

## **Federal Court Strikes Down Strip Club Ordinance**

The Second U.S. Circuit Court of Appeals has ruled that Vermont municipalities must demonstrate that they have considered the negative secondary effects of sexually oriented businesses before adopting an ordinance prohibiting their operation. *White River Amusement Pub Inc., v. Town of Hartford*, 06-02330cv (March 28, 2007).

In September 2001, White River Amusement Pub, Inc. (WRAP) opened a strip club in downtown White River Junction. In response, the Hartford selectboard adopted an ordinance prohibiting public nudity and engaging in sexual activities in a public place. WRAP sued the Town, alleging that the ordinance violated First Amendment free speech protections.

The trial court judge found in WRAP's favor, ruling that the Town had failed to show that "at the time it enacted the ordinance, it relied upon at least some evidence reasonably believed to be relevant to its interest in preventing negative secondary effects associated with nude adult entertainment, and that the evidence fully supported its rationale for the ordinance." The Second Circuit affirmed, holding that Hartford selectboard had failed to demonstrate that it considered the negative secondary effects of sexually oriented businesses before it enacted the indecency ordinance.

The WRAP decision makes clear that, before adopting an adult business ordinance, a selectboard must create a sufficient record to demonstrate that the town's intent is not to regulate the content of the products that such businesses offer but to mitigate and prevent the negative secondary effects that they generate. For better or worse, the United States Supreme Court has made it clear that adult businesses are presumed to deal in protected speech. While municipalities may not regulate these businesses based on the content of their offerings, they can regulate them based on the negative secondary effects that these businesses produce. Negative secondary effects include things like crime, prostitution, and reduction in property values.

If your town is considering adopting an ordinance to regulate sexually oriented businesses, please contact the VLCT Municipal Assistance Center. MAC has developed a model adult business zoning bylaw and can provide training to planning commissions and selectboards on the special adoption procedures for such ordinances.

*- Jim Barlow, Staff Attorney, VLCT Municipal Assistance Center*

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