In the

Supreme Court of the United States

COLEMAN A. YOUNG, Mayor of the City of Detroit, et al., Petitioners,	:	
v.	:	No. 75-312
AMERICAN MINI THEATRES, INC., a Michigan Corporation, et al., Respondents.	:	

Washington, D. C.
March 24, 1976

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Wednesday, March 24, 1976

The above-entitled matter came on for argument at 10:19 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN P. STEVENS, Associate Justice

APPEARANCES:

MAUREEN P. REILLY, ESQ., Assistant Corporation Counsel, 1010 City-County Building, Detroit, Michigan 48226, for the petitioners.

STEPHEN M. TAYLOR, ESQ., 1650 First National Building, Detroit, Michigan 48226, for respondent Nortown Theatre, Inc.

(Cont.)

JOHN H. WESTON, ESQ., Fleishman, McDaniel, Brown & Weston, Suite 718, Max Factor Building, 6922 Hollywood Blvd., Hollywood, California 90028, for respondents American Mini Theatres, Inc., and Pussy Cat Theatres of Michigan, Inc.

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C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 75-312, Young, the Mayor of Detroit, against American Mini Theatres.

Mrs. Reilly, you may proceed whenever you are ready.

ORAL ARGUMENT OF MRS. MAUREEN P. REILLY

ON BEHALF OF PETITIONERS

MRS. REILLY: Mr. Chief Justice, and may it please the Court: For the record, I am Maureen Reilly, Assistant Corporation Counsel for the City of Detroit, representing Coleman A. Young, Mayor of Detroit, and the department heads who are petitioners in this matter.

The Court is asked this morning to review a decision of the Sixth Circuit Court of Appeals which by a two-to-one decision invalidated amendments to the city's zoning and licensing laws regulating adult businesses. This case is now before the Court approximately eight years after the problem first became apparent in the city of Detroit.

In 1969 there were only two of these new uses, land uses, within the city, two adult book stores, two adult theaters, and relatively few topless go-go bars. Within a period of three years that number had changed so that there were 18 adult theaters, 21 adult book stores, and 70 topless bars. Reports from the Detroit Police Department indicated that these businesses had clustered together along the main

arteries of the city of Detroit and were immediately adjacent to or backed up to neighborhoods, residential neighborhoods, which were zoned residential.

Based on the complaints received by a number of families, residents, and businessmen whose businesses served those families, the Mayor recommended changes in the city's zoning and licensing laws. The changes that were adopted were these:

The adult businesses were now designated as regulated uses. These were uses which had been determined by the Council to be businesses which had a deleterious effect on the surrounding neighborhood, which caused a downgrading in property values and a deterioration of the neighborhood generally.

QUESTION: The category of regulated uses had been one that was part of the Detroit zoning pattern for many years, hadn't it been there for some time?

MRS. REILLY: Yes, your Honor. The idea, the concept of regulated uses so far as I know was a new concept of inverse zoning adopted by the city in 1962. The city found out that certain uses when clustered together caused a down-grading of a neighborhood.

QUESTION: Pool halls and shoeshine parlors and --

MRS. REILLY: Motels, bars, those businesses which catered to transient type patrons.

QUESTION: As contrasted with a neighborhood patronage.

MRS. REILLY: That's right, your Honor.

It seemed only proper that the adult businesses be included in the regulated use category because they follow the same pattern. They cluster together, they drew patrons who were not members of the immediate neighborhood but from the surrounding community, and had operational characteristics which set them apart from other types of theaters and book stores.

These theaters and book stores, which offered -- a substantial portion of their stock in trade or their films were sexually stimulating on the spot. It was not like a drugstore which would offer a pill and you go home and five hours later you feel sexually stimulated. Whether you walk into the theater and watch the film on the screen or you walk into the book store and review the material there, the immediate reaction was sexual stimulation. I think this Court can almost take judicial notice of that.

When these persons left the store, not only the residents were aware of how they may have been sexually stimulated, but prostitutes were aware of it and prostitutes began coming into these areas. It is a matter of record in the city of Detroit that in these areas where the adult businesses were clustered, so-called massage parlors opened. We have padlocked 12 massage parlors within the last few years,

all of them in the area of the adult businesses.

I call them massage parlors, but in fact they were fronts for houses of prostitution.. This is one of the adverse effects which is caused by the adult businesses, particularly when they cluster together. And this is one of the adverse effects that the families are concerned about when they send the women and the children and some of the men who are concerned to the business area which includes these adult businesses.

In 1972 when we passed the ordinances, there was no immediate reaction. The people generally seemed to favor the ordinances. Early in 1973 we had our first test of the ordinances. The respondents in this case, the American Mini Theatres, Inc., and Nortown Theatre, Inc., both opened adult theaters in the City of Detroit in violation of the city's zoning regulations. Both were within 1,000 feet of two other regulated uses. In fact, the Nortown was within 1,000 feet of, I believe, seven other regulated uses.

Neither adult business,the respondents, neither of the respondents sought to obtain a waiver by the neighboring community. Now, I recognize that the provision in the ordinance, in the zoning ordinance requiring the consent of 51 percent of the persons living or doing business within 500 feet of the location of the adult business is not directly before the Court today, but I submit to your Honors that indirectly the provision

is before the Court. If this Court accepts the decision of the Sixth Circuit Court of Appeals that the city may not regulate adult businesses because by definition it refers to the content of the material disseminated therein, then all of the city's regulations dealing with adult businesses will be wiped out.

QUESTION: That provision that you just told us was not directly before the Court was what, invalidated by the district court and you took no appeal, is that it?

MRS. REILLY: We took no appeal. We amended the ordinance to correct the deficiency pointed out by the trial court.

QUESTION: Later. And that was after the district court's judgment.

MRS. REILLY: That's correct, your Honor. When I say that that provision is indirectly before the Court, I say that because it includes the same definition and it would be wiped out. The court refused to allow the provision that is directly before the Court.

QUESTION: If we should affirm the Court of Appeals in other words, a fortiori the other one would be invalidated in your submission.

MRS. REILLY: That is correct, your Honor.

The other point I wish to make is that this provision was needed by Council and considered by Council because it

took into consideration the aspect of protecting the families, the youth in the neighborhood. And that's why I ask this Court not to ignore it, because the package was presented to Council as one package to accomplish two ends -- to avoid clustering in the neighborhood, in the business area that served, and to insure the businessmen in the zoned business district and the residents that they would continue to have a voice in the kind of neighborhood that they lived in and to insure their commitment to the neighborhood. And this provision, 51 percent provision, has to be at least considered by the Court in the total picture that we are trying to present to the Court today.

The respondents in this matter, the two adult theatres, who by the way admit that they are adult theatres in their complaint in the Federal district court and state unequivocally that no minors were permitted, brought the suit in the Federal district court contending that their constitutional rights under the First and Fourteenth Amendments were being violated. I am sure the Court is aware that the district court reversed the rule that the provision relating to the 51 percent consent was ruled unconstitutional because, the Court said, it was too restrictive to accomplish the legitimate interest sought to be accomplished by the city, the reason being that the ordinance dealt with a particular residential unit, when the court said we had shown that we

were attempting to protect a neighborhood, and obviously a single residential unit is not a neighborhood. So that ordinance was stricken because it was more restrictive than necessary to accomplish our purpose.

The other provision of the zoning law relating to the 1,000-foot restriction was upheld as being a legitimate way of protecting the city's interest in allowing the neighborhoods to remain stable and to protect them in providing an atmosphere in which the neighborhood and the business people would continue to live in the neighborhood and --

QUESTION: Mrs. Reilly, does the amended ordinance, within 500 feet of a residentially zoned district continue that waiver provision of 51 percent?

MRS. REILLY: If I understand you correctly, your Honor, you are asking that --

QUESTION: As I understand it, your initial ordinance had that it could not be located within 500 feet of a residential unit, unless the prohibition is waived by the consent of some 51 percent of the persons living or doing business within 500 feet. Now you have amended it to read it can't be within 500 feet of a residentially zoned district.

MRS. REILLY: That's correct.

QUESTION: But may there also be the waiver by consent of 51 percent?

MRS. REILLY: Yes, your Honor, there is the waiver.

Both prohibitions may be waived. The 1,000-foot prohibition may be waived by what was the City Plan Commission, under our new organization it's a different department, but the waiver still is allowed, and the 51 percent consent waiver is still continued under the 500-foot restriction.

QUESTION: Mrs. Reilly, you characterize this case as a First Amendment case or something else?

MRS. REILLY: I would have to characterize it as a First Amendment case because of the issues raised. It is the petitioner's position, however, that the case of U.S. v. O'Brien would be controlling, and we are asking this Court not to apply an absolutist viewpoint on First Amendment rights to this case.

QUESTION: Are you trying to bring it within the time-place exception?

MRS. REILLY: Yes, your Honor. It's our position that even though we look to the content of the material to define the type of business which is causing the deleterious effect, the regulations are not directed towards the content of the material, they are directed toward the location of commercial operations in order to avoid clustering and the adverse effects that result from the clustering and to avoid locating these kinds of businesses in neighborhoods where we are concerned about family values. So in this sense I am saying, yes, First Amendment rights must be considered.

QUESTION: Could I ask you one other question now that you are interrupted again?

On the 1,000-foot part of the ordinance, I take it it means that the entrepreneur must know not only what he is doing, he has to know what other people within that radius are doing. He has to determine that they are regulated uses before he can undertake operations. Is that correct?

MRS. REILLY: That is correct, your Honor. It's a simple matter of going to the Community and Economic Development Department in the City of Detroit and filing an application or stating where he wishes to locate, and he will be advised by that department of any other regulated uses within 1,000 feet of the proposed location.

QUESTION: I suppose even without these regulations, these kinds of establishments would have to have a license of some kind.

MRS. REILLY: Your Honor, the Class B cabarets are licensed both by the State and by the city. Motion picture theatres have traditionally been licensed within the city of Detroit, and all theatres are subject to the same licensing provisions as the nonadult theatres. Book stores have not traditionally been licensed in the city, and the adult book stores are not licensed.

QUESTION: Do they have to get an occupancy permit or must they go to the city government for any purpose at all?

Or do they just go and open a book store?

MRS. REILLY: No, the book store, like any other commercial operation, must have a certificate of occupancy which is required in order to check out the health regulations.

QUESTION: I see.

MRS. REILLY: Going back to one of the points raised by one of the Justices, the question of whether or not First Amendment rights, if this is a First Amendment case, I say, yes, but I am asking on behalf of the petitioners that this Court apply the traditional balancing of interest test to the case at the bar. In many cases decided by this Court recently, the Court has looked to the content of the material. I get the impression from the Fort Dix case that was announced today that the Court said it is political material, but under the circumstances, considering the interest of the State and protecting the military atmosphere in a camp devoted entirely to military purposes, and balancing that with the interest of the persons who seek to disseminate their political views, the balancing results in a favorable position on behalf of the State, that the State's interest is more important under this situation.

This balancing of interest has been applied in Ginsberg v. New York case where the Court said, "Material may not be obscene as to adults, but may be regulated as to minors. Specific material dealing with sexual conduct, if appealing to

the prurient interests of the minors, it may be separated and regulated even though it is not obscene and cannot be totally prohibited."

The material which we are discussing in the case at bar is specifically defined and relates to specific sexual conduct. The definitions are quite explicit. In fact, when the ordinance was presented to City Council our Council president asked if it was permissible to discuss it at the table, considering our anti-pornography ordinances. We are dealing with a definition including specific sexual conduct and specific sexual areas of the body, not general ideas relating to feelings, political, social, economic, so on. The definitions are clearly tied into specific sexual conduct in anatomical areas.

QUESTION: But concededly, I take it, Mrs. Reilly, some of the material sold would not be barred or could not be barred by the State under the Miller case and the Paris Adult Theatre, that is, you can't call this simply the City of Detroit's efforts to deal with something that could be found to be obscene.

MRS. REILLY: That is correct, your Honor. We are not implying that the material is obscene because we recognize the Court's decision that no material is technically pornographic until it has been found to be so by a judicial adversary hearing. The problem is that there is a great amount of

material which may or may not be obscene, which may be hard core, soft core, whatever, but it is all sexually stimulating, and if that type of material is offered in a business, we have the adverse effect existing from these types of businesses whether or not the material is determined to be obscene.

QUESTION: Don't you think your case would be in a somewhat weaker position if the Detroit City Council simply said, "We don't like this kind of material so we are going to limit the number of outlets," that is, put it on a straight content basis rather than, as I understand they did, saying, "We don't like the consequences that come in the wake of places that sell this material"?

MRS. REILLY: Yes, your Honor, I think that is the key to this case, that we are not saying the material itself is offensive. We are saying that the operation of these types of businesses causes adverse effects which infringe upon the rights of the neighboring citizens, whether they be residents or businessmen. If we said only the material is offensive, we would have no right to prohibit the sale or dissemination of that material without a judicial adversary hearing, because this Court in Miller ruled that only obscene material may be directly prohibited and then only after a judicial adversary hearing.

