-foot standard set by *Barnes*. The prohibition of such uses from both residential areas and the downtown is consistent with the City's adopted Comprehensive Plan, meeting the criteria established by Rhode Island zoning enabling law.

Although local zoning ordinances are often subject to legal challenge, the courts have been more likely to uphold zoning ordinances where the municipality demonstrates that the objectives of the ordinance are within the scope of the police power; that the ordinance is neither harsh nor unreasonable, and does not violate due process; and that the ordinance is comprehensive, has a rational basis, and complies with a comprehensive plan. To date no portion of Providence's current zoning ordinance has been found by any court to be unconstitutional.

RECOMMENDATIONS FOR FUTURE ACTION

As the standards for judicial review of adult entertainment regulations continue to be refined, Providence should consider further improvements to the zoning ordinance, and should also look into alternative means of regulating adult entertainment, separate from the zoning ordinance.

Recommendation 1: Amend the Zoning Ordinance to Clarify the Concept of "Principal Use." Those who have challenged the zoning ordinance have argued that the current definition of adult entertainment in Providence's zoning ordinance would apply not only to nude dancing at an adult nightclub, but also to the appearance of nude actors in a scene of a play such as "Hair" or "Equus" presented at Trinity Repertory Company in

downtown Providence. A theater whose primary purpose is to present a wide range of theatrical productions which may occasionally include nude scenes, can and should be distinguished from a theater whose primary purpose is to present live nude or sexually oriented performances.

The Table of Use Regulations in Section 303 of Providence's zoning ordinance identifies over 80 different land uses which are regulated in the city (Chapter 1994-24, p.13-34). Adult entertainment is classified as Use Code 37, a separate use category from theaters ("spectator assembly," Use Code 32), bookstores ("retail trade", Use Codes 56 and 57), and nightclubs ("eating and/or drinking establishments with entertainment", Use Code 58). However, the text of this Section does not clearly state that the table refers to principal uses, defined elsewhere as "the primary purpose or activity for which land or buildings are designed, arranged, intended, or for which land or buildings are occupied or maintained" (Chapter 1994-24, Section 1000.139, p. 118).

Language should be inserted into Section 303 clarifying that the uses described in the Table of Use Regulations are considered principal uses. See Appendix C for a proposed amendment to the zoning ordinance.

Recommendation 2: Regulate Adult Entertainment Through Ordinances Governing the Sale and Serving of Liquor. Some communities seeking to avoid legal challenge to adult entertainment regulations under the First Amendment have turned to the Twenty-first Amendment, which repealed Prohibition and established the right of government to regulate the importation and distribution of liquor. "The Supreme Court has long recognized that a state has absolute power under the Twenty-first Amendment to prohibit totally the sale of liquor within its borders. It is equally well established that a state has broad power under the amendment to regulate the times, places and circumstances under which liquor may be sold." (Weinstein 1982, p. 7).

The U.S. Supreme Court has several times ruled in favor of government regulations banning nude dancing and other adult entertainment in bars and other places that serve liquor for on-premises consumption. In *California v. LaRue* (409 U.S. 109, (1972)) and *New York State Liquor Authority v. Bellanca* (69 L.Ed.2d 357, (1981)), the Court declared that while nude dancing is entitled to some constitutional protection, the state's interest in regulating liquor sales is presumed to have greater validity. In *Bellanca*, the Court cited the New York legislature's finding that "any form of nudity coupled with alcohol in public places results in undesirable behavior and that such behavior can best be prevented by prohibiting nudity in establishments serving liquor" (Weinstein 1982, p. 7).

In another case, the Court ruled on the right of a city to regulate adult entertainment under local liquor laws. In *City of Newport v. Iacobucci* (U.S. 107 S.Ct. 383, 93 L. Ed. 2d 334 (1986)), a lower court had overturned Newport's ordinance banning

nudity in liquor establishments on the grounds that the city had no power under state law to ban the sale of liquor entirely. The Supreme Court reversed the lower court decision, ruling that, “the findings in the ordinance’s preamble, as in *Bellanca* and *LaRue*, established that the city’s interest in maintaining order outweighed the interest in free expression by nude dancing in liquor establishments. Given the “added assumption” of constitutionality supplied by the twenty-first amendment, the Court held that the ordinance was clearly valid.” (Gerard, p. 107).

