

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF
THE TOWN OF SOUTHERN SHORES TO
REGULATE SEXUALLY ORIENTED BUSINESSES

WHEREAS, the Town of Southern Shores Town Council finds that studies have shown the secondary impacts associated with the location of sexually oriented businesses are: the lowering of property values, an increased crime rate, and an increase in illicit sexual activity and solicitation. (U.S. Attorney General's Commission on Pornography (1986), the Regulation of Adult Establishments in North Carolina (1996) on the secondary impacts of adult businesses), and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on existing businesses around them and hinder the potential to attract new businesses into the area near a sexually oriented business, and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics thereby contributing to urban blight and downgrading the quality of life in the adjacent areas; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the Town citizens and visitors, and

WHEREAS, the Town Council desires to protect the health, safety and welfare of its citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods;

NOW, THEREFORE BE IT ORDAINED by the Town Council of The Town of Southern Shores that the Zoning Ordinance of the Town of Southern Shores be amended as follows:

PART I. That ARTICLE VI. GENERAL PROVISIONS be amended by adding a new section as Section 6.10 Sexually Oriented Business to read as follows:

SECTION 6.10 Sexually Oriented Businesses

A. Findings

1. Based on evidence concerning the adverse secondary effects of adult uses on the community and on the findings incorporated in the cases City of Renton v. Playtime Theaters, Inc., 475 US 41 (1986), Young v. American Mini Theaters, US. 50 (1976), and Barnes v. Glenn Theater, Inc., 501 US 560 (1991), and on studies in other communities including but not limited to, Phoenix, Arizona; Tucson, Arizona; Saint Paul, Minnesota; Houston, Texas; Austin, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), a Report on the Regulation of Adult Establishments in North

Carolina (May 22, 1996), and findings from the 1997 Town of Southern Shores Land Use Plan questionnaire dealing with Sexually Oriented Businesses, the Council finds:

2. According to the studies referenced above, sexually oriented businesses tend to lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further without a reasonable regulation there is no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

3. Sexually oriented businesses provide a potential focus for illicit and undesirable activities by providing a place of contact for numerous potential customers for prostitution, pandering and other activities.

4. In combination with on-site or nearby alcoholic beverage service or other sexually oriented businesses, the concentration of uses increases the quantity of undesirable activities. There is a snowball effect of undesirable activities that feed upon and support each other.

5. Facilitation of illicit behavior results in the exposure of children and youth in adjacent neighborhoods or nearby educational or religious institutions to inappropriate models of behavior which they are unprepared to understand or respond to effectively. Where criminal activity is involved, children, women and the elderly are especially prone to victimization.

6. The very existence of a sexually oriented business opens to question the presence of pedestrians within that area. This unsolicited attention is intimidating to children, women alone and the elderly.

7. There is a strong tendency for inappropriate activities to seek nearby venues. Prostitution and other illicit activities will find lightly used and under used nearby parks, parking lots, garages, alleyways and other spaces for their activities. A sexually oriented business does not necessarily create the activity but provides a facilitating setting for supporting these activities. It provides a legitimizing reason for the presence of individuals who have illicit intent.

8. Sexually oriented businesses have a negative impact upon both residential and commercial property values within three blocks of the location. The preponderance of research suggests that the presence of sexually oriented businesses is considered by real estate appraisers and lenders to be evidence of community decline and decay. Other research indicates that areas with sexually oriented businesses experience lower rates of appreciation in property values and/or higher turnover in properties in comparison to comparable areas without sexually oriented businesses. Crime rates are significantly higher in areas with one or more sexually oriented businesses than in comparable areas without these businesses within the same municipality. (See American Center for Law and Justice on the Secondary Impacts of Sexually Oriented Businesses).

9. Certain employees of sexually oriented businesses, defined as adult theaters and adult cabarets, may engage in a higher incidence of certain types of illicit sexual behavior than employees of other commercial establishments.

10. Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

11. Persons frequent such adult theaters, adult cabarets and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

12. At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigulla infections.

13. Sanitary conditions in some sexually oriented businesses are unhealthy because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

14. The 1997 Southern Shores Land Use Plan Update included a series of questions posed to Town residents and property owners regarding their perception of Town attributes, Town services and the direction of the Town's development. A specific question dealt with aspects of adult establishments, and the Sketch Land Use Plan Update concludes: "Respondents strongly agreed that the presence of adult entertainment establishments would adversely affect residential property values (84.3% of the 92.4% responding) and adversely affect nearby commercial establishments and businesses (77.6% of the 91.3% responding). Respondents also strongly agreed that adult entertainment establishments would negatively influence their decision to buy a home or vacation in Southern Shores (76.3% of the 91.7% responding). The respondents strongly disagreed with the statement that adult entertainment establishments would enhance the vacation resort attraction of Southern Shores for vacationing families (71 % of the 91.8% responding)." (See Southern Shores Planning Board Report of June 4, 1999.)

15. The Town of Southern Shores total land area is 1 mile wide by 4 miles long with only 2.9% of the land area zoned for commercial use. The rest of the town is encumbered by restrictive covenants. The only commercial district runs along the town's southern border on Rte. 158, the major access route to the Outer Banks for tourists and residents.

16. In September 1999, Southern Shores reported a population of 1923 full-time residents. The majority of these are retired persons and this trend is expected to continue into future populations. According to the 1997 CAMA Sketch Land Use Plan Update, almost one quarter of the population of Dare County in 1995 was 55 years of age or older.

17. Southern Shores was first conceived and designed as a planned residential community, and that concept was supported further in 1979 when the Town was incorporated. Throughout its fifty-two year history, it has valued its family residential character. In its most recent referendum, a Liquor By The Drink proposal was defeated by the electorate, preferring instead its family residential goals to increased commercialism.

18. Southern Shores never has been, and never is expected to be, a self-sufficient community. Residents of Southern Shores consistently and on a daily basis leave the town to procure goods and services and to conduct routine business. (Refer to Southern Shores Planning Board Report of June 4, 1999.) Residents must travel to other communities for automotive sales and service, bars and grills, book stores and libraries, boat and marina sales and supplies, business supplies and equipment, home furnishings and decorating supplies or services, building supplies, hardware stores, electronic equipment sales and services, employment agencies, home appliances and repairs, liquor stores, specialty foods, sports and recreational equipment and services, comprehensive health care, hospitals, and funeral services, among others.

19. Any First Amendment rights of citizens or visitors to Southern Shores to sexually oriented entertainment can readily be met in nearby communities. Provision for the establishment of sexually oriented businesses has been made approximately 8 miles south of Southern Shores by the towns of Kill Devil Hills and Nags Head. An adult entertainment business currently operates in Currituck County about 3.25 miles from Southern Shores' western border.

20. A public hearing was held jointly by the Town Council and Planning Board on Monday, August 16, 1999 to allow the general public an opportunity to express opinions on sexually oriented businesses. The consensus held that sexually oriented businesses would negatively impact life styles and moral values if permitted in The Town of Southern Shores.

B. Sexually Oriented Business Prohibited.

Based upon the input from the public hearings, studies recited in the findings and the findings in Section 6.10 A, all sexually oriented businesses as defined in Article III, Section 3.02, of the Southern Shores Ordinance are prohibited.

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. Should a court of competent jurisdiction declare this ordinance or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance nor the Zoning Ordinance of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

PART III. Adopted this the 7th day of March, 2000. This ordinance shall be in full force and effect from and after the date of adoption.

ATTEST:

Carrie Gordin
Carrie Gordin, Town Clerk

Paul Sutherland
Paul Sutherland, Mayor

Approved as to form:

Thomas L. White, Jr.
Thomas L. White, Jr. Town Attorney