QUESTION: May I ask you this, Mrs. Reilly: Is there any claim or any showing in this case that the effect

of this zoning ordinance is ultimately to limit, to put a limit on the absolute number of these theatres and book stores in the City of Detroit? The purpose is dispersal, but is there any claim that the effect is to actually limit the number of them in the city?

MRS. REILLY: I do not recall that that claim has been made at any time. The claim has been made that "We don't know where to locate," and I said at the district court level I wasn't about to point out the places where they might locate, but the zoning law is written in such a way that they may locate anywhere where similar uses may locate in business zoned districts more than 1,000 feet of two other regulated uses.

QUESTION: But my question was whether the effect was to make this ordinance tantamount to the one that my brother Rehnquist hypothesized, i.e., to put an absolute limit on the number of these two kinds of establishments in the city.

MRS. REILLY: There is no absolute limit, no ceiling on the number of --

QUESTION: I know there is no ceiling in the words of the ordinance, but my question was whether there is any claim that that was in fact what the ordinance succeeded in doing.

MRS. REILLY: I do not believe that claim was made

at any point.

QUESTION: If it is going to be made, it's going to be made here.

MRS. REILLY: It may be made now. That is why I was carefully answering that.

QUESTION: Mrs. Reilly, are the adult businesses regulated exactly the same way that some of the other restricted uses are regulated, such as bars and motels and pawn shops and the like?

MRS. REILLY: Yes, your Honor, in this way: All the regulated uses are subject to the 1,000-foot restriction. Public entertainments: many of the public entertainments in the City of Detroit are also subject to the 500-foot restriction.

QUESTION: But in terms of the 1,000-foot restriction, there is no distinction made in terms of location.

MRS. REILLY: In terms of location, no, except I have to point out that the adult businesses are now subject under our amended ordinance to the 51 percent consent provision, that the adult businesses may not locate within 500 feet of a residentially zoned district.

The other regulated uses --

QUESTION: That is not before us, though, is it?

MRS. REILLY: No, but you are asking me if they are being treated the same, and I am saying the bars under a different law are also subject to that 1,000-foot prohibition --

I'm sorry, the 51 percent consent prohibition. All regulated users are subject to the 1,000-foot prohibition. The additional requirement that they not locate within 500 feet of a residentially zoned district applies only to bars and the adult businesses within the regulated --

QUESTION: And that is the only one that can be waived, isn't it? The 1,000-foot can't be waived.

MRS. REILLY: Yes, it can be waived by the successor to the City Plan Commission upon a showing of certain facts, basically that it will not adversely affect the neighborhood.

QUESTION: But I mean the waiver of the 51 percent consent. Does that apply to the 1,000-foot as well as the 500 feet?

MRS. REILLY: No, let me explain it to clarify it. The amendments to the zoning ordinance involve two prohibitions relating to adult business. Adult businesses were categorized as regulated uses. All regulated uses are subject to the 1,000-foot prohibition.

QUESTION: And is that waivable?

MRS. REILLY: That may be waived by the City Plan Commission.

QUESTION: But not by the immediate residents.

MRS. REILLY: No, that is a separate restriction which only applies to bars, adult businesses, which we

consider to be entertainment, and certain other types of entertainment in the city. Those are listed in section 5-2-1 in Ordinance 743.

QUESTION: Now, the 500-foot, that waiver applies to what? The 51 percent.

MRS. REILLY: The 51 percent consent of the surrounding neighborhood applies to the 500-foot restriction, that an adult business may not locate within 500 feet of .

QUESTION: Applicable only to the adult business?

MRS. REILLY: Adult businesses, bars, and certain public entertainments listed in section 5-2-1.

QUESTION: Any other kind of a movie, I take it, any other kind of a theater, could be located right next to a residential zone or two theaters could be located right next to each other if they aren't in this category.

MRS. REILLY: I believe theaters may be permitted in B-3 zones, and those zones would become less restrictive.

QUESTION: They could be right up against a residential zone.

MRS. REILLY: Yes.

QUESTION: And they could be next to each other.

MRS. REILLY: Yes.

QUESTION: Shows only Shirley Temple pictures.

MRS. REILLY: Or even "I Flew Over the Cuckoo Nest." It is only those that come within our specific definition.

QUESTION: But all moving picture theaters are licensed.

MRS. REILLY: All moving picture theaters are licensed. All licensed in the same way, the same kind of restrictions.

QUESTION: I take it, or have you suggested, that one of the purposes of these restrictions is to maintain property values, like zoning sometimes is aimed at that.

MRS. REILLY: It is very definitely directed to preserve property values, yes, your Honor.

QUESTION: But that comes also through what you discussed earlier, maintaining the kind of values for a residential area where people want to live and have their children brought up.

MRS. REILLY: Provide a suitable atmosphere for the raising of children, yes.

QUESTION: It's an environmental problem which has an incidental impact on property values, is that not a fair way to say it?

MRS. REILLY: Yes, your Honor.

QUESTION: They didn't set out in the first place to try to hold up property values; they set out to try to, as you describe it in your briefs, they set out to try to preserve a decent environment in the city and one of the consequences of that is it will also help the property values.

MRS. REILLY: That's correct, your Honor. Thank you.

QUESTION: I'm afraid we haven't given you very much time to argue what you have in mind. I think we should reach the charge that this ordinance is vague and overbroad. For example, the language with respect to book stores refers to stores that have a substantial or significant part of their stock in trade within the scope of the definition. What response do you have to that?

MRS. REILLY: Well, of course, it's our position that the ordinances are quite specific. We have had to use relative terms in the definition of book stores because it's extremely difficult to say if a store has even 9 percent of its stock in trade to be adult, that does not make it adult, but 90 percent would make it adult. So we used a relative term "substantial." That word has been used time and again by this Court. In fact I think it's used in U.S. v. O'Brien talking about a substantial or compelling governmental interest. Even though the term is relative, it is not vague. This Court has looked at many relative terms, at or near a courthouse, interfere with the administration of justice, words such as that that were discussed in Cameron v. Louisiana--the Cameron case--Cox v. Louisiana. And this Court has said that you cannot always have mathematical certainty.

QUESTION: But who determines substantiality with respect to a particular store?

MRS. REILLY: Well, the department which now controls the zoning ordinances, the Community and Economic Development Administration, would make that determination.