In Rhode Island, the towns of Burrillville, Johnston and Westerly have adopted ordinances banning adult entertainment in places where alcohol is sold for consumption on the premises (see Appendix A). Using the Burrillville ordinance as a model, Providence could consider amending Article X of the City Code of Ordinances to prohibit adult entertainment in any commercial eating or drinking establishment where alcohol is served, and to establish penalties for violations of the ordinance, including fines and imprisonment. A proposed ordinance is contained in Appendix B.

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**APPENDIX A -
TOWN OF BURRILLVILLE, RHODE ISLAND
ALCOHOLIC BEVERAGES LICENSES ORDINANCE, Chapter 4-8.4.1, 1995.**

The Town Council of the Town of Burrillville hereby ordains as follows:

Chapter 4-8 of the Town Ordinance entitled, Alcoholic Beverages Licenses, is hereby amended as follows:

4-8.4.1 Nudity on premises where alcoholic beverages are offered for sale.

a. It shall be unlawful for any person maintaining, owning, or operating a commercial establishment located within the Town of Burrillville at which alcoholic beverages are consumed or are offered for sale for consumption on the premises to suffer or permit:

- (1) Any female person, while on the premises of the commercial establishment, to expose to the public view that area of the human breast at or below the areola thereof.
- (2) Any female person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast as described in subsection (a)(1) above.
- (3) Any person, while on the premises of the commercial establishment, to expose to public view his or her genitals, pubic area, anus or anal cleft.
- (4) Any person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus or anal cleft.

b. It shall be unlawful for any female person, while on the premises of a commercial establishment located within the Town of Burrillville, at which alcoholic beverages are consumed or offered for sale for consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof, or to employ any device or covering which is intended to give the appearance of or simulate such areas of the female breast as described herein.

- c. It shall be unlawful for any person, while on the premises of a commercial establishment located within the Town of Burrillville, at which alcoholic beverages are consumed or offered for sale for consumption on the premises, to expose to public view his or her genitals, pubic area, anus or anal cleft or cleavage, or to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus or anal cleft.
- d. Any person who violates the provisions of this ordinance shall be subject to revocation or suspension of their license and be subject to a fine not to exceed five hundred dollars (\$500.00) for the first offense and not to exceed one thousand dollars (\$1,000.00) for each subsequent offense. Any offense committed by a licensee three years after a previous offense shall be considered a first offense.
- e. The invalidity of any section or sections of this ordinance shall not affect the validity of the remainder of the ordinance.
- f. This ordinance shall become effective ten days after passage.

APPENDIX B

CITY OF PROVIDENCE CODE OF ORDINANCES
ARTICLE X, DIVISION 4, SECTION 14-230
(Proposed Amendment)

IN AMENDMENT OF AND IN ADDITION TO ARTICLE X, "SHOWS AND OTHER AMUSEMENTS" OF THE CITY CODE OF ORDINANCES,

1. That Article X of the City Code of Ordinances be amended by adding a new Division 4, Section 14-230 as follows:

DIVISION 4. COMMERCIAL ESTABLISHMENTS WHERE ALCOHOLIC BEVERAGES ARE OFFERED FOR SALE

Sec. 14-230. Nudity on premises where alcoholic beverages are offered for sale.

- (a) It shall be unlawful for any person maintaining, owning, or operating any commercial eating and/or drinking establishment, whether or not entertainment is provided, and at which alcoholic beverages are offered for sale for consumption on the premises to suffer or permit:
- (1) Any female person, while on the premises of the commercial establishment, to expose to the public view that area of the human breast at or below the areola thereof.
 - (2) Any female person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate such portions of the human female breast as described in subsection (a)(1) above.
 - (3) Any person, while on the premises of the commercial establishment, to expose to public view his or her genitals, pubic area, anus or anal cleft.
 - (4) Any person, while on the premises of the commercial establishment, to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus or anal cleft.

