

A city ordinance prohibits the location of "adult theaters and bookstores" (theaters and bookstores presenting sexually explicit performances or materials) in residential or commercial zones within the city. The ordinance was intended to protect surrounding property from the likely adverse secondary effects of such establishments. Adult theaters and bookstores are freely permitted in the areas of the city zoned industrial, where those adverse secondary effects are not as likely.

A storekeeper was denied a zoning permit to open an adult theater and bookstore in a building owned by him in an area zoned commercial. As a result, the storekeeper brought suit in an appropriate court challenging the constitutionality of the zoning ordinance.

Which of the following statements regarding the constitutionality of this city ordinance is most accurate?

- A. The ordinance is invalid, because a city may not enforce zoning regulations that deprive potential operators of adult theaters and bookstores of their freedom to choose the location of their businesses.
- B. The ordinance is invalid, because a city may not zone property in a manner calculated to protect property from the likely adverse secondary effects of adult theaters and bookstores.
- C. The ordinance is valid, because a city may enforce this type of time, place, and manner regulation on speech-related businesses, so long as the regulation is designed to serve a substantial governmental interest and does not unreasonably limit alternative avenues of communication.
- D. The ordinance is valid, because a city may enforce zoning restrictions on speech-related businesses to ensure that the messages they disseminate are acceptable to the residents of adjacent property.

## Explanation:

### Speech regulations

Type	Definition	Test
<b>Content-based</b>	<ul style="list-style-type: none"><li>• Facial discrimination</li><li>• Primary purpose targets message, subject, or idea</li></ul>	Strict scrutiny <ul style="list-style-type: none"><li>• Necessary &amp; narrowly tailored to achieve compelling interest</li></ul>
<b>Content-neutral</b>	<ul style="list-style-type: none"><li>• Regulates time, place, or manner of speech</li></ul>	Intermediate scrutiny <ul style="list-style-type: none"><li>• Narrowly tailored to achieve important interest</li><li>• Alternative avenues of communication remain</li></ul>

Adult theaters and bookstores are **speech-related businesses** that are protected by the **First Amendment**. As a result, government regulation of such businesses is subject to constitutional review. If the regulation targets what is being said (ie, **content-based** restriction), it is subject to **strict scrutiny** and **presumptively unconstitutional**. But if the regulation targets the time, place, or manner of speech (ie, **content-neutral** restriction), it is subject to **intermediate scrutiny** and **generally acceptable**.

In *Renton v. Playtime Theatres, Inc.*, the Supreme Court held that zoning ordinances for adult-entertainment businesses are time, place, and manner restrictions. That is because such ordinances target the *secondary effects* that adult businesses have on the surrounding community—not the acceptability of their content. As a result, these ordinances are valid so long as they pass intermediate scrutiny—ie, are narrowly tailored to serve a substantial or important government interest *and* do not unreasonably limit alternative avenues of communication (**Choice B**).

**(Choice A)** A city *can* enforce zoning regulations that restrict adult theater and bookstore operators' freedom to choose the location of their businesses so long as the regulation survives intermediate scrutiny.

**(Choice D)** A zoning ordinance is a content-based restriction if its primary purpose is to ensure that the *messages* disseminated by speech-related businesses are acceptable to residents. Such a restriction is almost certainly invalid since it must pass strict scrutiny—ie, be necessary and narrowly tailored to achieve a compelling government interest.

### Educational objective:

Time, place, and manner restrictions (eg, zoning ordinances) are valid so long as they are narrowly tailored to serve a substantial government interest *and* do not unreasonably limit alternative avenues of communication.

**References**

- Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46–47 (1986) (explaining that zoning ordinances for adult-entertainment businesses are time, place, and manner restrictions).

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