

Regulation of
Adult Entertainment Establishments
in New Hanover County

New Hanover County
Planning Department

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IN NEW HANOVER COUNTY

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I. Executive 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 New Hanover 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. New Hanover 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 (usually 1,000 feet apart) and located away from residential zones, churches, schools, and parks (usually 500 -1,000 feet away). 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 neighborhoods.

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 must seek to curb the negative effects of adult businesses, not to prevent their establishment.

It is recommended that New Hanover 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, and a minimum of 500 feet away from any residentially zoned area, school, church, or park. Adult entertainment establishments should be permitted in B-2 and 1-1 districts with a Special Use Permit. 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 outcry against "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 below.

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/saleability, 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 (McClendon, 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.

1. 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 areas (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). Closer to home, Fayetteville's crime statistics for 1978 and 1979 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 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 New Hanover County

In general, unincorporated New Hanover County has not experienced any major problems with adult entertainment establishments. The Sheriff's Department reports that an adult bookstore on Carolina Beach Road has been closed by Sheriff's Department raids and re-opened several times

In addition, the Sheriff's Department has received reports that a topless dancing establishment may be opened 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. There is a concern that such establishments may be located near schools, churches, 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 for cities to use in protecting and preserving possibly their most valuable resource 'quality of life' (McClendon, p. 3).

IV. Definitions

The following definitions are generally accepted in zoning ordinances throughout the Country. The definitions are taken from Marion County, Indiana and San Bernardino, California.

A. Adult Entertainment Establishments

1. "Adult arcade" means an establishment where, for any form of consideration, one or more motion picture projectors, slide projectors or similar machines, for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."
2. "Adult bookstore" means an establishment which has as a substantial portion of its stock-in-trade and offers for sale for any form of consideration any one or more of the following:
 - a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas", or
 - b) instruments, devices or paraphernalia which are designed for use in connection with "specific sexual activities."
3. "Adult cabaret" means a nightclub, bar, restaurant or similar establishment which regularly features live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities," or films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description or "specific sexual activities" or "specific anatomical areas."
4. "Adult motel" means a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."
5. "Adult Motion Picture Theater" means an establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is characterized by an emphasis upon the depiction or description of "specified sexual activities" or 'specified anatomical areas."
6. "Adult theater" means a theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances which are

characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

7. "Massage parlor" means an establishment where, for any form of consideration, massage, alcohol rub fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the state. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

8. "Sexual encounter establishment" means an establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate or consort in connection with "specified sexual activities" or the exposure of "specified anatomical areas." This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in sexual therapy.

B. "Specified Anatomical Areas" means any of the following:

1. less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or

2. human male genitals in a discernibly turgid state, even if completely and opaquely covered.

C. "Specified Sexual Activity" 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 touchings of human genitals, pubic regions, buttocks or female breasts;
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.

V. Regulatory Techniques

A. Zoning Techniques

Municipalities have generally limited adult entertainment uses to commercial and/or industrial zones. The City of Wilmington, for example, allows such uses only in its Regional Business District, its most intensive commercial zone. Cumberland County, North Carolina permits adult businesses in their C-3 Heavy Commercial District and M-2 Heavy Industrial District.

While New Hanover County's zoning ordinance does not address adult entertainment establishments, there are provisions for "entertainment establishments, bars, cabarets, discos." Such businesses are permitted by right in the Highway Business (B-2), Planned Development (PD) and Shopping Center (SC) Districts, and by Special Use Permit in the Neighborhood Business (B-1) District. Other intensive retail trade uses are not permitted in the B-1 District in any case, but are permitted by right in B-2 and Industrial Districts (I-1 and I-2). These businesses include "automobile dealers and truck sales," "boat dealers," "building materials and garden supplies," and "farm implement sales." Finally, some retail and service uses are permitted in B-2 and I-1 Districts but not in B-1 or I-2: "landscaping service," "mobile home dealers and prefabricated buildings," "equipment rental and leasing," "hotels/motels," and "septic tank vacuum service."

