

Zoning Out the Porn

The "cleanup" efforts that come and go like Times Square's dingy snows have proved to be an exercise in redundant futility. Neither missionary zeal, nor economic outrage, nor political opportunism, nor transient law enforcement, can stop the completion of the pimp's or prostitute's appointed rounds or the efflorescence of seedy sex establishments.

What can stop it—or at least ameliorate it by tipping the neighborhood balance back to nonabusive uses—is the proposed new zoning that would disperse these establishments and limit their numbers according to appropriate land-use patterns and acceptable community impact.

The new zoning would neither condemn nor prohibit these sex activities nor anyone's right to participate in them. It would simply determine the placement and number of such establishments, limiting the commercial exploitation of sex to commercial areas in regulated amounts—much as other obnoxious or disturbing uses, such as junkyards and signs, are at present controlled by zoning. This kind of control is a well-established exercise of the police power in the public interest. New York's model, Detroit's "smut dispersal" ordinance, was recently upheld by the United States Supreme Court as a proper extension of zoning law for neighborhood protection.

Unquestionably, the balance between free speech and property rights involved in this particular zoning is a delicate one. To protect free speech, the New York law contains provisions for appeals, exemptions and permits wherever it might be considered necessary for an "adult message" to reach the public. The problem of economic hardship raised by the planned phasing out of existing sex operations is refuted by the ease with which the properties could be returned to conforming uses. These are questions that will probably be in the courts for some time.

But this is innovative rather than repressive zoning, as long as there are essential speech guarantees. It recognizes that an affected community has rights at least equal to the purveyors of sleazy porn, and that bad does not have an inalienable right to drive out good when a neighborhood's social, economic and environmental health is at stake. This is no blue law; it is a giant step forward in sophisticated—and necessary—environmental legislation.