

Topic: State Land Use Law; Adult Entertainment
Resource Type: Regulations
State: North Carolina
Jurisdiction Type: State
Municipality: N/A
Year (adopted, written, etc.): 2004
Community Type - applicable to: Urban; Suburban; Rural
Title: State of North Carolina Adult
Entertainment Ordinances
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Abstract

Section 160A-181.1 authorizes cities and counties to regulate sexually oriented businesses through zoning ordinances, licensing requirements, or other “appropriate ordinances.” Such regulations may include, but are not limited to: restrictions on the location; restrictions on operations, including, inter alia, hours and exterior advertising and noise; reasonable moratoria on new or expanded facilities while studies are conducted and ordinances are considered; and requirements that existing businesses come into compliance with new ordinances. § 160A-181.1(c)(1)-(4), (d). This section also authorizes cities and counties to enter into cooperative agreements with one another to coordinate their regulations on sexually oriented businesses.

Additionally, North Carolina’s statutes regarding limitations on adult entertainment establishments (§ 14-202.11) and prohibiting obscenity (§ 14-190.1) and indecent exposure (§ 14-190.9) all specify that local governments are not precluded from regulating these areas, as well.

Resource

§ 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.

§ 14-202.11. Restrictions as to adult establishments

(a) 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.

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

(c) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech.

§ 14-190.1. Obscene literature and exhibitions

(a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

(1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or

(2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or

(3) Publishes, exhibits or otherwise makes available anything obscene; or

(4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Article any material is obscene if:

(1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and

(2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and

(3) The material lacks serious literary, artistic, political, or scientific value; and

(4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(c) As used in this Article, "sexual conduct" means:

(1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted;
or

(2) Masturbation, excretory functions, or lewd exhibition of uncovered genitals; or

(3) An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

(d) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences.

(e) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(f) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(g) Violation of this section is a Class I felony.

(h) Obscene material disseminated, procured, or promoted in violation of this section is contraband.

(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech.

§ 14-190.9. Indecent exposure

(a) Any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, of the opposite sex, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech.