# Not in My Backyard

# Zoning, Smut, Citizen Participation, and Social Control

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#### **ABSTRACT**

In the 1970s, cities began to regulate adult businesses through zoning and land-use regulation instead of obscenity-based regulations to great efficacy. These governmental efforts were supported by ordinary citizens using arguments about property value to keep adult businesses 'out of their backyards.' Today, former 'smut districts' in Detroit, Boston, and New York City are often the sight of high-value real estate and look very different from their seedy pasts. By using zoning and top-down planning tools like urban renewal to deal with adult businesses, cities succeeded in dispersing their porn districts. The regulations came at a cost, pushing out spaces that acted as sites for interaction across class and racial boundaries; areas with affordable shopping, dining, entertainment, and living options; and places where members of the LGBTQ community could be 'out' in public. When these areas are replaced with tourist traps and high-value real estate ventures, little thought is given to the social costs of losing these spaces. As planners making decisions about what land uses are valuable and which are 'nuisances,' it is important to understand that we may not know the true value of a controversial space until it is gone.

n the 1970s, city officials in Detroit, Boston, and New York City began to employ land-use regulations rather than obscenity laws to restrict sexual activity and adult uses. Obscenity laws relied on subjective definitions of the 'obscene' and were easily challenged in court on First Amendment grounds. Because these landuse regulations could not actually shut down adult businesses but prevented them from congregating, land-use regulations did not pose the same risk of violating an owner's right to free speech and thus were less likely to be challenged in court. This shift was supported by small groups of ordinary citizens who opposed adult businesses and pressured elected officials to use their power to restrict these uses. The rhetorical tactics used by groups protesting adult uses reflect tactics used by opponents of other controversial development: the development can go somewhere, just 'not in my backyard' (NIMBY).2 Using arguments about 'quality of life' and 'property values,' small groups of concentrated opponents wielded considerable political power against adult business during this time.3

Opposition to adult businesses often took on a racist and classist timber. In Boston, Detroit, and New York City, 'smut districts' were threatening not only because they provided places where sex was on display, but also because these neighborhoods facilitated mixing of race, ethnicity, and socioeconomic groups. The people who frequented or worked in these areas were 'deviant groups' stigmatized by the policy process and thus, even when concentrated in one neighborhood, were not able to protest as effectively as their privileged NIMBY opponents.<sup>4</sup>

Anti-porn advocates shifted the focus of land-use arguments from difficult-to-define 'moral' reasons to more tangible 'economic' reasons for restricting adult businesses; this shift could explain their success in redefining smut districts. Such districts were often located on valuable real estate

near the central business districts of these three cities. The consequences of using capital to displace the bawdy is apparent in many U.S. cities today, as politicians, developers, and business owners in these areas have used techniques like Tax Increment Financing (TIF) and Business Improvement Districts (BIDs) to incentivize development, raise property values, and reduce city property tax revenue in former porn districts. Yet brick-and-mortar adult businesses still exist: smut has not been defeated; it has simply been dispersed.

Real estate developers have gained the most from efforts to remove adult business from high-value central business district land. Areas like Times Square, once a thriving smut district, had rents as high as \$2,500 per square foot by 2015.7 This profitable future was hard to imagine in the 1970s, when all three cities were struggling economically. Adult businesses allowed landlords to collect rents, even as the rest of the cities lost businesses and population to the suburbs.8 The decision to shut down profitable, thriving adult districts in times of urban divestment seems counterintuitive, but it happened anyway.

In the history of these spaces, complaints about the loss of authenticity and nostalgia for a pre-HIV/AIDS era of commercial sex run parallel to criticism of governmentdriven moralizing clean-up efforts. 9 While the intrinsic value of a strip club or an adult bookstore is debatable, the areas where these businesses were located held value in their functions as diverse and relatively safe public spaces, places to go for the unhoused, homes to those who lived in residential hotels, sites of gay bars and safe spaces for LGBTQ residents to be 'out' in public, and affordable entertainment districts for youth of color. As planners and policymakers, we must learn from the loss of these spaces. We may not understand the full social value of a 'nuisance' space to people who are different from ourselves until it is no longer there.

