



Sexually Oriented Business Ordinance Case Law Overview

Sexually oriented business ordinances are regulations that govern adult businesses such as strip clubs, adult bookstores, and adult theaters. These ordinances often include zoning restrictions, licensing requirements, hours of operation limitations, and other operational rules. Courts evaluate these ordinances under the First Amendment when they restrict expressive conduct, such as nude dancing, or the operation of adult businesses.

To survive legal challenges, municipalities must demonstrate that their ordinances:

1. Are content-neutral and not aimed at suppressing speech.
2. Serve a substantial governmental interest, such as reducing crime or preserving property values.
3. Leave open reasonable alternative avenues for communication.

Key Cases:

Municipalities Successfully Defending SOB Ordinances

1. **City of Renton v. Playtime Theatres, Inc. (1986)**

- **Key Decision:** The U.S. Supreme Court upheld a zoning ordinance that prohibited adult theaters from being located within 1,000 feet of schools, parks, churches, or residential areas.
- **Rationale:** The Court ruled that the ordinance was a content-neutral regulation aimed at mitigating adverse secondary effects (e.g., crime and neighborhood decline) rather than suppressing speech. The city relied on studies from other jurisdictions, which the Court found acceptable.
- **Impact:** This case established that municipalities can rely on studies from other cities to justify SOB ordinances and do not need to conduct their own research.

2. **Barnes v. Glen Theatre, Inc. (1991)**

- **Key Decision:** The U.S. Supreme Court upheld an Indiana law requiring dancers at adult entertainment venues to wear at least minimal clothing.
- **Rationale:** The Court ruled that the law was content-neutral and served a substantial governmental interest in promoting public order and morality.
- **Impact:** This case allowed municipalities to regulate nude dancing as long as the regulations are not aimed at suppressing expression.

3. **City of Erie v. Pap's A.M. (2000)**

- **Key Decision:** The U.S. Supreme Court upheld a public nudity ordinance requiring dancers at adult entertainment venues to wear at least pasties and a G-string.
- **Rationale:** The Court found the ordinance was aimed at reducing adverse secondary effects, such as crime and public health concerns, and was not intended to suppress expression. The regulation was deemed content-neutral and narrowly tailored.
- **Impact:** This case reinforced municipalities' ability to regulate adult entertainment through content-neutral ordinances targeting secondary effects.

4. **City of Los Angeles v. Alameda Books, Inc. (2002)**

- **Key Decision:** The U.S. Supreme Court upheld a Los Angeles ordinance prohibiting multiple adult businesses from operating on the same premises.
- **Rationale:** The Court ruled that the city could rely on studies showing that the concentration of adult businesses led to increased crime rates. The city did not need to prove causation definitively, only that its evidence was reasonably believed to be relevant.
- **Impact:** This case clarified that municipalities can use studies, even if imperfect, to justify SOB ordinances as long as they provide reasonable support for the regulation.

5. **Z.J. Gifts D-4, L.L.C. v. City of Littleton (2004)**

- **Key Decision:** The U.S. Supreme Court upheld a licensing ordinance for sexually oriented businesses.
- **Rationale:** The Court found that the ordinance provided adequate procedural protections and did not unduly burden First Amendment rights.
- **Impact:** This case established that licensing requirements for SOBs are permissible if they include adequate safeguards against censorship.

Businesses Successfully Challenging SOB Ordinances

1. **Schad v. Borough of Mount Ephraim (1981)**

- **Key Decision:** The U.S. Supreme Court struck down a zoning ordinance that prohibited live entertainment, including nude dancing, in all areas of the borough.
- **Rationale:** The Court found the ordinance overly broad and not narrowly tailored to serve a substantial governmental interest. It effectively banned an entire category of protected expression without justification.
- **Impact:** This case emphasized that municipalities cannot enact blanket bans on expressive conduct without demonstrating a legitimate governmental interest.

2. **H&H Entertainment, Inc. v. City of Kissimmee (1999)**

- **Key Decision:** A federal court struck down a zoning ordinance that restricted adult businesses to industrial areas and imposed excessive distancing requirements.

- **Rationale:** The court found that the city failed to provide sufficient evidence of adverse secondary effects and that the restrictions left too few viable locations for adult businesses to operate.
- **Impact:** This case reinforced the requirement for municipalities to provide substantial evidence and ensure that regulations do not create a de facto ban on adult businesses.

3. **Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County (2003)**

- **Key Decision:** The Eleventh Circuit Court of Appeals struck down a public nudity ordinance that applied to adult entertainment venues.
- **Rationale:** The court found that the county failed to provide substantial evidence of adverse secondary effects and that the ordinance was overly broad.
- **Impact:** This case reinforced that municipalities must provide substantial evidence to justify SOB ordinances and ensure they are narrowly tailored.

4. **Fly Fish, Inc. v. City of Cocoa Beach (2000)**

- **Key Decision:** A federal court struck down a public nudity ordinance that applied to adult entertainment venues.
- **Rationale:** The court ruled that the city failed to provide sufficient evidence of adverse secondary effects and that the ordinance was not narrowly tailored to address the alleged harms.
- **Impact:** This case demonstrated that municipalities must show a direct connection between the regulation and the mitigation of adverse secondary effects.

5. **Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County (2003)**

- **Key Decision:** A federal court struck down a zoning ordinance that restricted adult businesses to industrial areas and imposed excessive distancing requirements.
- **Rationale:** The court found that the ordinance effectively banned adult businesses from operating in the county and that the county failed to provide sufficient evidence of adverse secondary effects.
- **Impact:** This case highlighted that municipalities cannot use zoning regulations to create a de facto ban on adult businesses.

Key Takeaways

For Municipalities:

- SOB ordinances must be **content-neutral** and target adverse secondary effects, not the content of speech.
- Municipalities can rely on studies from other jurisdictions to justify regulations, provided the evidence is reasonably relevant and credible.
- Regulations must leave **reasonable alternative avenues** for expression and cannot impose a de facto ban.

For Businesses:

- Municipalities must provide **substantial evidence** of adverse secondary effects to justify SOB ordinances.
- Regulations must be **narrowly tailored** to address the alleged harms without being overly broad.
- Businesses can challenge ordinances that fail to provide sufficient procedural protections or that effectively ban adult businesses.

By understanding these cases, municipalities and businesses can better navigate the legal landscape surrounding sexually oriented business ordinances.