- (b) It shall be unlawful for any female person, while on the premises of any commercial eating and/or drinking establishment, whether or not entertainment is provided, and at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view that area of the human female breast at or below the areola thereof, or to employ any device or covering which is intended to give the appearance of or simulate such areas of the female breast as described herein.
 - (c) It shall be unlawful for any person, while on the premises of any commercial eating and/or drinking establishment, whether or not entertainment is provided, at which alcoholic beverages are offered for sale for consumption on the premises, to expose to public view his or her genitals, pubic area, anus or anal cleft or buttocks, or to employ any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, anus or anal cleft.
 - (d) Any person who shall violate any provision of this section shall be guilty of an offense against the City punishable as provided in Sec. 1-10 of this Code, and by a fine of not less than five hundred dollars (\$500.00) for each offense or by imprisonment of not less than thirty (30) days. The provisions of this section shall be enforced by the Providence Police Department.
 - (e) Any "Adult Entertainment" establishment, as provided for and defined in the Providence Zoning Ordinance, as amended, which was lawfully existing prior to the passage of this section, is exempt from the provisions of this section.
2. This Ordinance shall take effect upon passage.

APPENDIX C

PROPOSED AMENDMENT TO ZONING ORDINANCE
(Chapter 1994-24, No. 365, adopted June 27, 1994, as amended)

Amend Article III, Section 303 as follows (new text in bold print):

Section 303 - Use Regulations: Zoning districts, as defined, are listed horizontally . . . Permitted uses, listed vertically in the table of use regulations, **connote principal uses as defined in Section 1000.139 herein**, and are denoted with a "Y" for Yes; uses not permitted are denoted with an "N" for No; and uses permitted only upon approval of the Board are denoted with an "S" for special use permit. ...

Providence 2000 - The Comprehensive Plan

Amendment # 1

Adopted by the City Plan Commission on June 19, 1996

Adopted by the City Council on _____

Abstract

This amendment to *Providence 2000: The Comprehensive Plan* has the effect of reaffirming the residential nature of most of Smith Street, from Ruggles Street to the North Providence city-line. However, the Proposed Nonresidential Map is amended to allow both Residential and Residential-Professional uses (as defined in the Zoning Ordinance) to occur along Smith Street, to a depth of one lot, between Tyndall and Wyndham Streets.

1. Background

Providence 2000 - The Comprehensive Plan was developed during 1991-93 with extensive neighborhood input and adopted in 1994. The Comprehensive Plan provides two (2) Proposed Land Use Maps - one Residential and one Nonresidential. Both serve as general guides for future changes to the city's zoning map, which regulates the use of every individual parcel of land in the City. From 1993 to 1996, various requests to change residentially zoned land to allow professional office and commercial uses along Smith Street were deemed to be inconsistent with the Comprehensive Plan's Proposed Land Use Map: Non-Residential, which indicated that most of Smith Street is intended to be residential in nature, with only a few limited commercial areas.

The Land Use Element also contains narrative sections on goals and policies affecting various types of land uses, including mixed uses. Section 4.1.2(U6), on pages 128 and 129 of the Comprehensive Plan discusses mixed uses. The Plan defines mixed use areas as having primarily residential uses with limited permitted non-residential uses. It promotes the utility of mixed uses to help preserve residential areas by providing a buffer between residential and other uses. The goal for mixed uses in the Comprehensive Plan is:

Permit and control mixed use development which is primarily residential in nature along major thoroughfares and as buffers between commercial, industrial and port uses and residential areas. Mixed use development should not detract from the residential appeal of the neighborhood, but it may serve as a buffer zone between strictly residential uses and alternate uses existing within the neighborhoods.

To achieve this goal, the Comprehensive Plan also has a policy to promote the establishment of zoning techniques to allow various types of mixed use zones that will permit and control appropriate mixed use development in specific areas of the city. One of these zones would be designed to preserve the integrity of certain residential neighborhoods while permitting

compatible professional uses (those that will fit into an existing residential structure, thus preserving the character of the neighborhood and its architecturally distinctive qualities).

Mixed use zoning has existed in Providence since 1991. In 1994 the classification was renamed "RP - Residential Professional District," and, despite the name change, its definition closely parallels the language of the Comprehensive Plan, as follows:

R-P - Residential Professional District - This zone is intended to preserve and enhance the residential integrity of certain heavily traveled streets while permitting compatible professional uses. Compatible professional uses are those that will fit into the existing structure so as to preserve the residential character of the street, including its architecturally attractive and distinctive qualities; provide opportunities for people to live, work and receive professional services in the same area; and improve public safety by encouraging both day and night time occupancy in the area.

In compliance with the Comprehensive Plan's Non-Residential Land Use Map, which allows limited commercial uses along Smith Street west of River Avenue, an R-P District was created there in 1994.

2. Comprehensive Plan Text

This amendment to the Comprehensive Plan reconfirms the policies of mixed uses as noted on page 129. In addition, it establishes that the "RP - Residential Professional District," as defined in the Providence Zoning Ordinance to be equal to and synonymous with "mixed uses." This action will allow mixed uses (residential and residential-professional) in areas as noted below.

3. Comprehensive Plan Map - Smith Street

The portion of Smith Street from Ruggles Street to the North Providence city line is still mostly residential, but many of the larger, formerly single-family houses have been converted to either multi-family or mixed (office with residential) uses. In addition, limited commercial uses have been introduced along the street. Smith Street itself is a major arterial roadway designated as U.S. Route 44, heavily traveled and perhaps no longer viable as an exclusively residential street.

Commission staff conducted a study of the Smith Street corridor from Ruggles Street to the North Providence town line. Staff mapped out existing zoning and land uses along Smith Street (to a depth of one lot), and identified the legal use (which sometimes conflicts with the existing use) of each property from building department records. This study found that while Smith Street remains primarily a residential street, it also has a number of mixed use properties, where a professional office occupies space in a residential building. Many of these properties are located in the vicinity of Roger Williams Medical Center. Most of the mixed use properties have been in existence for years, and have received variances from the Zoning Board of Review to be used in this manner. In addition, the street has several nodes of limited commercial activity.

Based on this study, staff presented for discussion several possible changes to the Comprehensive Plan Non-Residential Land Use Map, to permit RP-Residential Professional mixed uses in four small areas, and also to add two small pockets of C1-Neighborhood Commercial uses. Maps were prepared showing the results of the land use study and the staff proposals, and presented at a public hearing held before the City Plan Commission on May 16, 1996 at the Chamber of Commerce auditorium, 30 Exchange Terrace, Providence. This public hearing was advertised in the Providence Journal in advance, in accordance with state law and City Charter.

The existing (1993) version of the Non-Residential Land Use Map of the Comprehensive Plan shows some small pockets of non-residential uses along Smith Street. These areas are currently zoned C-1 (Neighborhood Commercial), OS (Open Space), or PS (Public Space).

Staff prepared a map to show the addresses of all hearing attendees, speakers, petitioners and correspondents, which was presented at the CPC meeting on June 19, 1996.

4. Findings of Fact

1. The proposal to amend the Non-Residential Land Use Map of *Providence 2000: The Comprehensive Plan* to allow residential professional uses in certain areas of Smith Street is consistent with the goals and policies of the Comprehensive Plan.
2. The Smith Street Corridor Study and its findings support the need to address changing land uses along Smith Street. Permitting appropriate, compatible professional uses to coexist with residential uses on certain areas of Smith Street will discourage the expansion of inappropriate non-residential uses into the neighborhood's residential areas, and will help to preserve the character of the neighborhood.
3. A public hearing was held on May 16, 1996 on the proposed amendments and public comment was taken, in accordance with state law. The record of the hearing was left open until May 31, 1996 to allow additional written testimony to be submitted.
4. The proposal to amend the Comprehensive Plan does not constitute a simultaneous change in the Zoning Ordinance or the Official Zoning Map. If the Comprehensive Plan amendments are approved, a separate ordinance amending the Zoning Ordinance and Map will have to be prepared and submitted to the City Plan Commission and the City Council for approval, and public hearings will be held on that matter in accordance with state and local law.