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. "By means of controls exercised through the Special Use Permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any bad effects they might have on surrounding properties" (Zoning ordinance, New Hanover County, p. 76).

Any use requiring a Special Use Permit requires the Board of County Commissioners to find:

1. that the use will not materially endanger the public health or safety if located where proposed and approved;
2. that the use meets all required conditions and specifications;
3. that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
4. that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development for New Hanover County (Zoning Ordinance, New Hanover County, p. 67).

Furthermore, the Board of County Commissioners 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. Dispersion

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. (This provision was later found to be unconstitutional and was amended to change "residential dwelling unit" to "residentially zoned district"). 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. Fayetteville, for example, adopted dispersal zoning, along with licensing requirements, in 1979 (Yow, p. 39). The City of Wilmington has a similar ordinance, allowing such establishments in its Regional Business Zone.

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 successfully 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 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. A comprehensive approach may include, in addition to zoning, 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 successfully 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. New Hanover County has used this approach with an adult book store. 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. The Supreme Court has agreed to hear challenges to the ordinance this year (1989). 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 News 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

1. Dispersal

Since New Hanover 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 New Hanover 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, churches, and parks. It is therefore recommended that adult entertainment establishments should not be permitted within 500 feet of any school, church, park, or residentially zoned area.

2. Permitted Districts

Municipalities have generally limited adult entertainment uses to commercial and/or industrial zones. It is felt that adult entertainment establishments may not be appropriate in the B-1 (Neighborhood Business) District, although "general" entertainment establishments are permitted with a Special Use Permit in the B-1 district. Adult businesses would be more appropriate in the B-2 (Highway Business) District, and may also be located in the I-1 (Industrial) District without harm to surrounding areas.

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 Use Permit process. It is therefore recommended that adult entertainment establishments should be allowed only in the B-2 and I-1 Districts, and only by Special Use Permit.

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 display, sign, etc. that depicts or describes "specified sexual activities" or "specified anatomical areas" be required to be out of view of the public way and surrounding property.

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 Attorney's Office and Sheriff's Department explore the possibility of requiring licensing for adult entertainment establishments.

VIII. Proposed Zoning Text Amendments

A. Add the following definitions to Section 23 of the Zoning Ordinance:

23-90 Adult Entertainment Establishment - Retail or service establishments which are characterized by an emphasis on specified sexual activity and/or specified anatomical areas, including but not limited to:

1. Any bookstore, video store, or other establishment in which a substantial portion of its stock in trade is devoted to printed matter or visual representation of specified sexual activities or specified anatomical areas;
2. Any movie theater offering movies or other displays, or any establishments offering coin-operated devices, which emphasize specified sexual activities or specified anatomical areas.
3. Any cabaret, club, tavern, theater, or other establishment which offers any entertainment emphasizing specified sexual activities or specified anatomical areas.
4. Any establishment offering massage or similar manipulation of the human body, unless such manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional licensed by the State. This definition does not include massages or similar manipulation offered at an athletic club, health club, school, gymnasium, spa, or similar establishments.

23-91 Specified Sexual Activities 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.

23-92 Specified Anatomical Areas 1) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and 2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. Add the following language to Section 72 of the Zoning Ordinance:

72-35 Adult Entertainment Establishment Adult entertainment establishments may be located within the B-2 Business District and I-1 Industrial District by Special Use Permit,

subject to the requirements of the district and provided that:

1. Each adult entertainment establishment shall be located a minimum of 1000 feet from any existing adult entertainment establishment. Such measurement shall be the horizontal distance between the nearest property lines of the proposed and existing adult entertainment establishments
2. Each adult entertainment establishment shall be located a minimum of 500 feet from any residentially-zoned area, church, school or park. Such measurement shall be the horizontal distance between the property line of the proposed adult entertainment establishment and the nearest residential zoning line or property line of any church, school, or park.
3. Any display, device or sign that depicts or describes specified sexual activities or specified anatomical areas shall be out of view of the public way and surrounding property

C. Amend the Table of Permitted Uses as follows:

<u>Other</u>	<u>B-2</u>	<u>I-1</u>
Adult Entertainment Establishments	S	S

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