

**Regulation of
Adult Entertainment Establishments
in St. Croix County**

**St. Croix County
Planning Department**

September, 1993

REGULATION OF
ADULT ENTERTAINMENT ESTABLISHMENTS
IN ST. CROIX COUNTY

I.	Summary	1	
II.	Potential Adverse Impacts	1	
	A. Economic Impacts		2
	B. Physical Impacts		2
	C. Social Impacts		2
	1. Morality		2
	2. Crime		3
	3. Community Reputation		3
	4. Quality of Life		3
			3
III.	Adult Entertainment Establishments in St. Croix County		
IV.	Definitions		4
	A. Specified Sexual Activities		4
	B. Specified Anatomical Areas		4
	C. Adult Establishments		4
V.	Regulatory Techniques		6
	A. Zoning Techniques		6
	1. Dispersal		7
	2. Concentration		7
	B. Other Regulatory Techniques		7
VI.	Constitutionality of Zoning Approaches		8
VII.	Recommendations		9
	A. Zoning		9
	1. Dispersal		9
	2. Permitted Districts		9
	3. Exterior Display		9
	B. Licensing		9
VIII.	Proposed Zoning Text Amendments		10
IX.	Bibliography		16

Regulation of
Adult Entertainment Establishments
in St. Croix County

I. Summary

Interest in regulating adult entertainment businesses is increasing throughout the Country, as such establishments continue to proliferate. Potential negative impacts of adult businesses include declining property values, blight and deterioration of surrounding neighborhoods, crime, and loss of "quality of life".

Unincorporated St. Croix County does not currently have a concentration of adult entertainment establishments. However, there are no regulations in effect to control the future location of such businesses. St. Croix County should consider following the lead of other communities which have used zoning to regulate adult entertainment establishments.

One of two zoning approaches is generally used. The dispersal technique requires that adult businesses be separated from each other and located away from residential zones, churches, schools, and parks. The concentration technique, on the other hand, allows adult entertainment uses only within a specified area. A primary purpose of either zoning approach is to prevent deterioration of the surrounding area.

Courts have generally upheld the constitutionality of zoning ordinances aimed at controlling adult entertainment establishments, providing that regulations do not totally exclude or excessively restrict such businesses. Local jurisdictions can only seek to curb the negative effects of adult businesses, not to prevent their establishment

It is recommended that St. Croix County adopt the dispersal technique. Adult entertainment businesses should be required to locate a minimum of 1,000 feet away from any other adult entertainment business, a minimum of 1,000 feet away from any property zoned Residential or Ag-Residential, a minimum of 1,500 feet from any property zoned Agricultural or Agricultural Two and 2,000 feet from any school, library, church, park, playground, or daycare facility. Adult entertainment establishments should be permitted in the Commercial or Restricted Commercial districts with a Special Exception Permit as part of a new Adult Entertainment Overlay District. In addition, it is recommended that sexually-oriented signs or displays not be permitted within view of the general public. Finally, the County should explore the possibility of requiring licenses for adult entertainment businesses.

II. Potential Adverse Impacts

Over the past several years, there has been an increasing concern about "adult entertainment establishments". However, these establishments continue to proliferate. The adult entertainment industry, which includes sexually-oriented businesses such as massage parlors, adult bookstores, adult theaters, and clubs and bars featuring live nude dancing, has become a multi-billion dollar growth industry (Rohan, p. 11-1)

This proliferation has generated a great deal of debate over the possible adverse economic, physical, and social effects of adult businesses. These potential impacts are outlined in the following sections-

A. Economic Impacts

Several municipalities have documented the economic impact of existing adult entertainment businesses on their communities. Real estate experts in Los Angeles concluded in 1977 that areas with a concentration of adult entertainment establishments have lower market value, rental value, and rentability- salability, and that these adverse effects diminish with distance (McClendon, p.2-3).

