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March 22, 2023

The Honorable Bryan Hughes  
Senate Committee on State Affairs  
P.O. Box 12068  
Austin, Texas 78711

Dear Chairman Hughes and Members of the Committee:

On behalf of the City of Houston (“City”), I write in opposition to Senate Bill 12 and ask that this written testimony be included in the formal legislative record for S.B. 12. The City and I thank the Committee and chairman for the opportunity to comment regarding this proposed legislation.

My name is Damon A. Crenshaw. I am Chief of the Neighborhood Services Section of the City of Houston Legal Department. I testify with the City’s full authority to speak on its behalf as part of my assigned duties and responsibilities.

The City of Houston Oppose S.B. 12 for the following reasons:

- I. **AS WORDED, S.B. 12, IN PROPOSED SEC. 243.0031(C), PLACES UNDUE BURDEN ON THE CITY TO EXAMINE THE CONTENT OF PERFORMANCES AT MULTIPLE CITY OWNED VENUES**

Proposed Sec. 243.0031 (c) states, “A municipality or county may not authorize a sexually oriented performance: (1) on public property; ...”. At multiple City owned venues – Alley Theatre, Jones Hall, Wortham Center, Hobby Center, and the like – performances may include nudity or “cross-dressing” characters. Some examples including “cross-dressing” characters would be plays by Shakespeare or the recent play, “La Cage aux Folles”. These types of performances are generally accepted in most communities. As defined by this bill, a “sexually oriented performance” might occur in numerous other events and yet be generally acceptable to the public. To comply with this bill, the City would have to pre-screen every performance

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at its public venues to determine whether a violation could occur. Such is an undue burden and expense on the City.

II. S.B. 12 FORCES THE CITY TO PROHIBIT CONSTITUTIONALLY PROTECTED SPEECH

As noted above, artistic performances at City owned venues (public property) may include “sexually oriented performances”, as defined in this bill. Most performances of this nature, at these venues, likely would be protected by the First Amendment right to speech. This bill unfairly burdens the City by putting the City in the position of predetermining potential constitutional issues while trying to comply with the proposed statute.

III. S.B. 12 BURDENS COMMERCIAL ACTIVITY IN THE CITY WHICH IS GENERALLY ACCEPTED IN THE COMMUNITY

The bill aims to curtail commercial activity which is generally accepted in communities within the City. Many business which contribute to commercial activity and revenues for the City have events involving “cross-dressing” activities (non-sexual drag shows) which some may say this bill defines as “sexually oriented performance”. The performances in these events are of the nature commonly seen on television. For the most part, the performances are not sexual in nature. The bill fails to define “prurient interest in sex” and opens the door to undue efforts to suppress protected expression and costly litigation. All the while, the City’s commerce will suffer during misguided efforts to enforce the terms of this bill.

For these reasons, the City of Houston respectfully opposes S.B. 12.

Sincerely yours,

/s/ Damon A. Crenshaw

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