

Section 8.03 Special Regulations for Adult Establishments

Intent - In the development and adoption of this Section, it is recognized that there are some *adult establishment* uses which due to their very nature have certain objectionable operational characteristics particularly when located in close proximity to residential neighborhoods, thereby having a deleterious impact upon property values and the quality of life in such surrounding areas. It has been acknowledged by communities across the nation that state and local governmental entities have a special concern in regulating the operation of such *adult establishments* under their jurisdiction to ensure that these adverse effects will not contribute to the blighting or down grading of adjacent neighborhoods. The special regulations deemed necessary to control the undesirable externalities arising from these *adult establishments* are set forth below. The purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods, to deter the spread of urban blight and to protect minors from the objectionable operational characteristics of these *adult establishment* uses by restricting their close proximity to *religious uses*, town parks, kindergartens, public or private schools, *child care ministries*, *family child care home*, *child care center* and residential districts.

A. Definitions.

As used in this Section only, the following terms shall be defined as set forth below. All other terms shall have the meaning set forth in Section 11 – Definitions.

Adult Bookstore: a bookstore:

1. which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to *specified sexual activities* or *specified anatomical areas*, as defined in this Section; or,
2. having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to *specified sexual activities* or *specified anatomical areas*, as defined in this Section.

Adult Establishment: an *adult bookstore*, *adult motion picture theater*, *adult mini motion picture theater*, *adult live entertainment business*, or *massage business*.

Adult Live Entertainment: any performance of or involving the actual presence of real people which exhibits *specified sexual activities* or *specified anatomical areas*, as defined in this Section.

Section 8.03
Special Regulations for Adult Establishments

Adult Live Entertainment Business: any establishment or business wherein adult live entertainment is shown for observation by patrons.

Adult Mini Motion Picture Theater: an enclosed *building* with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to *specified sexual activities* or *specified anatomical areas* as defined in this Section, for observation by patrons therein.

Adult Motion Picture Theater: an enclosed *building* or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to *specified sexual activities* or *specified anatomical areas*, as defined in this Section, for observation by patrons therein. *Adult motion picture theater* does not include any *adult mini motion picture theater* as defined in this Section.

Enlargement Of An Adult Establishment: an increase in the size of the *building, structure* or premises in which the *adult establishment* is conducted by either construction or use of: (1) an adjacent building; (2) an additional *building*, or (3) the construction or use of any portion of an adjacent or additional *building*, whether located on the same or an adjacent *lot* or parcel of land.

Establishment of an Adult Establishment: any of the following:

- a. The opening or commencement of an *adult establishment* as a new business;
- b. The conversion of an existing business, whether or not an *adult establishment*, to any of the *adult establishments* defined herein;
- c. The addition of any of the features of one or more of the *adult establishments* defined herein to an existing business;
- d. The addition of any of the *adult establishments* defined herein to any other existing *adult establishment*; or
- e. The relocation of any *adult establishment*.

Massage: the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

Massage Business: means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors, provided, however, massage therapy practices by a professional massage therapist licensed by the State of North Carolina shall not be deemed a massage business regulated by this Section 8.03.

Nonconforming Adult Use: any *building, structure* or land legally established as an *adult establishment* prior to the effective date of this UDO, but which would be prohibited, regulated or restricted under the provisions of this UDO.

Reconstruction of an Adult Establishment: the rebuilding or restoration of any nonconforming *adult establishment* use which was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion or other calamity or act of God if the damage or destruction exceeds fifty (50) percent of the fair market value of the *structure* or the facilities affected.

Residential District: any *district* which permits a *single family, two family* or *multifamily dwelling unit* as a *permitted primary use* or *special exception use*, including the R-30, R-20, R-15, R-10, R-8, R-MF-8, R-MF-15, TV, OR and PUD *districts*. [Amended Ordinance #04-11]*

Resumption: the reuse or reoccupation of a nonconforming *adult establishment* use which has been discontinued for a period of six (6) or more consecutive months.

Sexually Oriented Devices: means without limitation any artificial or simulated *specified anatomical area* or other device or paraphernalia that is designed principally for *specified sexual activities* but shall not mean any contraceptive device.

Specified Anatomical Areas: any of the following:

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

Specified Sexual Activities: any of the following:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy; or,
- c. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

Structural Alteration of an Adult Establishment: any change which would prolong the life of the supporting members of a *building* or *structure* such as bearing walls, columns, beams or girders, except such changes as are ordered made pursuant to the provisions of G.S. 160A-425 or G.S. 160A-426, and any amendments thereto.

B. Special Regulations for Adult Establishments.

1. Limitation on *Adult Establishment* Activity.

No person shall permit any *building*, premises, *structure*, or other facility that contains any *adult establishment* to contain any other kind of *adult establishment*.