Detroit, one of the first communities that used zoning to control adult entertainment businesses (in 1972), successfully defended a Supreme Court challenge to its ordinance in 1976. The City's success in this legal battle was partly due to documentation by the City that concentration of adult businesses results in deteriorating property values and depressed neighborhood conditions, among other effects (Yow, p.34).

The effects of the concentration of adult entertainment uses in the City of Beaumont, Texas were noted in a neighborhood plan prepared by the City's planning department. The plan described the "economic decline that followed the establishment and concentration" of adult businesses, and noted that these businesses drove away neighborhood commercial stores (McClendon, p.3).

In 1983, Indianapolis surveyed real estate appraisers on the impact of adult entertainment uses on surrounding property values in a hypothetical neighborhood. The overwhelming majority responding to the survey (80%) felt that an adult bookstore would have a negative effect on residential property values within one block of the site. Furthermore, 72% felt that commercial property values within one block would also be affected. The negative impact dissipates markedly 'with distance. At three blocks, less than 40% of the responding appraisers predicted a negative impact (McClendon, p.3).

B. Physical impacts

The economic decline resulting from adult businesses often causes physical deterioration and blight in communities. Negative physical impacts have been documented in Detroit, Los Angeles, and other cities @4cClendon, p.²).

Traffic congestion has also been reported (Yow, p.34). In addition, late at night, during their primary operating hours, adult entertainment businesses can create problems of noise and glare, as reported by the Amarillo, Texas Planning Department (McClendon, p.2).

C. Social Impacts

Potential social effects of adult entertainment establishments cover a wide range of impacts - morality, crime, community reputation, and quality of life.

I. Morality. The moral implications of pornography have been the subject of much public debate, pitting First Amendment rights of free speech against the desire to protect the public from exposure to pornography. Nevertheless, morality is often cited as a key reason to regulate adult entertainment. The Commission on Obscenity and Pornography noted in 1970 the concern of many people that adult entertainment businesses cause "a deleterious effect upon the individual morality of American citizens and upon the moral climate in America as a whole" (Radzinowicz and Wolfgang, p- 503, as quoted in Yow, p. 34).

2. Crime. There is much evidence to support the assertion that concentrations of adult businesses often result in an increase in crime, particularly prostitution, drugs, assault, and sex crimes. A planning department study in Phoenix, for example, compared three study areas containing adult entertainment businesses with three control areas that had comparable demographics and land use, but without adult entertainment businesses. The three study areas had, on average, 43% more property crimes, 4% more violent crimes, and over 500% more sex crimes than the control area (McClendon, p.3).

A high rate of crime near concentrations of adult entertainment establishments has also been reported in Detroit, Los Angeles, and Beaumont, Texas (McClendon, pp.2-3). Crime statistics for 1978 and 1979 in Fayetteville, North Carolina reveal this impact. In 1978, Fayetteville's overall crime rate decreased 11%, while crime in the district encompassing Hay Street (which had a large concentration of adult entertainment businesses) increased 7.5%. During 1979, the overall crime rate continued to decrease while increasing in the Hay Street district (Yow, p.34).

Another aspect of crime is the growing concern that organized crime is controlling the adult entertainment business. Local governments are concerned about this involvement and the potential for corruption that accompanies it (Yow, p.34).

3. Community Reputation. A proliferation of adult entertainment establishments may lead to a negative perception of a neighborhood, or of the entire community. In a neighborhood, this negative reputation can lead to declining property values and physical deterioration. The effects can also be felt city-wide. Fayetteville for example, has expressed concern about the City's reputation and its effect on industrial location decisions (Yow, p.34).

4. Quality of Life. Although "quality of life" is a nebulous term, courts have upheld zoning restrictions based on this concern. In 1976, for example, the United States Supreme Court upheld in Young vs. American Mini-Theatres (427 US 50) a Detroit zoning ordinance that restricted the location of adult motion picture theaters (Rohan, p.11-5). Justice Powell stated that "zoning, when used to preserve the character of specific areas of the city, is perhaps the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of "quality of life" (McClendon, p.1).

III. Adult Entertainment Establishments in Unincorporated St Croix County

In general, unincorporated St Croix County has not experienced any major problems with adult entertainment establishments. Currently, there are two adult cabaret establishments operating in the unincorporated part of the County that could be affected by new County policies on adult entertainment. These businesses are located in the Towns of St. Joseph and Somerset.

With the projected expansion of the interstate highway system between St. Croix County and the greater Twin Cities metropolitan area, there is a growing concern about the expansion of the adult entertainment industry in the County. While it is recognized that adult entertainment businesses cannot be prohibited entirely, the County would like to have some control over their location and operation. There is also concern that such establishments might be located near schools, churches, parks or residential areas.

Furthermore, it is felt that the issue needs to be addressed before it becomes a major problem. According to attorneys general in support of Renton, Washington's adult entertainment ordinance, "Preventative, versus after-the-fact zoning is an appropriate means of cities to use in protecting and preserving possibly their most valuable resource, 'Quality of Life'."

IV. Definitions

The following definitions are generally accepted in zoning ordinances throughout the country. The definitions are taken with few revisions from Kenosha County, Wisconsin and New Hanover County, North Carolina.

A. "Specified sexual activities" means any of the following:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast;
4. Flagellation or torture in the context: of a sexual relationship;
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
6. Erotic touching, fondling or other such contact with an animal by a human being; or
7. Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in "1" through "6" above.

B. "Specified anatomical areas" means any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anal region or female breast below a point immediately above the top of the areola; or
2. Human male genitals in a discernibly turgid state even if completely arid opaquely covered.

C. "Adult establishments" includes bookstores, motion picture theaters, mini motion picture theaters, bath house, massage parlors, modeling studios, body painting studios, cabarets, and video stores and are more specifically defined as:

1. Adult bookstore. An establishment having as a substantial or significant portion of its stock-in-trade in books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale or display of such material.
2. Adult motion picture theater. An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.

3. Adult motion picture theater (outdoor). A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activity" or "specified anatomical areas".
4. Adult mini-motion picture theater. An enclosed building with a capacity for less than 50 persons used for representing materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.
5. Adult bath houses. As establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities" as defined in this ordinance.
6. Adult massage parlors. An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in "specified sexual activity" as defined in this ordinance.
7. Adult modeling studios. An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise.
8. Adult body painting studios. An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this ordinance, the adult body painting studio shall not be deemed to include a tattoo parlor.
9. Adult Cabaret. An establishment or business which features male and/or female topless and/or bottomless dancers, go go dancers, exotic dancers, strippers, burlesque shows, male or female impersonators, or similar entertainers.
10. Adult novelty shop. An establishment or business having as a substantial or significant portion of its stock-in-trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, "specified sexual activity" as defined herein or stimulating such activity.
11. Adult video store. An establishment having as a substantial or significant portion of its stock-in-trade in videotapes for sale or rent which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale, display or rental of such material

V. Regulatory Techniques

A. Zoning Techniques

Municipalities have generally limited adult entertainment uses to commercial and/or industrial zones. Cumberland County, North Carolina permits adult businesses in its C-3 Heavy Commercial District and M-2 Heavy Industrial District. Kenosha County, Wisconsin permits adult entertainment uses in its B-3 Highway Business District as part of an Adult Entertainment Overlay District.

The St Croix County Zoning Ordinance does not currently deal with adult entertainment uses directly. The two night clubs in the county that provide adult cabaret shows are currently allowed as permitted uses in the Commercial District. Such uses could also be considered in the Restricted Commercial or Industrial Districts.

Some municipalities require a Special Use Permit for potentially objectionable uses such as adult entertainment establishments. Whittier, California, for example, allows adult businesses in "C-2 or less restrictive" zones, but requires a Special Use Permit. Wyoming, Michigan allows adult entertainment businesses in its B-2 district with a Special Use Permit.