5. Plan Amendment

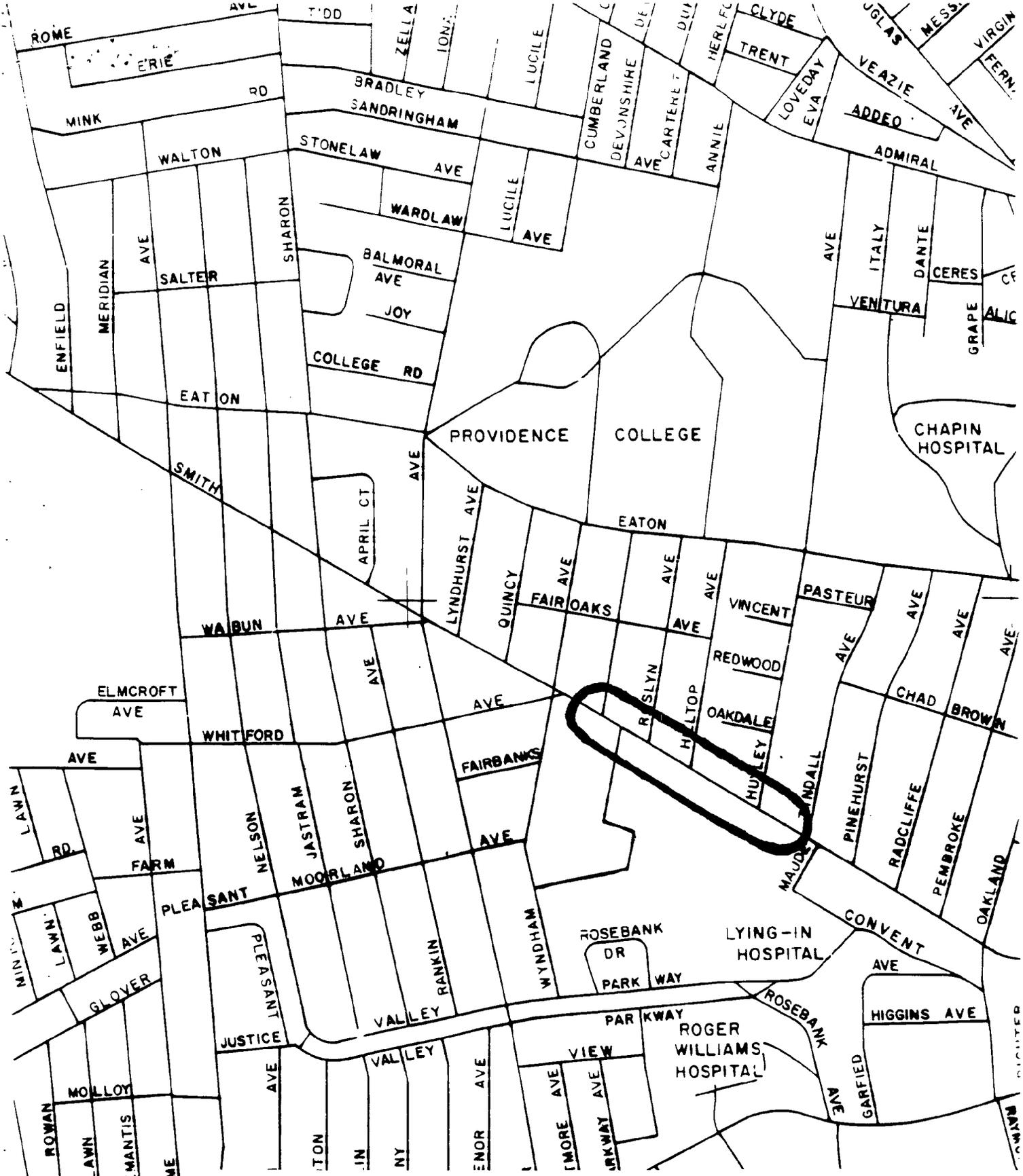
Policies U6 Mixed Uses (pages 128 and 129) of the Comprehensive Plan is hereby amended by adding the following additional policies:

1. The Comprehensive Plan, Non-Residential Land Use Map, is amended to allow both Residential and Residential-Professional uses (as defined in the Zoning Ordinance) to

occur along Smith Street, to a depth of one lot, between Tyndall and 100 feet (more or less) west of Elmhurst Avenue (see attached map).

2. Other parts of the Smith Street Corridor Study, relative to limited commercial and residential professional uses around the intersection of Smith and Gention Streets and Old Road; limited commercial uses around the intersection of Smith and Eaton Streets; and residential/ professional uses along Smith Street to the east of River Avenue, are not recommended for change, in response to the information and testimony received at the public hearing and during the open comment period that followed.
3. The Comprehensive Plan provides for residential-professional uses to serve as a buffer between residential areas and commercial areas. The portion of Smith Street, that is currently zoned residential, is residential in nature and will be well served by the buffer provided by the residential-professional use.