#### **DETROIT: ZONE IT OUT**

"History may link the new girlie era with 'the fluctuating economy of an industrial city,' or work out ponderous theories on 'urban depletion in face of suburban expansion.' But meantime – tonight – Detroiters and conventioneers will sit happily beating out the rhythm of bumps and grinds in any of the 24 night spots that now feature Girls! Girls! Girls!"

- Ralph Nelson, 1959<sup>10</sup>

The City of Detroit was a pioneer in the censorship of literature and film and later was the first city to use zoning to regulate adult businesses. After a 1957 Supreme Court decision ruled the City's censorship tactics unconstitutional, regulations loosened and adult businesses began to concentrate in downtown Detroit along the Woodward Corridor and on the Detroit side of West Eight Mile, areas that formerly were filled with more conventional businesses like retail stores and restaurants. 11 While some Detroiters saw adult businesses as a source of tax dollars and attraction to the city, others saw them as convenient scapegoats for suburbanization, deindustrialization, and racial tension in Detroit.<sup>12, 13</sup> Some even perceived adult businesses as a major cause of Detroit's economic decline. 14 Much of the opposition to adult businesses came from vocal groups of local citizens. 15 Homeowners in Detroit claimed that adult businesses would lower property values. 16 Yet when Detroit introduced measures to regulate adult activity, these businesses simply moved to working-class jurisdictions with less ability to fight back.<sup>17</sup> The demands of local citizens imploring their government to address adult businesses, paired with creative government officials using pornography as a proxy for more challenging issues, influenced strategies for battling adult businesses and land-use regulation in the city, and later across the country.

The opening of an Adult World Bookstore

in 1972 in northwestern Detroit's Redford neighborhood began a campaign of citizen involvement and NIMBYism, and signaled a rhetorical shift from regulating pornography on grounds of obscenity to regulating it based on property value and nuisance laws. A local pastor, concerned about the sexual content purveyed at Adult World, implored his congregation to take political action in the name of morals and Christian decency. 18 Soon, church members, neighbors, and community organizations were writing letters to city officials protesting Adult World. These letters diverged from morality arguments and instead reflected more generalized anxieties about race and economic decline. Letter writers espoused the need to protect children from sexual content and feared that the Adult World would lead to an "invasion" of outsiders and further the economic decline of the neighborhood and city.19

In the 1970s, the Redford neighborhood was one of the few remaining primarily white neighborhoods in the city, and it was more economically diverse than the surrounding suburbs or inner-ring neighborhoods.<sup>20</sup> Prior to and throughout the 1970s, Redford resisted integration, a history reflected in the rhetoric of the Adult World letter-writing campaign, where writers implored city officials to preserve neighborhood character, property values, children's innocence, and prevent 'invasion' language adopted from earlier resistance against neighborhood integration.<sup>21</sup> Others acknowledged that the patrons of Adult World were likely to be visitors from the white suburbs, who would be unwilling to allow such a land use in their own backyards.<sup>22</sup> Some conceded that Adult

At the end of the day, everything has to go in someone's backyard."

World would be acceptable downtown, but not in a residential neighborhood. However, some of the letter writers threatened that the trend of 'white flight' and disinvestment would be exacerbated if such uses were permitted to continue.<sup>23</sup> Less than a year after it had opened, Adult World closed of its own accord. The jubilation of residents was short lived, as an adult theater opened nearby in 1973.<sup>24</sup> This letter-writing campaign did not successfully ban adult business from the neighborhood, but it did demonstrate strong citizen support for addressing adult uses.<sup>25</sup>

