

DUPLIN COUNTY  
ADULT BUSINESS  
ORDINANCE  
Effective 08/01/98

**Sec. 1-101. Authority and jurisdiction.**

The provisions of this article are adopted by the County Board of Commissioners under authority granted by the General Assembly of the State of North Carolina, in Chapter 153 A, (45-50) and further Article VI of Chapter 153 A, Section 135 of the General Statutes. From and after the effective date hereof, this article shall apply to every building, lot, tract, or parcel of land within the county exclusive of the jurisdiction of any incorporated municipality (as herein stated).

**Sec. 2-201. Purpose.**

For the purpose of promoting the health, safety, moral and general welfare of the citizenry of Duplin County, this article is adopted by the Board of Commissioners to regulate adult and sexually oriented businesses, as hereby defined, located in the County of Duplin. Further the regulations of this article have been made with reasonable consideration, among other things, as to the character of the county and its areas and their peculiar suitability for these businesses.

**Sec. 3-301. Abrogation.**

These regulations shall not repeal, impair, abrogate or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions, regulations previously adopted pursuant to law in any district in Duplin County. However, where these regulations impose greater restrictions, the provisions of these regulations shall govern.

**Sec 4-401. Definitions.**

For the purpose of this article, the following definitions apply:

**Adult arcade** means an establishment where, for any form of consideration, one (1) or more motion picture projectors, slide projectors or similar machines for viewing by five (5) or fewer persons each are used to show films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas (as defined hereinafter).

**Adult bookstore** means an establishment that has (over twenty-five (25) percent of total retail space) or 25% of its stock-in-trade and offers for rent or sale, for any consideration any one or more of the following: 1) books, magazines, periodicals, or other printed mater; or photographs, films, motion pictures, video cassettes, slides or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or 2) instruments, devises or paraphernalia that are designed for use in connection with specified sexual activities.

**Adult business** means any business activity, club or other establishment which permits its employees, members, patrons or guests on its premises to exhibit any specified anatomical areas before any other person or persons. This definition would not include Hotels, Motels, or places of temporary lodging; not would it include sports clubs, exercise spas, or places which prove as an ancillary use public showers.

**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 twenty-five (25) percent of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

**Adult theater** means a theater, concert hall, auditorium or similar establishment characterized by (activities featuring) the exposure of specified anatomical areas or by specified sexual activities.

**Massage** mean any 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.

**Sexually oriented business** means any business activity, club or other establishment, within which the exhibition, showing, rental or sale of materials distinguished or characterized by an emphasis on material depicting, describing or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall include, but are not limited to: adult arcades, adult bookstores, adult motion picture theaters, adult theaters, and massage parlors, as defined by this article.

**Specified anatomical areas** means less than completely and opaquely covered human genitals, pubic regions, buttocks and female breasts below a point immediately above the top of the areola.

**Specified sexual activities** means:

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

**Total retail space** mean any space within the structure that is used for the direct sale of merchandise to the public and storage areas for those items.

#### **Sec. 5-501. Scope and provisions of article.**

##### **(a) Adult business.**

(1) An adult business shall be defined as any business activity, club or other establishment which permits any employee, member, patron or guest on its premises to exhibit any specified anatomical areas before any other person or persons. This definition shall not be construed to include hospitals, clinics, or doctors offices through which anatomical regions may be exposed during routine medical checkups or examinations by trained and certified medical staff.

(2) No adult business shall be permitted in any building:

- a. Located within two thousand (2,000) feet in any direction from a building used as a dwelling.
- b. Located within two thousand (2,000) feet in any direction from a building in which an adult business or a sexually oriented business is located.
- c. Located within two thousand (2,000) feet in any direction from a building used as a church, synagogue or other house of worship.
- d. Located within two thousand (2,000) feet in any direction from a building used as a public school or as a state licensed day care center.
- e. Located within two thousand (2,000) feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.

