



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Request to Join in Amicus Brief Requesting Certiorari by the United States Supreme Court in the case of Young v. City of Simi Valley, United States Court of Appeals, 9<sup>th</sup> Circuit.

**MEETING DATE:** November 1, 2000

**PREPARED BY:** Randall A. Hays, City Attorney

**RECOMMENDATION:** The City join the Amicus Brief requesting Certiorari of the United States Supreme Court in the case of Young v. City of Simi Valley.

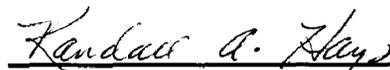
**BACKGROUND:** Amicus Briefs are filed in various actions, which involves matters of wide-ranging concern to provide information and additional argument to the Court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

This case involves a challenge to the City of Simi Valley's Adult-Oriented Business Ordinance. The Ninth Circuit has found that the right to locate an adult-oriented business in a particular location accrues at the time the application for a use permit is made, not the time at which a use permit is granted. In this case, a disqualifying use came into existence after an application to locate an adult-oriented business had been made. The Court's finding that rights to locate an adult-oriented business accrued at the time of application in effect creates a property right in that application which is contrary to existing law in the State of California. One only accrues property rights to a situation involving a permit once a permit is issued. This particular finding is troublesome for local government not only in the adult-oriented business context, but it would, if sustained, raise questions relative to the issuance of building permits or other permits of entitlement that provide no rights currently until such time as they are issued.

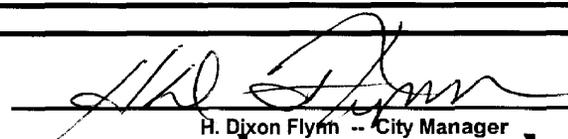
The amicus brief seeking certiorari from the United States Supreme Court will contend that the ruling conflicts with Supreme Court standards imposing strict limitations on facial challenges to statutes. By eliminating the requirement that a plaintiff first show that an ordinance is unconstitutional is applied before asserting facial invalidity, important and meaningful laws designed to protect the public health, welfare and safety can now be successfully challenged on the most speculative of theories. Amicus will further contend that this decision creates an unworkable procedural scenario for local governments. By granting adult businesses a property right not available to any other person in California, such businesses have an unfair advantage in controlling the development of the area where they are locating. Further the newly created property right grants such adult business preferential access to the federal courts.

**FUNDING:** Not applicable.

Respectfully submitted,

  
\_\_\_\_\_  
Randall A. Hays, City Attorney

APPROVED:

  
\_\_\_\_\_  
H. Dixon Flynn -- City Manager