Sams:c:\Smith St\complan



Proposed Amendment to the Comprehensive Plan - Non Residential Land Use Map:

Allow R / R - P uses on this portion of Smith Street

Providence 2000 - The Comprehensive Plan

Amendment #2

Adopted by the City Plan Commission on June 19, 1996

Adopted by the City Council on _____

Background

The City submitted *Providence 2000: The Comprehensive Plan* along with four subsidiary plans (*Downtown Master Plan and Implementation Plan, A Plan for Preservation, I-195/Old Harbor Plan, and Parks, Recreation and Open Space Plan*) to the state's Department of Administration, Office of Local Planning Assistance, for approval in May 1994. As required by state law, numerous state departments and agencies must review the Comprehensive Plan for consistency with their own goals and policies. To date, twenty-three state departments and agencies have approved the Comprehensive Plan, either as submitted or with amendments as noted below. Review by eight additional departments and agencies is still pending.

State law allows a municipality to amend its Comprehensive Plan up to four times a year. The approval process goes first to the City Plan Commission, then to City Council and finally to the state Office of Local Planning Assistance. With the bulk of the state's review concluded, the Department of Planning and Development proposes to amend the Comprehensive Plan with the technical amendments described below.

City Plan Commission Action: Findings of Fact and Vote to Approve

At its regular meeting of June 19, 1996, the City Plan Commission made the following findings of fact:

1. The proposed amendments to the Comprehensive Plan are consistent with the overall goals and policies of the plan and with state law.
2. The proposed amendments have been reviewed and approved by the affected state agencies.
3. A public hearing was held on this matter on May 16, 1996 (advertised in the Providence Journal in accordance with state law) at the Chamber of Commerce Auditorium, 30 Exchange Street, Providence. Five additional minor corrections to the amendments relating to wastewater issues (Section 3.11.1 of the Comprehensive Plan) were requested

in writing by the Narragansett Bay Commission. No other comments from state agencies or the general public were received on this matter.

The Commission then voted to approve the proposed technical amendments to the Comprehensive Plan, as described below.

Plan Amendments

The technical amendments prompted by state review of the Comprehensive Plan involve factual corrections, expansion of background information, and policy amendments. Specifically, the following amendments are proposed (text to be eliminated is struck out; new text in bold print):

1. Section 3.3.3 - The People - Future Expectations (Page 28). In the first paragraph, line 14, insert a paragraph break after the phrase "this demographic variable in 2010." Add the following new text as a new paragraph:

"The aging of Providence's population will become a significant factor in the coming decades. According to the 1990 census, 13.6% of Providence residents were over age 65. Given that another 7% were aged 55 to 64 in 1990, and 19.8% were aged 35 to 54, it is anticipated that by 2010, upwards of 20% of Providence residents will be over age 65."

Begin next paragraph with existing text starting, "The implications of future population growth are profound."

2. Section 3.11 - Community Services and Facilities - Existing and Future Conditions
 - a) Section 3.11.1 - Water Supply (Page 82). Amend the third sentence of the first paragraph, as follows:

"It has a safe daily yield of ~~89~~ 82 million gallons."

- b) Section 3.11.1 - Wastewater (Pages 84-85). Correct the second sentence of the first paragraph, as follows:

"The wastewater treatment system is ~~primarily~~ owned and maintained by the ~~state's~~ Narragansett Bay Commission (NBC), which was formed in ~~1982~~ 1980."

Correct the third sentence of the first paragraph, as follows:

“ . . . (CSO) outlets which empty in into the Providence River . . . ”

Rewrite the third paragraph, as follows:

“City maintenance responsibilities include catch basin cleaning as well as storm drain and combined sewer overflow maintenance. ~~While billings for wastewater services go through the Narragansett Bay Commission, City projects in the wastewater system are funded by the City.~~ The Narragansett Bay Commission has a system of user charges to fund the operation, maintenance and capital improvements of the NBC system. No NBC funds finance the City’s wastewater facility responsibilities.”