No person shall permit any *building*, premises, *structure*, or other facility in which *sexually oriented devices* are sold, distributed, exhibited, or contained to contain any *adult establishment*.

No person shall permit any viewing booth in an *adult mini motion picture theater* to be occupied by more than one (1) person at any time.

2. Prohibited Locations for *Adult Establishments*.

Adult establishments shall be prohibited within the following areas:

- a. Proximity to *Adult Establishments* - The establishment, enlargement, reconstruction, resumption or structural alteration of any *adult establishment* shall be prohibited within one thousand (1000) feet of another such adult establishment.
- b. Proximity to Protected *Uses* and Protected *Districts* - The *establishment, enlargement, reconstruction, resumption* or *structural alteration* of any *adult establishment* shall be prohibited within one thousand (1000) feet of any existing *religious use*, town park, kindergarten, public or private school, *child care ministry, family child care home, child care center* or residential *district* within the Town of Holly Springs or its extra-territorial jurisdiction.

3. Permitted Locations for *Adult Establishments* / *Special Exception* Required.

An *adult establishment* may be *established, enlarged, reconstructed, resumed, or structurally altered* only on a *lot* or *out lot* located in a GI – General Industrial *District* subject to the grant of a *special exception*.

C. Measurement of Distances.

The distance between an *adult establishment* and another *adult establishment* or a protected *use* and protected district shall be determined as follows:

1. Distance Between *Adult Establishments* – The distance between one *adult establishment* and another *adult establishment* shall be measured in a straight line, without regard to intervening *structures* or objects, from the closest exterior structural wall of each such *adult establishment*.

2. Distance to Protected *Uses* and Protected *Districts* – The distance between an *adult establishment*, and any existing *religious use*, town park, kindergarten, public or private school, *child care ministry*, *family child care home*, *child care center* or residential *district* shall be measured in a straight line, without regard to intervening *structures* or objects, from the closest exterior structural wall of the *adult establishment* to the nearest *lot line* of the *religious use*, town park, kindergarten, public or private school, *child care ministry*, *family child care home*, *child care center* or residential *district*.

D. Exterior Display.

Notwithstanding any other provisions of this UDO to the contrary, all exterior displays for an *adult establishment* shall comply with the following regulations.

1. Display – No *adult establishment* shall be conducted in any manner that permits the observation of any material depicting, describing or relating to *specified sexual activities* or *specified anatomical areas* by display, decorations, *sign*, show window or other opening from any *public right-of-way*.
2. Number of *Signs* – Not more than one (1) *business wall sign* shall be permitted for an *adult establishment* and said *business wall sign* shall be permitted only on the front facade of the *building*. All other *signs* or *sign structures* shall be prohibited.
3. *Sign Surface Area* – The *sign surface area* of a *business wall sign* for an *adult establishment* shall not exceed the lesser of:
 - a. three percent (3%) of the total area of the lower eighteen (18) feet or actual *building* height, whichever is less, of the front façade of the *building* or tenant space occupied by the *adult establishment*; or,
 - b. forty (40) square feet.
4. Illumination of *Signs* – *Signs* and *sign structures* may be illuminated, provided, however, such illumination shall not be by way of exposed neon, *outdoor light fixtures* (e.g., spot or flood lights) or any flashing or animated lights (either: interior to the *sign*; on the exterior of the *sign*; or, as a border to the *sign*).

Section 8.03
Special Regulations for Adult Establishments

E. Findings Required for Grant of Special Exception.

A petition requesting the approval of a *special exception* to permit an *adult establishment* shall be reviewed at a public hearing. A *special exception* for an *adult establishment* shall be granted only upon the presentation of sufficient evidence to determine that:

1. The proposed *adult establishment* is in compliance with all *development standards, development requirements* and general regulations applicable to the *use* and development of property as generally set forth in this UDO.
2. The proposed *adult establishment* is in compliance with all special regulations for *adult establishments*, including but not limited to those regulations set forth in Section 8.03, B., Section 8.03, C., and Section 8.03, D., above, in this UDO.
3. The proposed *adult establishment* is in compliance with all applicable laws of the State of North Carolina.
4. The proposed *adult establishment* will be in compliance with any terms and conditions of a *special exception* grant where such terms and conditions are intended and deemed necessary to assure compliance with the findings specified in Section 8.03, E., 1., Section 8.03, E., 2., and Section 8.03, E., 3., above. in this UDO.

F. Continuation of Nonconforming Use.

This Section 8.03 is subject to the provisions of Section 1.21 - Nonconforming Lots, Uses, Buildings, Structures or Signs.