QUESTION: Is there any provision for an administrative hearing to make that determination?

MRS. REILLY: Your Honor, under our Michigan court rules, a person may go into court and within four days have a decision of an administrative body reviewed, and if there is not substantial evidence -- again the word substantial -- evidence on the record to support that determination, the court may interfere with the administrative decision and overturn it.

There is a review body or Board of Zoning Appeals, which reviews all decisions that are protested which are made by the Community and Economic Development Department. So there is an inhouse review available in the administration of the city and there is court review available on four days notice.

QUESTION: Mrs. Reilly, how permanent is the classification? In other words, if a theater shows one adult performance or a book store has for a period of time an inventory of adult books. Is it then permanently prohibited use, or whatever the proper term is, or does it change as the operation changes?

MRS. REILLY: Under the zoning law, if a use, say an

adult use, and then ceases to be an adult use for six months, then it ceases to have the restrictions upon it, or the benefits, if it's a nonconforming adult use, say, which was existing before our ordinance and it closed down for six months or changed its fare for six months, then it would no longer be considered an adult use and no longer be considered a nonconforming use. And if it then wished to become an adult business, it would have to go through whatever the rules are applicable to starting a brand new business. There is a six months time period on it.

I would like to reserve whatever time I have for rebuttal.

MR. CHIEF JUSTICE BURGER: Thank you.

Mr. Taylor.

ORAL ARGUMENT OF STEPHEN M. TAYLOR ON BEHALF OF RESPONDENT NORTOWN THEATRE, INC.

MR. TAYLOR: Mr. Chief Justice, and may it please the Court: The ordinance in question, the ordinance before the Court is a zoning ordinance, at least it is termed that. Yet whatever the label given to a regulation, whether it be zoning, whether it be licensing, the regulation is subject to strict standards of judicial scrutiny where it impinges upon a fundamental right.

Now, there is no dispute that the zoning ordinance here impinges upon the exercise of First Amendment rights. For

that reason we have attacked the ordinance on a number of grounds, and if I might turn to the question, I believe Mr. Justice Powell directed, with regard to the question of vagueness. If we may look at the ordinance for a second, the question of vagueness arises in three contexts: First, with regard to the definition of the materials per se.

QUESTION: By the way, was that issue decided below?

MR. TAYLOR: The question of vagueness, your Honor? I don't believe it was raised, but the court didn't decide it on that issue. However, this Court can look at all the various issues independently and make its own determination. And that is the reason we have raised it continually through the courts.

However, getting back to the point of --

QUESTION: You say you raised it?

MR. TAYLOR: Yes, your Honor, in the lower court. I don't believe, however, that it was decided on that issue, and it clearly was not decided on that issue in the Sixth Circuit Court of Appeals. It was decided on the equal protection basis.

Now, again, with regard to the definition of an adult book store, per se, the term is defined as a book store having a substantial or significant portion of its stock in trade. What is substantial or significant portion? How does one measure that kind of term?

QUESTION: Does this store advertise itself as an

adult book store?

MR. TAYLOR: Of course, we are dealing with an adult theater, but assuming we were talking about an adult book store, yes, it probably would identify itself as an adult book store. However --

QUESTION: Isn't that a pretty good definition then?

MR. TAYLOR: Your Honor, I would beg to differ with you on this basis, taking the definition as it stands, that could apply to virtually any kind of a book store selling any kind of material, because we don't know where the line is to be drawn. That is to say, in the area of First Amendment rights, if precision of regulation is a touchstone, there is no way of knowing at what point a book store passes that line from adult to nonadult. So though it may be true some book stores advertise themselves as adult book stores, as that term is used, whatever that term means, it nevertheless could apply potentially to any kind of a book store. On the same basis if we took a look at a definition of a motion picture theater,"an enclosed building used for presenting material," well,that doesn't tell us whether that is one film for two hours; it doesn't tell us whether that is one film for one week or for six weeks or six films for, shall we say, two weeks apiece. In other words, again we have the same problem. We don't know at what point that line is drawn.

QUESTION: There is no question about the adult

theater, is there?

MR. TAYLOR: Pardon?

QUESTION: There is no question, ambiguity about what an adult theater is because I understand it was agreed that you didn't let minors in.

MR. TAYLOR: That would be correct, your Honor, but on the same basis --

QUESTION: Well, that makes it an adult theater, doesn't it?

MR. TAYLOR: If that be the basis that the city stands on, but we don't know that, then we could simply say that any R rated film as rated by the Motion Picture Association --

QUESTION: You made the admission that you excluded everyone but adults.

MR. TAYLOR: That would be correct, your Honor.

QUESTION: So that ergo is an adult theater.

MR. TAYLOR: That is correct, insofar as the Nortown Theatre goes, that would be correct. However, again --

QUESTION: That isn't in the definition of the zoning ordinance is it?

MR. TAYLOR: Pardon?

QUESTION: I am looking at the ordinance on page 81 of the petition for writ of certiorari.

MR. TAYLOR: Yes, your Honor. Might I direct you

to page 66 of the appendix, or petition for writ of certiorari.

QUESTION: Appendix H, beginning on page 80.

MR. TAYLOR: I believe that's a different ordinance, your Honor. 80, that is the licensing ordinance for adult theaters. The same definition, that would be correct.

QUESTION: Same definition.

MR. TAYLOR: Right. Used for presenting material.

QUESTION: It's the same definition.

MR. TAYLOR: Yes, your Honor.

QUESTION: And that doesn't say anything there about -- there is nothing in that definition, or that definition is certainly not confined to a theater that does not admit minors.

MR. TAYLOR: That is correct.

QUESTION: It's in quite different language.

MR. TAYLOR: Yes, your Honor, that is correct, and that's the point, we don't know at what point a theater becomes an adult theater, in accordance with this definition.

Now, if I might turn to the definition of the material -

QUESTION: I mean, a theater that did not admit minors would not be an adult theater within this per se under this ordinance, would it?

MR. TAYLOR: Your Honor,we don't know. That's the problem. It doesn't define it in those terms. It doesn't say that a theater which does not admit minors thereby is an adult theater, if that is what your Honor is getting at. No,

it does not.

QUESTION: I can't conceive of a theater that doesn't want paying customers. If they exclude paying customers, there must be some reason.

MR. TAYLOR: That may be true, your Honor. Possibly because --

QUESTION: Well, let's put it this way. Is the fact that the theater itself restricts itself to a minor piece of evidence that can be considered as to whether or not it is an adult theater?

MR. TAYLOR: Again, my answer to that would be no, because there are many theaters which based upon the particular movie which would come to that particular theater at a particular time would exclude minors. We don't know whether that theater then would be an adult theater.

Now, if I might turn to the definition --

QUESTION: You are not claiming the ordinance is vague as applied to your clients. You are going to make an overbreadth analysis and/you claim standing to assert the claim on some other business establishment.

MR. TAYLOR: No, your Honor, we are claiming that it is vague as applied to my client, not in this context, but in another context which I was just getting to. And also not only as applied, but as written, not only to this particular theater but to all theaters.

QUESTION: Is there any doubt about the fact that this ordinance applies to the businesses operated by your client?

MR. TAYLOR: Again, we have conceded we do show materials of a sexual nature. So if that be the definition, which is what we will get into in a moment, yes, this ordinance then would apply to the Nortown Theatre.

QUESTION: So you are really asserting that it's vague as applied to other uses different from those put on by your own clients.

MR. TAYLOR: I am also asserting that it's vague both as applied to my client and to other uses.

Now, if I might get into the next point, the ordinance defines the term "material" as material distinguished or characterized by and emphasis on matter, and then goes into the definition of the particular matter. Might I point out to the Court again we have the same problem. We don't know at what point the material is distinguished or characterized by andemphasis upon. What specifically does that mean? How much of the material, what percentage of the material has to be of a sexual nature and anatomical content, if you like, before it passes that line between nonadult and adult?

So then we have again the same problem with vaguensss.

If I might turn to the next position that we have taken, that is on the question of overbreadth. Now, as we

have said, it is our position that the ordinance is vague as far as those definitions go, but might I point out to the Court, with regard to the definition as to specific sexual conduct or specific anatomical areas that this ordinance applies to, it is quite specific. However, it defines that material in that context in a way which clearly goes beyond the restraints of that expression, that is to say obscenity. The ordinance goes far beyond permissible restraints on obscenity, and this is conceded by the petitioners in this matter. There is no question about this. Not only does it go beyond permissible restraints on obscenity, but it differentiates between materials which are protected materials which are adult and which are not adult.

QUESTION: Mr. Taylor, do you think that the City of Detroit could have said in an ordinance that regulated uses such as those conducted by your client and pool halls and other regulated, could not be established within 600 feet of an elementary school?

MR. TAYLOR: Your Honor, I think that would depend upon the interest asserted by the City of Detroit.

QUESTION: What if they had asserted the interest that they don't want elementary school students coming and going from the school to be exposed to those kind of uses.

MR. TAYLOR: My answer to the Court would be, no, based upon the definitions laid out here by this ordinance and

the way this ordinance is written. I would suppose, and I have to speak to your Honor off the top of my head in the sense that it is not the question that is before the Court. It may be possible for the city to do exactly what your Honor is saying, but they can't do it in this way and that is not the intent of this ordinance, nor the purpose nor the effect of this ordinance.

QUESTION: Well, I realize that. I was asking a hypothetical.

MR. TAYLOR: Yes, your Honor, I understand the hypothetical question. I think the city would have a difficult time justifying that kind of an ordinance unless there was some indication of an actual thrusting or viewing upon children, in other words, some indication that there was some of the material reaching the children. Simply to say, which in essence is exactly what the city is saying -- this, I think, is one of the basic questions and the essence, the question of overbreadth, the question of justification, the interests asserted by the city. What are those interests that the city asserts?

The city asserts an interest in protecting its neighborhoods, in preserving the values, if you like, community living, all of which simply exist in the abstract. Fine, and there is without a doubt an interest and the city has a valid interest in that. But let's take a look for a

moment, if we can, from the abstract abstraction of the interest to the concrete bases for the interest. The City of Detroit has said as a basis, and has filed some affidavits by a professor, and they have said that there are certain characteristics which because of their very nature cause deleterious effects. Yet they never mention what those specific effects are.

I might point out to the Court this ordinance takes effect at the inception of the operation of a theater or the book store. That is to say there is no theater or book store showing adult material, they have to request, the book store and theater have to request a waiver in essence in the case of the Nortown, a waiver of the standards in order to operate as an adult theater.

The City of Detroit says that there are certain interests, there is a basis for this interest, and they submit affidavits upon which they base their interests. If we look at the affidavits, what they really say is that people object to the materials coming into their area. They have a concept in their mind, a preexisting notion in their minds, if you like, that they don't like the material, because they don't like it, they view the area as going down, they thereby sell their property, or they don't take care of their property, the property goes down and brings in other people who don't keep it up.

Now, this is no more than what this Court has --

QUESTION: You are just drawing on generalities. There is nothing in the record about what you are saying now, is there?

MR. TAYLOR: Your Honor, to the contrary, there is an affidavit submitted by, I believe it's Mr. Ravitz, who is a professor, which is the basis of the ordinances. This is the basis, this is what the city says, We base our ordinance on this.

QUESTION: I am talking about your generalities. As a result of that people let their property go down. Did he deal with people neglecting the maintenance of their property?

MR. TAYLOR: As a matter of fact, your Honor, in his affidavit he says specifically that whether it is true or not that property is going down, they act as if it is going down, as if there is an effect on the neighborhood which is deleterious. And therefore, since they will act it, then that would be in fact the truth. And this is the point we are making to the Court. All the city is saying in essence on this record is that what this Court has called an undifferentiated fear or apprehension of harm at some time in the future as a basis for these ordinances. What the city is doing.

QUESTION: Do you suggest, is it your case that an adult theater may be located in any zone in which a nonadult

theater could be located?

MR. TAYLOR: Yes, your Honor. We are saying that there is virtually no reason, no basis, no rationale --

QUESTION: I take it that in Detroit they have six business zones, B-1 through B-6?

MR. TAYLOR: That is my understanding.

QUESTION: I take it on the face of the ordinance where it recites that adult theaters are not permitted in B-1, B-2, or B-3 zones, although other theaters are.

MR. TAYLOR: No, your Honor, I believe other theaters are not permitted in B-1, 2, and 3, and adult theaters are not permitted in B-3, 4, 5, and 6, though other theaters are. So there is a difference based upon the content of the material intended to be disseminated.

QUESTION: You would think that general prohibition would fall if you win this case, not just the 500 or 1,000-foot.

MR. TAYLOR: No, your Honor, our position is that our theater or any theater or book store should be treated no differently than any other theater or book store.

QUESTION: Then you should answer my question yes. Your kind of theater or your kind of book store should be able to be located in any zone in which an ordinary theater --

MR. TAYLOR: That is correct.