Rewrite the fourth paragraph, as follows:

“Like most older, metropolitan communities, Providence contains a predominantly combined sewer and stormwater system. Built around the turn of the century, the combined system often cannot meet the demands placed upon it. ~~During extended periods of rainfall, millions of gallons of sewage combined with stormwater discharges into the receiving waters of local rivers, because of overflow in the lines, termed “combined sewer overflow” (CSO). Of particular concern are the CSOs which empty into the Providence River in the vicinity of Field’s Point, causing significant water quality and aesthetic problems. In order to address these problems, the Narragansett Bay Commission has compiled overflow studies performed by the city and has performed a number of area studies itself. The last area to be analyzed is the downtown, all the programmed studies should be completed by 1991.~~ During extended periods of rainfall, millions of gallons of sewage combine with stormwater that discharges into the receiving waters of local rivers, through pipes called combined sewer overflows (CSOs). In order to address these problems, the NBC has completed several overflow studies. The last report, the Combined Sewer Overflow Control Facilities Program, was completed in 1994. It recommends the construction of deep rock tunnels and large near surface storage basins to hold overflows with pump-out and treatment to be provided after the storm.”

Correct the second sentence of the fifth paragraph (continuing onto page 85), as follows:

“Based on the findings of the studies, the Commission will prioritize the

problem areas to be improved, so as to better comply with the Environmental Protection Agency's (EPA) Rhode Island Department of Environmental Management's water quality standards."

Delete the last sentence of the fifth paragraph on page 85 (beginning, "This could temper . . .") and replace with new text as follows:

"It appears that the City of Providence has sufficient capacity in its collections and treatments systems, and therefore NBC is not proposing to expand these systems. Accordingly, there should be little effect on the development potential of the City."

- c) Section 3.11.1 - Solid Waste Collection and Disposition (Page 85). Amend the second sentence of the first paragraph, as follows:

"Approximately ~~90,000~~ 70,000 tons of solid waste materials are sent by Providence each year to a landfill . . ."

Delete the entire second paragraph (incineration is banned in R.I. since 1992).

- d) Section 3.11.1 - Recycling (Page 86). Delete the first paragraph and replace with new text, as follows:

"Every city and town in Rhode Island is required to adopt a recycling ordinance which falls within the guidelines of the Department of Environmental Management's Municipal Recycling Regulations. The main goal of the State's mandatory recycling program is to decrease the amount of refuse dumped at the state landfill which, in turn, will increase the expected lifetime of the landfill."

Correct the third sentence of the second paragraph, as follows:

"The recyclable materials are collected in specially designed ~~15~~ 14 gallon blue bins, and are collected with regular trash on the same day as trash."

- e) Section 3.11.1 - Human Services (Page 88). After the fourth complete paragraph that ends ". . . receive medical assistance," insert new text as follows:

"Providence also has 14 senior centers offering volunteer opportunities, recreation, group activities, counseling, information and referral, and continuing education to the elderly. Some centers

also provide hot lunches, outreach, transportation and health services.

These centers are:

DaVinci Community Center
East Side Senior Center
Elmwood Senior Center
Federal Hill Community Center
Fox Point Senior Center
Hamilton House Senior Center
Hartford Park Senior Center
Jewish Community Center
Nickerson House Senior Center
Silver Lake Annex Center
Smith Hill Senior Center
St. Martin dePorres Senior Center
Washington Park Community Center
Westminster Senior Center

Overall, funding for senior services is not distinguished from human services funding in general. Some senior centers are located within community centers which serve many different needs in the local neighborhoods. Other housing, nutrition, transportation, and social services are extended to seniors in a variety of city programs that are not specifically dedicated to the elderly.

Given the likelihood that Providence's elderly population will increase in the coming years, more services may be required. The Mt. Pleasant/Elmhurst neighborhood currently lacks a senior center. The Westminster Senior Center, in downtown Providence, receives no city funding for its operations and is in danger of closing due to cutbacks in federal and state aid. Transportation services for the elderly, which now only provide rides to and from medical appointments and meal programs, do not address the need for transportation to shopping centers, social and recreational activities, and personal care providers such as hairdressers. Finally, adult day care centers, providing a safe, supervised environment for frail elderly and functionally challenged adults, may become more needed.

The City provides some property tax relief to its senior citizens in the form of deductions and homestead exemptions. (The homestead exemption is available to all eligible homeowners, not just the elderly.)"