The Special Use Permit is an effective tool for dealing with uses, such as adult entertainment establishments, which are recognized as having objectionable characteristics. The equivalent of the Special Use Permit in the St. Croix County Zoning Ordinance is the Special Exception Permit. Special Exceptions are certain uses and situations that are of such special nature or their effect is so dependent upon actual contemporary circumstances as to make impractical the determination in advance of permissibility". [St. Croix County Zoning Ordinance, Sec. 17.70(7)]

Any use requiring a Special Exception Permit requires a public hearing and approval by the County Board of Adjustment subject to the following general standards:

1. No grant of a special exception shall violate the spirit or general intent of this chapter;
2. No special exception shall be allowed which would be contrary to the public health, safety or general welfare or which would be substantially adverse to property values in the neighborhood affected;
3. No use shall be permitted by special exception that would constitute a nuisance by reason of noise, dust, smoke, odor or other similar factors; and
4. The Board shall also apply standards set forth in other sections of this chapter which apply to particular classes of special exceptions. [St. Croix County Zoning Ordinance, Sec. 17.70.(7Xa)]

Furthermore, the County Board of Adjustment may require additional conditions which it deems reasonable and appropriate to assure the use will be harmonious with the area in which it is located.

In addition to limiting zoning districts in which adult entertainment uses may be located, and requiring Special Use Permits, there are two basic zoning strategies used by local officials to control adult entertainment — dispersal and concentration. The City of Detroit is generally credited with pioneering the dispersal approach. Another approach, less commonly used, is concentration. Boston is most often cited as an example of the concentration approach.

1. Dispersal. The most commonly used zoning technique for controlling adult entertainment is the strategy of dispersing such establishments. This method attempts to prevent clustering and its potential adverse effects.

The City of Detroit originally adopted an "Anti-Skid Row Ordinance" in 1962. This ordinance was aimed at such establishments as bars, pawn shops, and pool halls. The City added sex businesses to the list in 1972, citing the deleterious effects of adult entertainment uses on surrounding neighborhoods (Yow, p. 35).

The ordinance had two objectives: 1) to keep "skid-row" uses from locating near one another, and 2) to keep such uses away from residential areas. The first objective was met by not allowing a listed use within 1,000 feet of two other listed uses. The second objective was met by requiring that no listed use be located within 500 feet of a residential unit. The result was a policy of dispersing "skid-row uses" throughout commercial and industrial areas (Yow, p.35). Many jurisdictions have since used the dispersal approach to control adult entertainment businesses (Irving-Cwiek, pg. 7).

2. Concentration. Unlike the dispersal technique, the concentration approach uses zoning to set aside one or more areas for the location of adult businesses. The City of Boston, for example, contained an area already dominated by adult businesses - the "Combat Zone". In an effort to prevent the spread of this district, the City created an overlay zone, covering approximately seven acres, to which all adult uses were confined.

To prevent the potential skid-row effect, Boston supplemented its efforts with a renovation program. The city spent money on parks, street lighting, improved streets, sign removal, and renovation of store fronts. In this case, the concentration approach legitimized and successively controlled what already existed.

Although this approach proved useful for Boston, few localities have similar existing circumstances to warrant the concentration of adult entertainment establishments. Before adopting dispersal zoning, Fayetteville, North Carolina considered the concentration approach. With its concentration of adult entertainment uses downtown on Hay Street, Fayetteville had a situation similar to Boston. However, due to a perception by the public that such zoning would condone pornography, and opposition by other downtown businesses and the police, the concentration proposal failed. (Yow, p.38-39).

B. Other Regulatory Techniques

While zoning is one method used to control adult entertainment, other approaches can be used. In addition to zoning, a comprehensive approach may also include licensing, active law enforcement, sign regulations and/or nuisance provisions.

Fayetteville has combined licensing with dispersal zoning (Yow, p.39). Many municipalities, including Des Moines, Chicago, Portland, Denver, Tucson and Washington have successively used licensing laws and other legal measures to close massage parlors offering illegal sex activities. The City of Dallas, Texas made it illegal for a person to be massaged by anyone of the opposite sex, thereby substantially reducing the operation of massage parlors (Rohan, pp. 11-9, 11-10).