##### **(b) Sexually oriented business**

- (1) A sexually oriented business shall be further defined as any business activity, club or other establishment, within which the exhibition, showing, rental or sale of materials distinguished or characterized by an emphasis on material depicting, describing or exhibiting specified sexual activities is permitted. Regulated businesses shall include but are not limited to: adult arcades, adult bookstores, adult motion picture theaters, massage businesses, as defined in section 8-204.
- (2) No sexually oriented business shall be permitted in any building:
- Located within two thousand (2,000) feet in any direction from a building used as a dwelling.
  - Located within two thousand (2,000) feet in any direction from a building in which an adult business or a sexually oriented business is located.
  - Located within two thousand (2,000) feet in any direction from a building used as a church, synagogue or other house of worship.
  - Located within two thousand (2,000) feet in any direction from a building used as a public school or as a state licensed day care center.
  - Located within two thousand (2,000) feet in any direction from any lot or parcel on which a public playground, public swimming pool or public park is located.
- (c) Nonconforming adult business and sexually oriented adult business. Any adult business or sexually oriented business or sexually oriented business lawfully operating on 08\01\96, that is in violation of this article shall be deemed a nonconforming use. Any use which is determined to be nonconforming by application of the provisions of this section shall be permitted to continue for a period not to exceed two (2) years. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. If a nonconforming use is discontinued for a period of one hundred eighty (180) days or more it may not be re-established. If two (2) or more adult businesses or sexually oriented adult businesses are within two thousand (2,000) feet of one another and otherwise in a permissible location, the business which was first established and continually operating at its present location shall be considered the conforming use and the later-established business(es) shall be considered nonconforming. An adult business or sexually oriented adult business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a dwelling, church, house of worship, day care center, school, play-ground, public swimming pool or public park within two thousand (2,000) feet of the adult business or sexually oriented business.

**Sec. 6-601. Interpretation of terms and definitions.**

- Words used in the present tense include the future tense.
- Works used in the singular number include the plural and words used in the plural number include the singular.
- The work "person" includes and owner, firm, joint venture, association, organization, partnership, corporation, trust and company, as well as an individual.
- The word "owner" when applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by entirety of the whole or part of such building or land.
- The work "lot" includes the words "plot" or "parcel".
- The work "building" includes the word "structure".
- The work "shall" is always mandatory and not merely directory.

(h) The words "located", "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be located, used or occupied".

(I) The work "dwelling" shall mean a structure or portion thereof which is used exclusively for human habitation.

**Sec. 7-701. Severability.**

It is hereby declared to be the intention of the board that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this article is declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this article, since the same would have been enacted by the board of commissioners without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, paragraph, or section.

**Sec. 8-801. Enforcement.**

This ordinance shall be administered and enforced by the Duplin County Planning Department. Other agencies with responsibilities in the areas of public health, safety and law enforcement are hereby empowered to enforce this ordinance.

(a) Any person who violates this article shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with Section 14-4(a) of the North Carolina General Statutes.

(b) This article may be enforced against any person who is in violation by an appropriate equitable remedy issuing from a court of competent jurisdiction as provided for in Section 153A-123(d) of the North Carolina General Statutes.

(c) This article may be enforced against any person who is in violation by injunction and order of abatement as provided for in Section 153A-123(e) of the North Carolina General Statutes against any person who is in violation.

(d) Each day's continuing violation of this article by any person is a separate and distinct offense.

(e) As used herein, "person" shall include:

- (1) The agent in charge of the building, premises, structure or facility.
- (2) The owner of the building, premises, structure or facility when such owner know or reasonable should have known the nature of the business located therein.
- (3) The owner of the business or the manager of the business.

Sec. 9-901.

Effective Date

This ordinance shall become effective and be in full force from and after the 1st day of August 1996. Adopted by the Duplin County Board of Commissioners this the 15th day of July 1996.

Zettie B. Williams

Chairman

Duplin County Board of Commissioners

ATTEST: James W. Barnhardt, Jr.

Clerk to the Board