QUESTION: Should a pool hall, under your constitutional theory, be able to be located in any zoning

district where a grocery store could be located?

MR. TAYLOR: There may be a difference there, your Honor, but the difference is that a pool hall is not in and of itself protected. For instance, a theater, may I point out to the Court, that you can't show a film without a motion picture theater. If you stop the operation of a theater, you stop the showing not only of a particular film, but all films which would be shown at that theater.

QUESTION: But what if the city says pool halls and adult theaters produce exactly the same consequences, attract adults, kind of a seedy class of adults in the eyes of the city, and we simply want to confine them or limit the closeness at which they are located together. Why can't the city do that?

MR. TAYLOR: The city may be able to do that, but would have to come up with a concrete justification which would be, I might add, more than merely the city doesn't like the people who come to the theater because they assume something is going on in the theater, which is exactly what counsel has come up with just now in this interest. They assume that the people are sexually excited and therefore they say this kind of thing we don't want.

QUESTION: But there is some evidence in the record, isn't there, that prostitution tends to follow these types of operations and that the city was concerned not about just the

content of what was being shown, but about the attendant consequences when a neighborhood took on the characteristics.

MR. TAYLOR: Your Honor, one, there has been no independent evidence, no showing adult book stores and adult theaters in and of themselves cause this problem. There is virtually nothing in the record. No. What the city has said is that there are massage parlors which cause these problems, the city has just said. Yet you will note the massage parlors are not included in the regulated uses. So there is something other than prostitution which is involved.

MR. CHIEF JUSTICE BURGER: You are cutting into your colleague's time now.

Mr. Weston.

ORAL ARGUMENT OF JOHN H. WESTON ON BEHALF OF RESPONDENTS AMERICAN MINI THEATRES, INC. AND PUSSY CAT THEATRES OF MICHIGAN, INC.

QUESTION: Mr. Weston, before you begin, will you tell me this: Is your theater located in one of the districts where adult theaters may be located?

MR. WESTON: Yes, your Honor. As I understand it, there is no question raised by the city --

QUESTION: Well, you are.

Now, my next question is are you within 1,000 feet of another adult theater?

MR. WESTON: We -- by "we" I refer to my client's

theater -- your Honor, is apparently within 1,000 feet of two other regulated uses. The record does not disclose whether or not--

QUESTION: What happens? Do all three have to go out of business?

MR. WESTON: Apparently the one that has to go out of business is the third one.

QUESTION: The third one.

MR. WESTON: Yes.

QUESTION: The new one.

MR. WESTON: Yes.

QUESTION: And is that you?

MR. WESTON: Yes, your Honor, that apparently is us.

QUESTION: Even though you had been established before the ordinance?

MR. WESTON: No. In this case,your Honor, unlike the theater owned by respondent Nortown, we had not been an operational theater prior to the time of the promulgation of the amended ordinance.

QUESTION: I see.

MR. WESTON: Nortown apparently had been a theater for some 40 years and then changed policy subsequent to the ordinance being passed. We were an incipient theater, if the Court will, having passed all of the preliminary tests and then the ordinance was promulgated and we were denied a certificate

of occupancy.

QUESTION: Do you have any theater in either of these cases located in areas where adult theaters may not be located under the ordinance?

MR. WESTON: As far as I know, your Honor, neither of the theaters involved in this case is in such a generally outlawed zoning area, so it's simply a question, then, of this clustering effect of the theaters.

QUESTION: Thank you.

MR. WESTON: Surely, your Honor.

Mr. Chief Justice, and may it please the Court: It is critical, it seems, to recall in this case at all times, that notwithstanding the suggestion and possible implication of Mr. Justice Rehnquist earlier in my colleague's argument, that we are dealing here only with speech which is presumptively protected under the First Amendment. The definitions under this ordinance are not the Miller definitions, nor is there any question that we are not dealing with material which has previously been found under procedural safeguards to be obscene. So we are dealing here with absolutely presumptively protected speech, and we resist and resent the attempt on the part of petitioners to try to deal with disseminaters and places of dissemination of presumptively protected constitutional speech in the same fashion as with pool halls, with grocery stores, with flop houses, with billiard parlors, and the like.

QUESTION: How far does your argument go? In other words, I suppose you would agree that a city could zone a portion of its area as residence A for single occupancy residential units and thereby exclude from such an area grocery stores, pool halls, shoe shine parlors, barber shops, and so on.

MR. WESTON: Yes, your Honor.

QUESTION: But your claim, if taken to its logical extreme,would be that it could not exclude from such an area a book store.

MR. WESTON: No, your Honor.

QUESTION: Or moving picture theater.

MR. WESTON: Not at all. We do not quarrel with the right of this municipality or any municipality to be able to zone in traditional ways, and in fact Detroit, as has been pointed out, does have the traditional --

QUESTION: Why does it have to be traditional? Why does the status quo have to be frozen in terms of land use planning?

MR. WESTON: I would say there is nothing required about that, of course, your Honor. But in this case we have, where Detroit has previously zoned into commercial, residential, and industrial areas, and what we are suggesting is that there can be no discrimination, no regulation of theaters in the name of zoning on the basis of content where the content

unquestionably at the time of the zoning is entitled to presumptive constitutional protection. It's that which we are resisting. If the city wishes to say within consistent zoning policies that no theaters may be located in a particular zone or --

QUESTION: Why isn't that a violation of the First Amendment under your argument?

MR. WESTON: Because what we are saying is that there is an inability constitutionally on the part of a municipality or other form of government to discriminate against theaters on the basis of content where that material is entitled to presumptive protection considerations, as these materials are. No theaters is one thing, just as, and has been said many times by this Court, that there may well be instances where no picketing may be undertaken. There may well be instances where there is no speech which may be tolerated under certain circumstances.

QUESTION: Why would you say that a single family residential zone is sustainable if it excludes pool halls and theaters from it, for example? What is the interest that supports that exclusion?

MR. WESTON: Well, it would seem, your Honor, and particularly in light of the recent decision in this Court in the Belle Terre case, that there are interests which are supportable constitutionally in a municipal area.

QUESTION: What are they? That's what I am asking.

MR. WESTON: I suppose the language of the Court is clear, to preserve a certain environment, to help the environment, to protect the envirionment.

QUESTION: Because of the consequences of having the commercial establishments there.