The Redford case is but one instance of the rhetorical shift from moral arguments against adult businesses to one of maintaining a 'quality community.' Other groups in the 1970s began to argue that adult businesses were detrimental to neighborhoods and did not belong in residential areas, but they were hesitant to touch free speech, promote censorship, or prevent others from enjoying pornography. <sup>26</sup> Under more liberal courts and new Supreme Court decisions, restrictions based on obscenity charges could no longer be used to regulate adult businesses, as they could be construed as censorship. <sup>27</sup>

During the Adult World letter-writing campaign, the Detroit City Council was pursuing action on an ordinance designed to prevent new adult businesses from opening.<sup>28</sup> Ultimately, City Council decided to extend the City's Anti-Skid Row Act to adult businesses. Designed to prevent land uses associated with blight from congregating, this law prohibited a variety of businesses from pawnshops to pool rooms from being located within 1,000 feet of each other.<sup>29</sup> Thus, the Detroit model, a zoning-rather than obscenity-based regulation on adult uses, was born. This model was replicated in cities across the country. 30 Attacking pornography through land-use regulation followed the time-honored American tradition of employing land-use regulation as a form of social control. This adjustment

to the ordinance could not close existing adult businesses but would make it more difficult to open them, thereby working to disperse them and avoiding the risk of any one area forming a 'smut district.' Attacking these businesses on the economic grounds of adult entertainment's 'blighting' effect on neighborhoods rather than on moral grounds proved to be less controversial.<sup>31</sup>

In October 1972, the Detroit City Council voted unanimously to pass a set of anti-porn ordinances that emphasized homeowners' rights and the negative economic impact of adult businesses and imposed a mixture of zoning and licensing-based restrictions.<sup>32</sup> Four years later, in the case of *Young v. American Mini Theatres Inc.*, the constitutionality of Detroit's anti-porn zoning ordinance was challenged in the Supreme Court. In a narrow decision, the ordinance was declared constitutional.<sup>33</sup> By the end of the 1970s, most U.S. cities had passed similar ordinances.<sup>34</sup>

#### **BOSTON: ZONE IT IN**

Boston's approach to regulating adult businesses in the 1970s was reminiscent of the 'cool parent' who allows their teenagers to throw parties at their home because if they are going to drink, they should not drive. Concerned by the 'blighting' effect of adult entertainment, city officials restricted adult uses in Boston to an area known as the 'Combat Zone' 35

The Combat Zone emerged after the combined forces of a fire in an old burlesque theater and urban renewal through eminent domain succeeded in shutting down Boston's previous 'skid row,' Scollay Square.<sup>36</sup> Historically a source of cheap entertainment in the form of movie theaters, bookstores, arcades, and single-room occupancy hotels and restaurants, by the 1950s, Scollay Square primarily provided shopping and lodging for working-class Bostonians and people with nowhere else to go.<sup>37</sup> The Boston Redevelopment Authority

(BRA) replaced Scollay Square with a new City Hall, state and federal buildings, and private offices.<sup>38</sup>

By the early 1970s, adult entertainment in the city was concentrated in the Combat Zone, an area of lower Washington Street bounded by the shopping, theater, and garment districts, Chinatown and Park Square, and an area with mixed-use buildings including single-room-occupancy hotels for transients, retired merchant marines, and working-class men. BRA officials had designs for a redevelopment plan of Park Square that would include the construction of new hotels, apartments. office buildings, shops, and entertainment and would replace the Combat Zone with luxury apartments and a parking garage. Local residents opposed clearing the Combat Zone on the grounds that this would only scatter adult uses to other neighborhoods and formed the Park Plaza Civic Advisory Committee (CAC). In 1974, a study by the BRA and CAC proposed turning this area into a special 'Adult Entertainment Zone' and restricting the operation of adult entertainment facilities in the rest of the city. This solution would allow these businesses to remain in existence without 'contaminating' the rest of the city and make them easier to control.<sup>39</sup> The Boston Zoning Commission approved this amendment to the existing zoning code, supported by neighborhood groups from Back Bay, Beacon Hill, and Chinatown (who were likely relieved that these undesirable uses would remain far from their homes).40 The City even began running a shuttle bus to and from the Combat Zone in an attempt to force other adult businesses to relocate.41

Once the City had confined adult entertainment to the Combat Zone, it ceased providing adequate services like lighting and sanitation in the area and ignored requests from businesses for additional police protection. 42 Meanwhile, fueled by rumors of organized crime, the City lobbed petty charges like obscenity and poor lighting at

adult businesses. Lack of City investment in the Combat Zone allowed criminal activity to concentrate in the area while police were busy harassing business owners.<sup>43</sup>

Although stigmatized and neglected by City officials and considered immoral by most Bostonians, adult entertainment in the Combat Zone helped attract mainstream business conventions and suburban residents to the City. 44 These visitors, in turn, provided tax dollars desperately needed in a city that was suffering from declining commercial fishing, collapse of the textile industry, and loss of power as a banking center. 45 Despite media depictions of mob activity and devious dealings, businesses in the Combat Zone were run much in the same way as other groups of neighborhood businesses: they formed a trade association, had a spokesperson, and lobbied the City for services.46

What was life like in the Combat Zone? The reality of the area is obscured by newspaper reports about mob activity and fictional representations of the Zone as filled with sailors, streetwalkers, and leering college bovs. 47 The Combat Zone was also home to Bostonians and transients who lived in short-term occupancy hotels (SROs), retired Merchant Marines, and homeless shelters. 48 Men from a mix of socioeconomic groups typically patronized the Combat Zone. 49 The Zone also provided one of the few public places in the city where gay and lesbian Bostonians could meet. 50 The Combat Zone's socioeconomic mix of patrons and its reputation as a place where one may encounter homosexuals made the area a further target for moral scrutiny. If a suburban husband could view a peep show in the Combat Zone while his wife shopped a few blocks over, then anyone could be contaminated by the temptations of the area and become a 'john,' or even a 'gueer.'51

The tension between economic benefits, lack of investment, and the mixture of class and race in the Combat Zone came to a head in 1976 when two Harvard football players

in a group visiting the "Naked i" nightclub were stabbed. According to reports, the students and their friends were attempting to retrieve a wallet allegedly stolen by two or three Black prostitutes as they were leaving the Zone. Several (the students claimed 6-10) Black men came to the defense of the prostitute, attacking the players and stabbing two of them.<sup>52</sup>

After the stabbing, citizens pressured city officials to reform the Zone. <sup>53</sup> Anxieties about class, race, gender, and morality were highlighted by this case of Black visitors to the Combat Zone and Black sex workers versus white college students. <sup>54</sup> The City began to require licenses, enforce building codes, and issue safety citations. In the 15 days following the stabbing, 93 people were arrested in the Combat Zone on charges including prostitution, liquor violations, and 'night-walking.' A total of 66 complaints for disseminating obscene material were drawn up. <sup>55</sup>

While Boston's Combat Zone was not a neighborhood in the traditional sense, its renovation led to a loss of SRO hotels, which provided affordable housing for bachelors, retirees, and others. <sup>56</sup> The practice of hotel living faded after WWII. In the years following urban renewal, these hotels were torn down or renovated for more profitable uses, leaving the men who lived there (considered 'transients' in the eyes of the state and thus ineligible for relocation subsidies) to fend for themselves. <sup>57</sup>

Following the Naked i incident, the city encouraged developers to replace adult businesses with more 'legitimate' establishments. New landlords raised rents, Emerson College and Suffolk University converted buildings into dormitories, and luxury apartments were constructed in what used to be a parking lot. Gradually, the Combat Zone began to resemble the rest of downtown.<sup>58</sup>

### NEW YORK CITY'S TIME SQUARE: WHO NEEDS ZONING WHEN YOU'VE GOT URBAN RENEWAL?

Much has been written on the transformation of Times Square: from its tenure as a theater district that became New York's first truly public space, to an area considered the "sleaziest block in America." to 42<sup>nd</sup> Street's current status as a tourist destination. 59, 60 Urban renewal-like forces facilitated the shift from a place where you could have sexual encounters in an adult theater to the paean to capitalism it is today. Samuel R. Delany's Times Square Red, Times Square Blue describes the porn theaters of Times Square from the 1960s onward as places where men across racial, ethnic. and socioeconomic groups could encounter each other (sexually or otherwise) and where someone who had nowhere else to go could spend time. 61 Other accounts of Times Square in the 1970s and 1980s describe it as a relatively safe and affordable place where those living in low-income minority neighborhoods could see a movie, shop, or go out to eat. Considering the high volume of tourist, commuter, and pedestrian activity through the Port Authority Bus Terminal and the 8th Avenue subway station, the area had relatively low incidence of felonies.62

Yet many New Yorkers did not see this side of 42<sup>nd</sup> Street as it became a national symbol of urban decline. 63 Accounts of Times Square do not sugarcoat that the area was primarily "male turf," aside from female sex workers.64 White fears of the Black and Latinx visitors to 42<sup>nd</sup> Street fueled negative public perception of the area. 65 There was doubt that the area could change without massive intervention. 66 City politicians had promised to reform Times Square for decades; these efforts failed, partially because it was difficult to enforce interventions based on obscenity laws, and partly because porn is profitable. Times Square attracted tourists and provided jobs in the city.67

In 1976, Mayor Abraham D. Beame set up a task force, the Mayor's Office of Midtown Enforcement (OME), to return Times Square's real estate to "good commercial uses" by enforcing obscenity laws; fire, health and building codes; and zoning law amendments. 68 OME was good at its job, making a persuasive case for promoting real estate redevelopment as an argument against porn. 69

For landlords in Times Square, adult businesses – with their high turnover and low overhead – were valuable in an area that otherwise might not have tenants. Properties slated for future demolition were purchased and rented out on short-term leases that allowed landlords to vacate tenants quickly while profiting off of the high rents these spaces garnered. Despite the high property value in Times Square, small parcels, multiple layers of title and lease holders, and costly acquisitions due to high rents supported by advertising signs – not to mention pornography and crime – limited real estate activity.

In previous decades, the rabbit warren of landlords, tenants, and title holders in Times Square could have been resolved by crying "Blight!" and instituting a program of urban renewal. 72 Yet in the post-Robert Moses era, people began to realize that perhaps it wasn't a good idea to wipe out entire communities with the blunt instrument of eminent domain. City officials were hesitant to wield this tool to initiate large-scale development. 73 Further, the sex industry enjoyed its centralized location and was unlikely to budge. 74

During Mayor Ed Koch's tenure in the early 1980s, the City's Public Development Corporation (PDC) was tapped to lead the redevelopment effort for Times Square. The PDC could sell land acquired from the City to a single entity without going through auction or a competitive bid process, thereby avoiding the red tape that

other City agencies faced in acquiring and disposing of land. It did not, however, have the legal authority to initiate the large-scale acquisition of property in Times Square, which would require condemnation and tax-abatements for developers. The State of New York, on the other hand, did have this power. The PDC partnered with New York State's Urban Development Corporation (UDC), which could issue condemnation and provide state-level support for the project. This partnership between the PDC and the UDC gave the City the unique role of developer and regulator. 75 Develop and regulate they did - the City could now use eminent domain to condemn land, then override local land-use regulations.76

The case of Times Square demonstrates how it is less legally sticky to control porn with real estate than on moral grounds. Redevelopment efforts under Mayor Koch and those who followed had the power of condemnation, and the joint power and resources of a unified City and State government. This gave the public sector a (questionable) leg-up on private developers.<sup>77</sup>

Over the next 20 years, Times Square transformed. By the time the constitutionality of Mayor Rudy Giuliani's zoning proposal to ban adult businesses from residential neighborhoods was upheld in court in 1998, Times Square had irrevocably changed.<sup>78</sup>

## PUBLIC SPACES, ECONOMIC DEVELOPMENT, AND SOCIAL COSTS

"The combatants that appear to be the most effective in this battle against the profiteers of sex are the profiteers of real estate."