3. Section 3.13.1 - Transportation, Parking and Circulation - Other Modes of Transportation (Page 106). Correct the second sentence of the second paragraph, as follows:

“Bus ridership is currently about ~~54,000~~ 57,000 per day throughout the RIPTA system with about ~~30,000~~ 45,000 riders going to and from downtown Providence every day.”

Correct the second sentence of the third paragraph, as follows:

“The system cost per passenger is \$0.91 and costs are covered by the State (~~46%~~) (60%), the Federal Government (~~22%~~) (15%), and user fees and miscellaneous sources (~~32%~~) (25%).”

4. Section 4.6.1 - Community Services and Facilities - Goals and Policies

- a) CS3. Solid Waste Collection and Disposition (Page 156). Delete the first paragraph and replace with the following text:

“The Central Landfill in Johnston is expected to be augmented by the opening of the adjacent 45-acre Southwest Landfill sometime in the near future. To prolong the capacities of both landfills as much as possible, the R.I. Solid Waste Management Corporation is expanding its recycling program to help municipalities divert up to 30-40% of the current waste stream.

RISWMC is retrofitting the current Materials Recovery Facility in Johnson to handle not only the items now collected in the blue bin program (plastic soda and water bottles, glass jars and bottles), but also empty aerosol and paint cans, #1 PETE plastic containers, #2 HDPE plastic bottles and jugs, paper milk cartons and juice boxes, large corrugated cardboard boxes, large scrap metal, and clean scrap lumber. RISWMC is also constructing a new paper recycling facility to handle mail, magazines and catalogs, writing paper, phone books, paperback books, clean corrugated cardboard, and paperboard (toilet paper rolls, cereal boxes, etc.), in addition to the newspapers and brown paper bags collected under the current system.

Providence will join in the state’s efforts to reduce substantially the amount of solid disposable waste in the city.”

- b) CS5 - Human Services (Page 158). Amend text of Policy A, as follows:

“A. Encourage City support for existing human service delivery centers, such as the twelve neighborhood community centers such as neighborhood community and senior centers, and support efforts to extend such services in neighborhoods which currently lack them.”

5. **Section 5.2.1 - Land Use Implementation Strategies and Timing Priorities** (Page 177).
Under Recommendation #4, add two new subsections, as follows:

“4. Implement a design review process for the review and approval of projects in the City.

- o As part of the design review process, consider adoption of the most recent version of the Soil Erosion and Sediment Control Handbook and the Stormwater Management Design and Installation Standards Manual (available through the R.I. Dept. of Environmental Management) as a minimum standard.**
- o Consider implementation of an inspection program designed to enforce routine maintenance of soil erosion, sediment control, and stormwater management practices.”**

6. **Section 5.2.4 - Natural Resources and Environmental Protection Implementation Strategies and Timing Priorities** (Pages 184-185). Under Recommendation #1, add two new subsections, as follows:

“1. Develop a special plan for natural resources and environmental protection that focuses on the preservation and enhancement of the City’s natural resources and environment. Adopt this plan as a part of Providence 2000: the Comprehensive Plan Series.

- o As a starting point, the natural resources plan will consider the identification, description and protection of species of concern and important biological communities; wetlands and hydraulic soils; soil types and the development constraints they pose; surface waters, watersheds, and floodplains.**
- o For areas identified as important for open space and/or conservation, consider tax incentives such as described in the Farm, Forest and Open Spaces Act, where applicable. Alternatively, the City’s current policy on open space conservation (keeping open spaces in public ownership, with**

no tax liability) may be used.”

Under Recommendation #8, add new subsection, as follows:

“8. Work with the Public Safety Department to insure that laws regarding the reporting of hazardous materials are being adhered to and that a citywide hazardous materials emergency response plan is developed.

- o **Consider adopting requirements for proper hazardous materials storage and handling.”**

Add new Recommendation #12, as follows:

“12. **Consider a prohibition on the installation of new underground storage tanks in areas identified as sensitive under the natural resources plan.**

- o **Consider developing a program, in cooperation with DEM, to educate building inspectors and homeowners regarding effective mitigation of leaking underground storage tanks, as well as the environmental and financial concerns surrounding inaction.”**