MR. WESTON: Potentially, yes, your Honor. But the fact that the term zoning and concepts inherent in zoning is superimposed on some sort of scheme no more confers talismanic immunity from constitutional scrutiny than any other such device which has ever been before this Court. Simply because the word "zoning" is utilized does not end the question. And the use of --

QUESTION: I suppose you could have B-1, B-2, B-3, and B-4, and in some areas you could have pool halls or grocery stores, but in that area you couldn't have a second-hand automobile dealer.

MR. WESTON: That may well be the case, yes, your Honor.

QUESTION: Because of the consequences and the characteristics of the business.

MR. WESTON: And because of the deference which this Court has traditionally given to certain governmental entities in terms of being able to control their own destinies subject to a strict analysis of constitutional --

QUESTION: What if one theater has a different consequence than another? It may be because of its content that it has a different -- but let's just posit that one kind of theater has a different impact than another.

MR. WESTON: Your Honor, first -- excuse me.

QUESTION: Why would you say that that neither could be excluded from the district?

MR. WESTON: Your Honor, it may be under some circumstances which are not present in this case and which are not present in the record which we have before us that there may be a specific entity, a specific theater, a specific work which in light of the legitimate and compelling interests of the city may in fact be regulated, as under any form of speech where appropriate, specific, particular questions are raised with regard to it. There is nothing unconstitutional, for example, about denying to a particular group the right to seek a forum under certain circumstances. There may well be a particular case.

We do not have this in this case.

QUESTION: Mr. Weston, suppose -- I gather these 1,000- and 500-foot limitations apply only to theaters defined as adult.

MR. WESTON: That is correct, your Honor.

QUESTION: Suppose you didn't have the limitation but rather that the 1,000- and 500-foot limitation should apply

to all theaters.

MR. WESTON: In that case, your Honor, certainly the question of equal protection in light of First Amendment activities making discrimination on the basis of content would be vastly diluted.

QUESTION: You wouldn't need to be here, would you?

MR. WESTON: I think not, frankly. There might well be, if there were certain --

QUESTION: Well, in that circumstance would you say that notwithstanding First Amendment prohibitions, that kind of zoning would be all right?

MR. WESTON: Yes, your Honor, that's what I am trying to suggest in terms of the refusal, then, of the city to discriminate on the basis of content.

QUESTION: I mean, even though there are no other businesses, even though other businesses are in that area?

MR. WESTON: No, your Honor. You see, that's the area which I am reluctant to concede and will not concede. There may be other and separate First Amendment problems raised by an attempt to exclude theaters where, for example, other businesses are permitted.

QUESTION: You don't exclude them. You simply say that theaters have to be, without regard to whether they are adult theaters or not, no theaters can be closer than 1,000 feet to each other, nor closer than 500 feet to a residential

district.

MR. WESTON: Yes, your Honor. In that sense that would eliminate the content-based equal protection discrimination of which we complain most strongly. It would not necessarily eliminate the fact that there may well be able to be, under the zoning laws, 97 gas stations which are allowed to proliferate near one another.

QUESTION: It's a classification problem, then, without First Amendment --

MR. WESTON: Without the same compelling First Amendment, yes, your Honor.

QUESTION: Now, the Belle Terre case involved First Amendment factors, did it not?

MR. WESTON: There were some implicit there, yes, your Honor, but the Court --

QUESTION: That is with association.

MR.WESTON: Yes, your Honor. But the Court was very specific in that in noting that it was not a fundamental right involved there and consequently the strict scrutiny test was not required. In this case, though, it is conceded by all parties that this is an ordinance which directly on its face purports to regulate First Amendment activities on the basis of content, that it involves a fundamental situation and consequently the strict scrutiny test must be applied. And it is our position, and in this sense we differ somewhat with

the Court of Appeals, because, of course, we agree that the discrimination, the distinctions that are made in the ordinance cannot stand under equal protection. However, we disagree with with the Court of Appeals, because we do not concede that the City of Detroit has a legitimate, no less compelling interest in the ordinance and the purposes of the ordinance which they have set up.

Now, let me be very clear about that. We are not saying that the City of Detroit does not have a legitimate interest in trying to maintain nice neighborhoods and a fine place in which for the citizens to live and maintaining the property values and a lovely area for children in which to be raised. But that's like analyzing an ordinance in terms of the interest by saying the purpose of it is to do good. It appears that we must be more precise in our analysis of what the ordinance is. And looking at it with more precision, we submit that the purpose of that ordinance is to prevent clustering of adult theaters based on the question of content on the basis of the undifferentiated fears of some people or some dominant interest in the community that bad things will happen --

QUESTION: Is it your position that content may not be a standard at all or can it sometimes guide the zoning?

MR. WESTON: Where the speech is protected, Mr. Justice Stevens.

QUESTION: Then no differentiation on the basic test. Suppose, for example, that in a neighborhood next to an elementary school the city permitted a theater to show nothing but Walt Disney cartoons, if it granted that permission, I take it, your position would be that it must therefore also grant permission to show anything protected by the First Amendment.

MR. WESTON: Certainly, as an abstract proposition, I would agree with that 100 percent, and clearly it appears to me that those issues, Mr. Justice Stevens, were really dealt with by this Court in the recent Erznoznik position v. City of Jacksonville, where we cannot condition necessarily that which is fit for adults and that which is fit for juveniles, and absent some greater compelling interest and demonstrated need, which we do not have in this case. It is simply not possible to say, as petitioners have tried to assert, that this case is based on a desire to protect juveniles, that theaters are by definition adult, they are by definition in neither commercial or industrial areas. This is not an area simply where children are involved. And to the extent that the city wishes to assert that there is somehow something wrong with exterior advertising or whatever may be there that children cannot avoid, based on some real record which we do not have in this case, then less intrusive regulation on First Amendment rights may be adopted to protect against those specific, not generalized,

not undifferentiated --

QUESTION: You are saying it's OK to look at content only for the purpose of protecting juveniles, but there is no such showing made here.

MR. WESTON: No, your Honor, I am not saying that at all. I am saying that --

QUESTION: I thought you said you could avoid the advertising outside the theater that would attract the juveniles.

MR. WESTON: No. What I am suggesting is this: I recognize, for example, that the Erznoznik opinion is limited to some extent in that obscene material on the outside of a billboard, or, for example, material which might not be obscene for adults but which perhaps might be harmful matter for juveniles, stronger material than was involved in Erznoznik might be by appropriate legislation or zoning limited so that it could not be exposed to juveniles in this 600-foot circumstance from schools.

What I am saying, however, is that content of the theater, content of films or books sold in the theater or book store which are not exposed to juveniles, which are not present in this factual circumstance, such as you said, in the absence of a very specific record which I really, frankly,cannot even imagine, may not be discriminated against on the basis of content. That is the position which we assert.