Many municipalities use traditional law enforcement techniques to control adult entertainment establishments. For example, police raids are often used to enforce anti-obscenity laws. Law enforcement can be used to control crimes such as prostitution, assault, and drug use, that are often associated with

adult entertainment businesses. However, when used alone, such techniques are usually only a "stalling mechanism", treating the symptoms rather than eliminating the problem (Yow, p.35).

VI. Constitutionality of Zoning Approaches

An increasing number of local jurisdictions are using zoning regulations to control adult entertainment establishments. While such regulations "cannot be used to totally exclude or excessively restrict local adult entertainment uses, it is clear that reasonable regulations can be used to concentrate or disperse sex businesses and to control their proximity to residential areas, churches, parks, or schools." (McClendon, p.1).

The constitutionality issue cannot be overstated. Localities must be sure that regulations are not used to prohibit adult entertainment businesses at the expense of First Amendment rights. If taken to court, the burden of proof is on the local government to show that its regulations meet a four-part test:

1. The regulation is within the constitutional power of the government;
2. The regulation furthers an important or substantial government interest;
3. The government interest is unrelated to a suppression of free expression; and
4. The incidental restriction of First Amendment freedom is no greater than necessary to further the government interest (McClendon, p.2-3)

Galveston, Texas, for example, passed a strict adult entertainment ordinance in 1979. Galveston modeled its ordinance on Detroit's ordinance, which had been upheld in a 1976 U.S. Supreme Court case. However, Galveston's ordinance was struck down by a federal appeals court in 1982 because the City had failed to designate "commercially viable" locations for adult entertainment uses, and in effect, banned such businesses (McClendon, p.2).

More recently, the Supreme court in 1986 upheld an ordinance from Renton, Washington that restricted adult theaters to 520 acres of industrially zoned land and prohibited them within 1,000 feet of any residential zone or use, school, or church. The Court ruled that Renton's ordinance was "aimed, not at the content of the film, . . . but rather at the secondary effects of the business on the surrounding community" (Zoning News, p.4, McClendon, p.2).

Dallas, Texas has stringent zoning and licensing restrictions on sexually-oriented businesses. Dallas has the 1,000 foot dispersal rule, similar to other jurisdictions. However, the Dallas ordinance is more stringent in several respects: 1) it requires amortization and relocation within three years if a business does not meet the 1,000 foot restriction; 2) it denies licenses for these businesses to people convicted of certain types of crimes, and may revoke business licenses for future employee offenses; and 3) it attempts to restrict adult motels by requiring ten-hour or greater rental periods (Zoning New, p.3-4).

It appears that reasonable regulations to control, but not eliminate adult entertainment businesses will be upheld in court. Authors stress, however, the necessity of documenting the need for regulation with studies and reports such as this one.

VII. Recommendations

The following recommendations are made concerning adult entertainment establishments.

A. Zoning

I. Dispersal. Since St. Croix County does not currently have any concentrations of adult entertainment businesses, it is felt that the best zoning approach is dispersal. This technique should prevent the development of a "skid row" effect with its concomitant adverse impacts. It is therefore recommended that St Croix County adopt a dispersal approach to zoning for adult entertainment.

One goal of dispersal zoning is to prevent clustering of adult businesses. In order to disperse adult entertainment businesses, the zoning ordinance should require a minimum distance between such uses. Courts have upheld a distance of 1,000 feet between adult businesses, which is a little greater than an average city block. Therefore, it is recommended that adult entertainment establishments should not be permitted within 1,000 feet of any other adult entertainment establishment.

Another goal of dispersal zoning is to protect residential areas from encroachment by adult businesses. In addition, it is felt that adult entertainment uses should be segregated from schools, libraries, churches, parks, playgrounds and daycare facilities. It is therefore recommended that adult entertainment establishments should not be permitted within 1,000 feet of any property zoned Residential or Ag-Residential, within 1,500 feet of property zoned Agricultural or Agricultural Two, or within 2,000 feet of any school, library, church, park, playground or daycare facility.

2. Permitted Districts. Municipalities have generally limited adult entertainment uses to commercial and/or industrial zones. However, there is very little industrial zoning in St. Croix County. Therefore, to both control and account for adult entertainment uses, it would be most appropriate to provide for such uses in the Commercial and Restricted Commercial Districts.

Furthermore, even in appropriate districts, there may be deleterious effects in specific circumstances and locations. The location of adult businesses may be more appropriately decided on a case-by-case basis through the Special Exception process. It is therefore recommended that adult entertainment establishments should be allowed only in the Commercial and Restricted Commercial Districts, and only by Special Exception as part of an Adult Entertainment Overlay District

3. Exterior Display. The County should make a reasonable effort to protect the public, particularly young children and teenagers, from exposure to obscene material that may be associated with adult businesses. Therefore, it is recommended that any exterior display, sign, etc. shall not depict or describe "specified sexual activities" or "specified anatomical areas".

B. Licensing

Many communities have found licensing to be an effective approach to regulating adult entertainment businesses, particularly when combined with zoning regulations. Requiring a license for the operation of such businesses may give local law enforcement and elected officials more control over their operation. It is therefore recommended that the County Public Protection Committee explore the possibility of requiring licensing for adult entertainment establishments.

VIII. Proposed Zoning Text Amendments

17.20 Adult Entertainment Overlay (AEO) District

(1) Intent. it is the intent of this Ordinance to protect the health, safety, general welfare and morals of the residents of St Croix County, to preserve the quality of family life, to preserve the rural and urban characteristics of the neighborhoods in St. Croix County and to prevent adverse and deleterious effects contributing to the blight and downgrading of neighborhoods. Being mindful of the effects of adult entertainment upon minors and the criminal activity and disruption of public peace associated with such establishments, while also giving due consideration to the civil rights of persons partaking in such entertainment, it is the intent of this section to regulate the location of such establishments of adult entertainment. By the enactment of this ordinance, the St Croix County Board of Supervisors does not intend to give any explicit, implicit or tacit approval or condone any activity relating to adult entertainment.

(2) Definitions. For the purpose of this section:

"Specified sexual activities" is defined as:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse or sodomy;
- (c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast
- (d) Flagellation or torture in the context of a sexual relationship;
- (e) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
- (f) Erotic touching, fondling or other such contact with an animal by a human being; or
- (g) Human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in (a) through (f) above.

"Specified anatomical areas" is defined as:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anal region or female breast below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

"Adult establishments" includes bookstores, motion picture theaters, mini motion picture theaters, bath houses, massage parlors, modeling studios, body painting studios, cabarets, and video stores and are more specifically defined as:

- (a) Adult bookstore, An establishment having as a substantial or significant portion of its stock-in-trade in books, magazines and other periodicals which are distinguished or characterized by their emphasis on, matter depicting, describing or relating to "specified sexual activities" or

"specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale or display of such material.

- (b) Adult motion picture theater. An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.
- (c) Adult motion picture theater. (outdoor). A parcel of land from which individuals may view a motion picture presented out of doors which present material distinguishably characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".
- (d) Adult mini-motion picture theater. An enclosed building with a capacity for less than 50 persons used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.
- (e) Adult bath houses. As establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in "specified sexual activities" as defined in this ordinance.
- (f) Adult massage parlors. An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in "specified sexual activities" as defined in this ordinance.
- (g) Adult modeling studios. An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise.
- (h) Adult body painting studios. An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this ordinance, the adult body painting studio shall not be deemed to include a tattoo parlor.

