The following article appeared in the Houston Chronicle on December 8, 2013.

**Experts raise questions about city settlement with topless clubs**  
By Mike Morris and Jayme Fraser

Houston's recent settlement to relax rules in exchange for payments and changes at 16 of the city's largest topless clubs drew unease and skepticism from experts in human trafficking and the law.

The city will halt enforcement of a three-foot rule required between performers and patrons and will allow dancers to be fully topless at the 16 clubs involved in the settlement, according to an agreement announced late last month. In exchange, the clubs will eliminate their private rooms and contribute more than $1 million a year to fund a new 12-person Houston Police Department unit to investigate human trafficking.

The clubs also have agreed to report to the city any prostitution, indecent exposure and drug use, as well as the names, ages and immigration status of all employees.

The agreement ends a 16-year court battle that followed the passage of Houston's sexually oriented business ordinance in 1997. Among other challenges, the clubs had claimed they are not sexually oriented businesses as defined in the law.

Of the 289 Houston clubs, massage parlors and bookstores city officials believe are sexually oriented businesses, City Attorney David Feldman said, only five have agreed to be regulated under the ordinance.

The settlement will free up vice officers from spending most of their time at the largest clubs to focus more on "rogue" clubs operating in brazen violation of the law and harbor more trafficking activity, Feldman said. He denied that the settlement amounts to the city relaxing its rules in exchange for club owners' cash.

"If all we required was that they contribute money, then I would agree with that depiction, but they're required to do much more than that," he said. "One of the things we were able to accomplish in this agreement that no one thought we'd ever get them to agree to was to eliminate the private rooms, the private areas and the de facto enclosures. That was the most difficult part of this to negotiate, not the money."

Separation of powers
South Texas College of Law professor Matthew Festa said the payments are not his central concern, noting cities often condition building permits on a business planting trees or building sidewalks. Festa said the deal presents a separation of powers issue, however, in that Mayor Annise Parker's administration is selectively enforcing city rules. It also raises a due process issue by creating a two-tiered approach to enforcement, he said.

The ordinance remains in force as written for clubs not involved in the settlement. In addition to the three-foot rule, the ordinance requires that such businesses operate at least 1,500 feet from schools, day cares, parks and churches.

Experts’ opinions

"'You close down the private rooms, and we'll back down on the three-foot rule.' Those are great examples of compromise and deliberation that are supposed to be made and decided on by the legislative body, which is the City Council," Festa said. "The settlement may, in fact, reflect a good judgment about what the law should be, but until that becomes what the law is, it's problematic for the city to not enforce it uniformly."

Kellen Zale, a professor at the University of Houston Law Center, had fewer concerns about two-tiered enforcement. She said the outcome strikes her as similar to grandfathering, which happens regularly in all cities, particularly zoned cities where businesses that exist before land use rules change can operate under the old rules.

"The local government is exercising its police power and saying, 'In exchange for you helping with our vice requirements, we can help with your, I guess, clothing requirements,'" she said. "It's within their police power to make these arrangements that change the land use requirements or the business operation requirements for a particular business."

Amy Farrell, a Northeastern University criminologist and human trafficking expert, found the settlement surprising. Small charges for such things as violating the three-foot rule can be useful for police, she said, helping them gain leverage for a wider trafficking probe.

"There certainly have been cities in the U.S. that have created agreements with businesses, but those were more on the regulation side and didn't have this explicit pay-back system," Farrell said. "We hope that communities would provide the resources to pursue these cases without needing to make bargains with strip clubs."

Deal 'feels slimy'
Still, Farrell said, the information sharing between businesses and police, and the money to fund additional officers, could be valuable.

Mary Burke, executive director of the nonprofit Project to End Human Trafficking, refers to Houston as city that is making progress on human trafficking, but said the settlement "feels slimy."

"I have mixed reactions. Are we somehow colluding with the perpetrator by taking this money?" she said. "That's really fantastic to see that much money go to a human trafficking unit. I hope some of that money is given to groups who help survivors."

Burke said she is among those who believe all sex businesses exploit and objectify women, and said she is concerned the elimination of the three-foot rule could lead to more dancers being touched or grabbed in unwelcome ways.

Church concerned

Congregants at Houston's Grace Community Church received a similar message from pastors Steve Riggle and Garrett Booth; some then contacted City Council members in a mistaken belief that the settlement would come up for a vote. Feldman said he also has received critical emails from church members.

"We are legalizing the further exploitation of women in the city of Houston in exchange for a yearly bribe to hire officers to address the exploitation of women in the city of Houston," the Grace church statement read. "Our city officials are proposing to extort money from these businesses in exchange for allowing behavior that is currently illegal according to the sexually oriented business code. It's unbelievable."

The new unit is expected to launch with the new year, staffed by Capt. Charles Dunn, nine officers and two civilian employees. Dunn said some vice officers, including him, have trained in trafficking and worked with trafficking task forces.

"Without a doubt, a large portion of human trafficking takes place in the sex industry, and those (16) clubs … are involved in the sex industry," Dunn said. "In one way, I see and understand the controversy of it. Looking at it another way, it makes sense the industry is taking part itself to take care of this problem occurring in this industry."