

## County of Bernalillo - Zoning Code

### Section 17.5. - Adult Amusement Establishment Regulations.

A. Purpose. The purpose of this ordinance's provisions regulating adult amusement establishments is to control, through zoning regulations, certain land uses that have a direct and detrimental effect on the health, safety, and general welfare of the citizens residing in the unincorporated areas of Bernalillo County.

B. Studies. In adopting this ordinance regulating adult amusement establishments, the Board of County Commissioners has reviewed and considered the following studies addressing secondary effects of adult amusement establishments in other jurisdictions:

1. Police Memorandum, Tucson, Arizona (1990);
2. Staff Report, Amendment to Zoning Regulations, Adult Business in C-2 Zone with Conditional Use Permit, Whittier, California (1978);
3. Adams County (Colorado) Nude Entertainment Study (1987);
4. Adult Entertainment Business Study for Manatee County Florida (1987)
5. Regulation of Adult Amusement Establishments in New Hanover County, North Carolina (1989);
6. Adult Business Study, Town and Village of Ellicottville, Cattaraugus County, New York (1998);
7. Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area (New York, NY) (1994);
8. A Report on Zoning and Other Methods of Regulating Adult Businesses in Amarillo (Texas) (1977);
9. Sexually Oriented Business Ordinance Revision Committee Legislative Report (Houston, Texas) (1997);
10. Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin (1993);
11. Do "Off-Site" Adult Businesses have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, Richard McCleary & Alan C. Weinstein (2007);
12. Rural Hot Spots: The Case of Adult Businesses, Richard McCleary (To Be Published 2007-08);

13. Survey of Appraisers, Fort Worth & Dallas, Effects of Land Uses on Surrounding Property Values, Duncan Associates (2004).

14. Final Report to the City of Garden Grove (California): The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, Richard McCleary & James W. Meeker (1991).

15. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles (California) (1977).

C. Published Court Decisions. The Board of County Commissioners has also reviewed and considered the following appellate cases addressing secondary effects of adult amusement establishments in other jurisdictions:

City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2002); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. Am. Mini Theatres, 427 U.S. 50 (1976); California v. LaRue, 409 U.S. 109 (1972); Williams v. Attorney Gen. of Ala., 378 F.3d 1232 (11th Cir. 2004); World Wide Video of Wash., Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Heideman v. S. Salt Lake City, 348 F.3d 1182 (10th Cir. 2003); Ctr. for Fair Pub. Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003); Z.J. Gifts D-4, L.L.C. v. City of Littleton, 311 F.3d 1220 (10th Cir. 2002); LLEH, Inc. v. Wichita County, 289 F.3d 358 (5th Cir. 2002); Essence, Inc. v. City of Federal Heights, 285 F.3d 1272 (10th Cir. 2002); Am. Target Adver., Inc. v. Giani, 199 F.3d 1241 (10th Cir. 2000); Connection Distrib. Co. v. Reno, 139 F.3d 804 (10th Cir. 1998); Sundance Assocs., Inc. v. Reno, 139 F.3d 683 (10th Cir. 1998); Z.J. Gifts D-2, L.L.C. v. City of Aurora 136 F.3d 683 (10th Cir. 1998); Dodger's Bar & Grill, Inc. v. Johnson County Bd. Of County Comm'rs, 32 F.3d 1436 (10th Cir. 1994); Cortese v. Black, 7 F.3d 1327 (10th Cir. 1996 (table)); Dodger's Bar & Grill, Inc. v. Johnson County Bd. Of County Comm'rs, 32 F.3d 1436 (10th Cir. 1994); ILQ Invs., Inc. v. City of Rochester, 25 F.3d 1413 (8th Cir. 1994); O'Connor v. City & County of Denver, 894 F.2d 1210 (10th Cir. 1990); M.S. News Co. v. Casado, 721 F.2d 1281 (10th Cir. 1983); Hart Book Stores, Inc. v. Edmisten, 612 F.2d 821 (4th Cir. 1979); Bigg Wolf Disc. Video Movie Sales, Inc. v. Montgomery County, 256 F.Supp.2d 385 (D. Md. 2003); Sewell v. Georgia, 233 S.E.2d 187 (Ga. 1977).

D. Findings. The Board of County Commissioners makes the following findings regarding the effect of adult amusement establishments on the character of the unincorporated areas of Bernalillo County. In making these findings, the Board of County Commissioners has considered the recommendations of its Building, Zoning, and Planning Department, which, along with the Bernalillo County Planning Commission, has reviewed and considered the experiences of other local governments—in urban, suburban, and rural areas—in the United States where adult amusement establishments have located

Based upon the Board of County Commissioners' review, consideration, and study - which includes its consideration of the recommendations of its Building, Zoning, and Planning

Department and the County Planning Commission - the Board of County Commissioners makes and adopts the following FINDINGS:

1. The above cited reports and cases are considered evidence from studies conducted in varied locations across the United States relating to adult amusement establishments.
2. Adult amusement establishments are associated with high crime rates and depression of property values.
3. The character of a neighborhood can dramatically change when there is a concentration of adult amusement establishments adjacent to residential property.
4. Adult amusement establishments have an impact on neighborhoods surrounding them that is distinct from the impact caused by other commercial uses.
5. Residential neighborhoods located within close proximity to adult amusement establishments experience increased crime rates, lowered property values, increased transiency, and decreased stability of ownership.
6. Adult amusement establishments can have negative effects on persons attending places of worship as well as children attending school.
7. Adult amusement establishment uses can contribute to an increase in criminal activity in areas where such businesses are located, thereby taxing Bernalillo County crime prevention programs and law enforcement resources.
8. Many members of the public perceive areas within which adult uses are located as less safe than areas that do not have such uses.
9. Values of both commercial and residential properties are either diminished or fail to appreciate at the rate of comparable properties when located in proximity to adult amusement establishment uses.
10. Adult amusement establishment uses can significantly contribute to the deterioration of residential neighborhoods and can impair the character and quality of the residential housing in the areas where such uses are located, thereby exacerbating the dearth of affordable, habitable housing for residents of the unincorporated areas of Bernalillo County.
11. The concentration of adult amusement establishment uses in one area can have a substantial detrimental effect on the area where such uses are located and on the overall quality of life in that area.
12. The concentration of separate adult uses— e.g., adult amusement establishment, adult bookstore, adult photo amusement establishment, adult photo studio, adult theater, adult video arcade, and adult body oil or lotion demonstration parlors— in a single structure tends to produce harmful secondary effects destructive to the overall quality of life in that area.

13. A cycle of decay can result from the influx and concentration of adult amusement establishment uses. The presence of such uses is perceived by others as an indication that the area is deteriorating and the result can be devastating: other businesses leave the vicinity and residents move from the area. Declining real estate values, which can result from the concentration of such businesses, erode the tax base and contribute to blight.

14. Citizens have expressed support for the following ordinances at meetings of the Board of County Commissioners, the County Planning Commission, and its Building, Zoning, and Planning Department.

15. The impacts of adult amusement establishment uses, including those covered in this ordinance, on the residents and property of the unincorporated areas of Bernalillo County would be similar to the cities, towns, and counties cited in the reports and court decisions.

16. That this ordinance shall provide that sufficient space and sites for the location of adult amusement establishment uses in the appropriate zones for the purpose of protecting the health, safety, and welfare of the citizens of the unincorporated areas of Bernalillo County, as well as the values of property and structures located therein.

17. The adverse impacts that adult amusement establishment uses have on surrounding areas may diminish as the distance from adult uses increases.

18. The Board of County Commissioners adopts this ordinance recognizing that the County has real and substantial goals for public health, safety, and welfare and has a great interest in the promotion of health and prevention of criminal activities.

19. The enactment of this ordinance is in the best interest of the public health, safety, and general welfare of the people residing in the unincorporated areas of Bernalillo County.

20. It is in the best interest of the unincorporated areas of Bernalillo County to protect existing property values and protect adjacent business owners, and/or businesses, from undesirable impacts of adult amusement establishment uses.

21. It is in the best interest of the unincorporated areas of Bernalillo County to protect its residents through appropriate ordinances from the secondary effects of adult amusement establishment uses.

22. It is in the best interest of the unincorporated areas of Bernalillo County to protect children and other persons vulnerable to crimes and increased criminal activity associated with adult amusement establishment uses.

E. Conclusion of Board of County Commissioners. In order to minimize the detrimental effect adult-amusement establishment uses have on adjacent land uses, the Board of County Commissioners adopts appropriate land-use regulations, recognizing that it has a great interest in the present and future character of the unincorporated areas of Bernalillo County.

F. Definitions of Adult Amusement Regulations. Words used in the present tense include the future tense, and words used in the future tense include the present tense; the singular number includes the plural number, and the plural number includes the singular number. The word "shall" is mandatory, and the word "may" is permissive.

Adult Amusement Establishment.

1. An establishment which provides amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing, or relating to specified sexual activities or specified anatomical areas;
  - a. Specified Anatomical Areas, means:
    - (1) Less than completely and opaquely covered.
      - (a) Human genitals or pubic region;
      - (b) Buttock; and
      - (c) 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. Specified Sexual Activities, including the following:
    - (1) Human genitals in a state of sexual stimulation or arousal;
    - (2) Acts of human masturbation, sexual intercourse, or sodomy; and
    - (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
2. An establishment which features topless dancers, exotic dancers, strippers, or similar entertainment; or
3. An establishment which, upon payment of a fee provides an escort or a partner to its patrons.
4. An establishment which upon payment of a fee provides its patrons with a male or female model fully or partially nude for the purposes of demonstrating body oils, body lotions or similar substance or devices.

Adult Bookstore. An establishment having a substantial or significant portion of its stock in film, video tapes, trade 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, or an establishment with a segment or section devoted to the sale or display of such material.

**Adult Photo Studio.** An establishment which, upon payment of a fee, provides photographic equipment or models for the purpose of photographing specified anatomical areas.

**Adult Theater.** A theater used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

#### G. General Regulations for Adult Amusement Establishments.

1. Adult amusement establishment, including but not limited to, adult bookstore, adult photo amusement establishment, adult photo studio, adult theater, adult video arcade, and adult body oil or lotion demonstration parlors; shall be:

- a. Located at least 2,000 feet from another adult amusement establishment, adult bookstore, adult photo amusement establishment, adult photo studio, adult theater, adult video arcade, and adult body oil or lotion demonstration parlors;
- b. Located at least 2,000 feet from the nearest conforming residential use, or from any church or school; and

2. Each of the adult uses set forth above shall be considered a separate use and the approval of one adult use shall not imply the approval of any other adult use.

(Ord. No. 2008-4, § 1, 4-24-08)