- John E. Yang, 198179

During the events leading up to the dispersal of adult businesses in Detroit,

the corralling of the Combat Zone, and the taming of Times Square, all three cities were in states of 'urban crisis,' facing depopulation and disinvestment as the forces of suburbanization, deindustrialization, and panic over integration threatened to further drain the population.<sup>80</sup> It is difficult to imagine this level of divestment for most of these places today. Areas that were once smut districts are now some of the wealthiest areas in the city. This wealth is maintained by small groups of people through the use of economic development tools like TIFs and BIDs.

At its best, a BID is a tool that can garner support from a diverse range of interests for investment in otherwise disinvested areas. It can step in to provide services like place marketing or sanitation where the government cannot.<sup>81</sup> At its worst, a BID provides privatized security that further contributes to the privatization of urban public spaces that once provided opportunities for diverse social interaction.<sup>82</sup> In Times Square, the local BID entity employs a private security force and facilitates a community court that tries those caught loitering, among other minor crimes, and punishes them with street sweeping.<sup>83</sup>

Detroit does not fare much better. Quicken Loans founder Dan Gilbert currently owns nearly 100 properties around Campus Martius in downtown Detroit, including the luxury Shinola Hotel and office buildings housing Microsoft, JP Morgan, and Quicken Loans. 84 Billionaire Gilbert has received \$618 million in tax incentives via a TIF district. 85 This is a dramatic shift from an area rife with

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adult businesses in the 1970s.86

With real estate investment, there are also spaces of continued divestment that must make Faustian bargains for the promise of economic development. Do elected officials allow commercial sex to flourish and risk having their town receive the 'Smut City' moniker, or sacrifice jobs and revenue to another suburb? What is better, a porn theater or a boarded-up theater? Adult business or no business at all?<sup>87</sup> NIMBYs have the resources, time, and political clout to ensure that adult businesses do not end up in their communities, but at the end of the day, everything has to go in someone's backyard.

As an urban planner, when I read about the rich social (and, yes, sexual) fabric of adult districts. I wonder what other valuable functions are lost when public spaces change. It is impossible to hang on to every space, simply because we don't understand how and why they are useful until they are gone. I don't know if I would have felt comfortable going to Times Square in the 1970s or entering a porn theater then or now. Dwelling in nostalgia for lost adult theater districts plays along similar logical veins that cry for returns to an imagined, more morally pure existence. In more tangible ways, nostalgia can hamper planning efforts to provide affordable housing and improve the public transportation system; then again, so does the privatization of public space.

Despite efforts on the part of politicians and developers to obscure public costs of private development, one could theoretically follow the paper trail of tax abatements, rent credits, and development incentives back to a number. The social costs may be difficult to quantify but are far more important. When people have nowhere to go, where do they go? When the stage upon which Jane Jacobs' "intricate sidewalk ballet" of the city was once performed is privately owned, what happens to the dancers?

#### ABOUT THE AUTHOR

Janney Lockman grew up in West Virginia. After attending Oberlin College, she moved to Colorado where she worked in active transportation and played in a bluegrass band. Dreams of working in the music industry brought her to Nashville, where she dabbled in aspects of the entertainment industry from booking to modeling, but ultimately made the most money bartending. Her frustrations with income inequality, lack of transportation options, and expensive housing in rapidly growing Music City led Lockman to pursue a planning degree at the University of Michigan. Her planning interests lie in rural economic development, transportation equity, and feminist planning. Janney's piece, "Old Money, New Nashville: A Tale of Changing Wealth in Music City" was featured in Agora's 13th volume.

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