- (i) Adult Cabaret. An establishment or business which features male and/or female topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, burlesque shows, male or female impersonators, or similar entertainers.
 - (j) Adult novelty shop. An establishment or business having as a substantial or significant portion of its stock-in-trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, "specified sexual activities" as defined herein or stimulating such activity
 - (k) Adult video store. An establishment having as a substantial or significant portion of its stock and trade in videotapes for sale or rent which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined herein or an establishment with a segment or section devoted to the sale, display or rental of such material.
- (3) Adult Entertainment Overlay' District So as to ensure a maximum benefit to the community and a minimum impact upon existing and future uses of land, there is hereby created an Adult Entertainment Overlay District which, subject to the standards set forth in this Ordinance may be used for an adult establishment as defined herein except as may be prohibited in section 17.20(8).
- (4) Principal Uses. No principal uses shall be permitted as a matter of right in the Adult Entertainment Overlay District All uses shall be special exceptions.
- (S) Special Exceptions.
- (a) Adult Bath Houses
 - (b) Adult Body Painting Studios
 - (c) Adult Bookstores
 - (d) Adult Cabarets
 - (e) Adult Massage Parlors
 - (f) Adult Mini-motion Picture Theaters
 - (g) Adult Modeling Studios
 - (h) Adult Motion Picture Theaters
 - (i) Adult Motion Picture Theaters (outdoor)
 - (j) Adult Novelty Shops
 - (k) Adult Video Stores
- (6) Underlying District Standards. Lot area and width, building height and area, yard and sanitary sewer system requirements in the underlying district shall be complied with in the Adult Entertainment Overlay District.

(7) Procedure for Establishing Adult Entertainment District.

- (a) A petition to amend the County Zoning Ordinance to establish an Adult Entertainment Overlay District and an application for a special exception permit shall be filed with the County Planning and Development Committee. The Committee shall refer each petition and application to the Town Board of Supervisors of the town wherein the property sought to be zoned is located. The Town Board of Supervisors shall review and make a recommendation regarding such petition and application. The County Planning and Development Committee shall make a recommendation to the County Board of Supervisors regarding the petition for amending the County Zoning Ordinance, but not until it has received a recommendation from the Town Board of Supervisors, or until such time as the Town Board of Supervisors has failed to act within a reasonable time after a referral of an application. The procedure set forth in section 59.97(5) (e) 3 of the Wisconsin Statutes and section 17.72 of this ordinance shall be followed. In addition, those requirements set forth in section 17.70(7) of this ordinance relating to the issuance of a special exception permit shall be adhered to. No Adult Entertainment Overlay District shall be created which does not substantially comply with the standards Set forth in this Ordinance.
- (b) A petition to amend the County Zoning Ordinance to establish an Adult Entertainment Overlay District must be accompanied by three copies of the proposed site plan prepared by a certified land surveyor or planner in addition to any other information required under section 17.72(2) of this Ordinance.
- (c) The County Planning and Development Committee shall within a reasonable time after receipt of the recommendation of the Town Board of Supervisors, review the petition and application in accordance with the requirements of this Ordinance. After such review, the Planning and Development Committee shall make a recommendation to the St. Croix County Board of Supervisors in accordance with section 59.97(S)(e)3 of the Wisconsin Statutes. Such recommendation may approve, disapprove or approve subject to modifications the petition for zoning, and shall include a written statement of the Committee's findings. No petition for an Adult Entertainment Overlay District shall be approved by the Committee and County Board unless, however, the following findings have been made:
 - 1. That all the standards and requirements in this Ordinance will be met by the proposed use.
 - 2. That the proposed use will not be a detriment to the public welfare.

3. That the proposed zoning is consistent with the general intent of any comprehensive plan in existence.
4. That the existing streets and utility services are adequate for the proposed use.
5. That the proposed use will in no substantial way contribute to the deterioration of the surrounding neighborhood
6. That the presence of the proposed use will not have a harmful influence on children residing in or frequenting the area.

(8) Standards for Adult Entertainment Uses. In addition to all other applicable requirements of this Ordinance, all adult entertainment uses shall meet the following standards:

- (a) The Adult Entertainment Overlay District shall only be established in situations in which the underlying district is a Commercial or Restricted Commercial District
- (b) No more than one of the adult entertainment uses defined herein may be established on any one parcel and any of the adult entertainment uses defined herein shall be at least 1,000 feet from any other adult entertainment use. No adult entertainment use shall be permitted within 500 feet of any establishment serving alcoholic beverages, within 1,000 feet of property zoned Residential or Ag-Residential, within 1,500 feet of any property zoned Agricultural or Agricultural Two, or within 2,000 feet of any school, library, church, park, playground, or daycare facility.
- (c) There shall be no sale of intoxicating beverages in the Adult Entertainment Overlay District
- (d) Signs advertising any of the adult entertainment uses defined herein shall conform with section 17.65 of this ordinance with the exception, however, that no tower or portable signs or billboards shall be permitted on the premises, and with the further exception that signs will not depict or describe "specified anatomical areas" or "specified sexual activities and provided further that there shall be no flashing or traveling lights located outside the building
- (e) Adequate parking shall be provided in a lighted area.
- (f) There shall be no display windows on the premises.

- (g) The owner and/or operator of the adult entertainment establishment shall comply with all federal, state and local laws and ordinances, including obscenity, liquor and cabaret laws, and shall further ensure that minors are not permitted on the premises. Solicitation for purposes of prostitution shall be strictly prohibited.
- (h) In the case of adult cabarets, the hours of operation for such establishments shall be limited to the same hours of operations for bars and taverns within that community within which the district is located.
- (i) In the case of outdoor adult motion picture theaters, the establishment shall confine its hours of operation to those hours of operation established for bars and taverns within the community within which the establishment is located. Outdoor adult motion picture theaters shall also have the viewing screen located in such a fashion as to not be visible from any road, street or highway or residence and the premises shall be surrounded by solid fencing at least eight feet in height. All theaters shall comply with section 134.46 of the Wisconsin Statutes.
- (j) Prior to the establishment of an Adult Entertainment Overlay District, an inventory of the surrounding area and population shall be made along with a study of the proposed development and plans for the area so as to enable the Planning and Development Committee to make appropriate findings relative to the effect of the establishment of such a district in that area.
- (k) The owner of the parcel upon which the adult entertainment use is to be established and the operator of the establishment and owner of the establishment shall appear in person before the Planning and Development Committee.
- (l) In the event of noncompliance with any conditions imposed on the adult entertainment use, the special exception permit may be revoked, the Adult Entertainment Overlay District may be abolished by the Committee, and the parcel shall revert to its underlying zoning.

IX. Bibliography

Irving-Cwiek, Patricia M., "Zoning and Free Speech: A Review of Adult Entertainment Caselaw" Planning & Zoning News, August 1991, pp.5-10.

Luedtke, Gerald, "Spaced-Out ZONING," Planning: & Zoning News, February 1989, pp. 10-11.

McClendon, Bruce W., "Zoning for Adults Only," Zoning News, August 1985, pp- 1-3.

Radzinowicz, Sir Leon, and Marvin H. Wolfgang, Crime and Justice: the Criminal in Society, Vol. 1, New York: Clark Boardman, Ltd., 1977 (as quoted in Yow).

Regulation of Adult Entertainment Establishments in New Hanover County. Wilmington, North Carolina: New Hanover County Planning Department, 1989.

Rohan, Patrick S., Zoning and Land Use Controls. Vol.2, New York: Matthew Bender and Co., 1988

"Supreme Court to Review Porn Zoning," Zoning News, Chicago: American Planning Association, May 1989, pp.34

Yow, Robert B., "Adult Entertainment Zoning: A Case Study," Carolina Planning Vol.7, No.1, Spring 1981, pp. 33-41.

Zoning Ordinance, Kenosha County, Wisconsin.

Zoning Ordinance, Marion County, Indiana.

Zoning Ordinance, New Hanover County, North Carolina.

Zoning Ordinance, San Bernardino, California