

Motion and
Statement of Consistency with Comprehensive Plan
UDO-269

I move that the following statement be adopted in support of a *Motion to Approve* Zoning Text Amendment UDO-269.

The zoning text amendment, proposed by the City Attorney's Office to revise Chapter B, Article II of the Unified Development Ordinances (UDO) to add hours of operation for Adult Establishments, is in conformance with the recommendations of the Legacy Comprehensive Plan and is reasonable and in the public interest because:

1. N.C.G.S. 160A-181.1 provides that local government regulation of the location and operation of Adult Establishments through zoning regulations or other appropriate local ordinances is necessary to prevent undue adverse secondary impacts that would result from these businesses; and
2. The proposed text amendment imposes hours of operation for Adult Establishments to reduce adverse secondary impacts of these businesses on neighboring properties; and
3. While there currently are no Adult Establishments located within Forsyth County's jurisdiction, this proposed text amendment will maintain consistency in this section of the UDO and put this regulation in place in the event such a business does locate within the Forsyth County jurisdiction.

Based on the foregoing Statement, I move adoption of UDO-269.

Second:

Vote:

STAFF REPORT

DOCKET # UDO-269
STAFF: Gary Roberts, Jr. AICP

REQUEST

This text amendment is proposed by the City Attorney's Office to amend Chapter B of the *Unified Development Ordinances* (UDO) to revise the hours of operation for Adult Establishments.

BACKGROUND

Adult Establishments (as defined in the UDO) are currently allowed in the GB (General Business) and GI (General Industrial) districts. Adult Establishments must also comply with a 1,000' spacing requirement between any other such use and between any Child Day Care Center, public or private school, and from any RS or RM zoning district. In Winston-Salem, there are several existing Adult Establishments that are nonconforming in regard to these spacing requirements. They are allowed to continue under the current UDO provisions. In response to a recent increase in illegal activity occurring in or around Adult Establishments, the City Attorney's Office has asked the Planning staff to prepare a text amendment that would limit the hours of operation for such establishments.

ANALYSIS

Adult Establishments are a protected form of "freedom of speech" under the First Amendment of the United States Constitution. Local governments may however regulate the time, place, and manner of such operations. The North Carolina General Statutes state that sexually oriented businesses can cause adverse secondary impacts such as increases in crime rates and decreases in property values on neighboring properties (see Attachment A).

Presently, there is no limit on the hours of operation for Adult Establishments in Winston-Salem or Forsyth County. However, there are approximately 14 uses identified within the UDO which do have various time limits on their operation. Examples of some of these uses include: Golf Courses; Land Clearing and Inert Debris Landfill; Motor Vehicle, Dismantling and Wrecking Yards; and the outdoor activities associated with Adult Day Care and Child Day Care Centers. For comparative purposes, neither the City of Greensboro nor the City of Charlotte have any limitations on the hours or operation for Sexually Oriented Businesses. In Raleigh, this use must be approved as a Special Use Permit from the Board of Adjustment which *may* attach conditions including hours of operation.

According to the City Attorney's Office, a review of incident reports revealed a significant amount of crime occurring at Adult Establishments after 2:00 a.m. In the State of North Carolina, the sale of alcohol for on-site consumption is prohibited after 2:00 a.m. The City Attorney's Office believes that this established statewide cut-off time, the significant increase in

illegal activity which occurs after 2:00 a.m., and G.S. 160A-181.1, can serve as a reasonable basis for the closure of local establishments at this time. The proposed hour that such businesses could open would be 10:00 a.m.

From an enforcement perspective, it is anticipated that any initial field investigation regarding violation of these proposed hours of operation would be conducted by local law enforcement. The results would then be given to the Zoning Enforcement staff for follow up.

RECOMMENDATION

APPROVAL

NOTE: THE ORIGINAL STAFF RECOMMENDATION FOR HOURS OF OPERATION WAS FOR 10:00 AM TO 2:00 AM; HOWEVER AFTER FEEDBACK FROM ADULT ESTABLISHMENT OPERATORS, THE CITY ATTORNEY RECOMMENDED AND THE CITY COUNCIL ADOPTED 7:00 AM TO 2:30 AM AS THE HOURS OF OPERATION.

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-269
FEBRUARY 11, 2016**

Gary Roberts presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

During discussion by the Planning Board, the following points were made:

In response to questions by George Bryan, Jerry Kontos, Assistant City Attorney responded that part of the UDO's definition of Adult Establishment refers one to the State Statutes. Among other types of uses, the State Statutes list Adult Book Stores, Adult Video Stores, Adult Mini-Video Stores, Adult Live Entertainment, and Adult Massage Parlor. However, our UDO does not include Massage Business in the definition of Adult Establishment.

George Bryan noted that it appears that issues with crime in our area have occurred with all three types of adult establishments - book stores, videos, and live entertainment.

MOTION: Clarence Lambe moved approval of the text amendment.

SECOND: Paul Mullican

VOTE:

FOR: George Bryan, Melynda Dunigan, Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning and Development Services

PLANNING BOARD RECOMMENDED VERSION

UDO-269 AN ORDINANCE AMENDING CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES* TO REVISE THE HOURS OF OPERATION FOR ADULT ESTABLISHMENTS

Be it ordained by the Board of Commissioners of Forsyth County, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article II of the UDO is amended as follows:

Chapter B – Zoning Ordinance **Article II – Zoning Districts, Official Zoning Maps, and Uses**

2-5 USE CONDITIONS

2-5.5 Adult Establishments

(A) Location

No activities permitted under State law shall be conducted in adult establishments in the following locations:

- (1) Residential Districts.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any RM or RS District;
- (2) School.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any public or private school;
- (3) Child Day Care Center.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any child day care center;
- (4) Other Adult Establishment.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any other adult establishment.

(B) Measurements

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed adult establishment is to be located to the nearest point of the lot line or boundary of the closest RM or RS District; elementary, secondary or private school; or adult establishment.

(C) Hours of Operation

The hours of operation for Adult Establishments shall be limited to between the hours of 10:00 a.m. and 2:00 a.m.

Section 2. This ordinance shall be effective upon adoption.

CITY COUNCIL ADOPTED VERSION

UDO-269 AN ORDINANCE AMENDING CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES* TO REVISE THE HOURS OF OPERATION FOR ADULT ESTABLISHMENTS

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- (4) Other Adult Establishment.** Adult establishments may not be located within a distance of one thousand (1,000) feet from any other adult establishment.

(B) Measurements

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed adult establishment is to be located to the nearest point of the lot line or boundary of the closest RM or RS District; elementary, secondary or private school; or adult establishment.

(C) Hours of Operation

The hours of operation for Adult Establishments shall be limited to between the hours of 7:00 a.m. and 2:30 a.m.

Section 2. This ordinance shall be effective upon adoption.

§ 160A-181.1. Regulation of sexually oriented businesses.

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

- (1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;
- (2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;
- (3) Clothing restrictions for entertainers; and
- (4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, "sexually oriented businesses" means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations. (1998-46, s. 1.)

Attachment A

UDO-269