QUESTION: Mr. Weston, supposing instead of Detroit this were Dodge City 50 years ago and they enacted an ordinance that no movie showing Western films could be within 1,000 feet of another one because the cowboys came in on horses and they just couldn't accommodate all the horses if the theaters were too close together. Would you say there was something wrong with that?

MR. WESTON: Your Honor, on the basis of the flat assertion that the Court just made, I would say that there would simply have to be a strong showing that theaters exhibiting Westerns somehow attracted more horses, I suppose, let alone anything else.

QUESTION: Suppose there was that kind of a showing.

MR. WESTON: Your Honor, it would appear that in the absence of a compelling State interest in the preservation of the streets any more than an interest which this Court has ruled insubstantial to prohibit the distribution of handbills in the name of littering would simply not be appropriate to justify discriminating against presumptively protected disseminaters of speech -- or dissemination of presumptively protected speech on the basis of conduct. And I would without question exhort this Court not to remove that bulwark in the American Constitution.

QUESTION: Could you have any difficulty with a zoning ordinance that provided that there must be a parking

lot within 50 feet of every theater with parking spaces at a ratio of one car for every two seats in the theater, nothing to do with the First Amendment, just to keep the cars off the streets.

MR. WESTON: I understand, your Honor.

QUESTION: Do you have any problem with that?

MR. WESTON: I would certainly -- without talking about discriminatory enforcement, on its face that certainly becomes much more like O'Brien where the ordinance involved is not -- ordinance or statute is not speaking directly to limit First Amendment rights, and I think at that point then counsel's O'Brien analysis would obtain, whereas in this case it seems totally misplaced whatsoever.

QUESTION: Very well.

MR. CHIEF JUSTICE BURGER: Mrs. Reilly.

REBUTTAL ARGUMENT OF MRS. MAUREEN P. REILLY

ON BEHALF OF PETITIONERS

MRS. REILLY: Thank you, your Honor.

I would like to take the remaining moments to respond to some of the comments made by counsel for respondents.

In response to one of the question by one of the Justices, I was given the impression, and I am fearful maybe some of the Justices were, that the adult businesses may not locate in the same business districts as other nonadult businesses of the similar type. That is not so. The adult

theaters may locate in zones B-4, B-5, and B-6, just as a nonadult theater may locate in those zones, unless they are faced with the 1,000-foot restriction or the 500-foot restriction.

QUESTION: A nonadult theater could be side by side with an adult theater.

MRS. REILLY: That is correct.

QUESTION: The 1,000-foot distance has to be between two adult theaters.

MRS. REILLY: Two regulated uses, which include other than the adult theaters.

The second point is --

QUESTION: But aren't there some areas in which adult theaters may not locate that other theaters may?

MRS. REILLY: Only if it's subject to these two restrictions that I mentioned, the 1,000-foot or the 500-foot. Otherwise they are treated the same as a regular theater.

QUESTION: As far as general zoning goes.

MRS. REILLY: Yes.

QUESTION: Right.

MRS. REILLY: The point has also been raised by counsel in oral argument and in his brief that we did not zone massage parlors. I think the answer to that is rather obvious. Massage parlors are legitimate business operations, as are health clubs, spas, and so on. It is only when they are fronts

for prostitution that they create a problem.

QUESTION: Well, pool halls and shoeshine parlors and motels and hotels are presumptively legitimate operations, too.

MRS. REILLY: Yes, your Honor, but the massage parlors, the legitimate massage parlors have not created the problem that pool halls, bars, and so on have created. It's only those massage parlors which are fronting as houses of prostitution which have created a problem, and clearly we do not intend to zone them.

QUESTION: You padlock them.

MRS. REILLY: We padlock them, put them out of business entirely.

One of the Justices raised the question whether it would be feasible to limit all theaters under the 500-foot and the 1,000-foot restriction. Our problem with that is that we feel that if we did that, then the nonadult theaters would claim that the ordinance applied to them was overbroad because there are no adverse effects from their operation, therefore, they should not be restricted. They would claim First Amendment rights and claim that the city's ordinance unnecessarily restricted their location and their operation. And so we have not included all theaters. We included under the ordinances only those theaters which have been shown to cause deleterious effects in the neighborhood.

QUESTION: I suppose a theater if it's large enough can cause what might be considered adverse effects in a neighborhood by bringing a lot of traffic and a lot of noisy people late at night. Isn't that true?

MRS. REILLY: Yes, your Honor, but that --

QUESTION: And a lot of non-neighborhood people.

MRS. REILLY: If it creates a nuisance in the neighborhood, then the nuisance may be enjoined. Whatever the operation or effects caused by the large theater are, then the city might go into court and ask that those operational effects as to congestion of traffic and so on be enjoined as to that specific theater and those specific operational characteristics.

QUESTION: But that's not an exercise of police power of zoning, is it?

MRS. REILLY: No, your Honor, that relates to a specific nuisance problem.

QUESTION: It's just an ad hoc nuisance.

MRS. REILLY: There is law in the City of Detroit --

QUESTION: But I assume, for instance, that's the reason you exclude from residence A districts and from commercial B-1 and 2 and 3 all theaters.

MRS. REILLY: That's correct, your Honor.

QUESTION: Because of the effect.

MRS. REILLY: And the parking problem is treated by

ordinance in the city. There are requirements as to the number of parking spaces which must be made available for a theater having a certain number of seats. But that applies to all theaters regardless of the type.

QUESTION: That's the regular off-street parking ordinance.

MRS. REILLY: Yes, your Honor.

If there are no further questions --

MRS. REILLY: Just so I get it straight, on page 86 of the petition for writ of certiorari there is that whereas recital in the third full paragraph that says, "Whereas, adult motion picture theaters, adult mini motion picture theaters, adult book stores and Group D cabarets are not permitted in B-1, B-2, or B-3 zoned districts and are only permitted with the approval of the City Plan Commission in B-4, B-5, and B-6."

I take it from what you say, that no theaters are permitted in B-1, B-2, and B-3.

MRS. REILLY: That is correct, your Honor.

QUESTION: So that this recital is true but it's also true of all theaters.

MRS. REILLY: That's correct. It did not go far enough to explain that it does include all theaters.

Thank you, your Honors.

MR. CHIEF JUSTICE BURGER: Thank you, Mrs. Reilly.

Thank you, gentlemen .

The case is submitted.

(Whereupon, at 11:27 a.m., oral arguments in the above-entitled matter were concluded.)