

ORANGE COUNTY PLANNING DEPARTMENT
131 W. MARGARET LANE, SUITE 201
HILLSBOROUGH, NORTH CAROLINA 27278



AGENDA
ORANGE COUNTY PLANNING BOARD

ORANGE COUNTY WEST CAMPUS OFFICE BUILDING
131 WEST MARGARET LANE – LOWER LEVEL CONFERENCE ROOM (ROOM #004)
HILLSBOROUGH, NORTH CAROLINA 27278
Wednesday, September 2, 2015
Ordinance Review Committee Meeting – 6:15 pm

Note: This is a meeting of the Ordinance Review Committee (ORC) for Planning Board members who would like to review and comment on proposed amendments before the items are placed on a Quarterly Public Hearing agenda. Attendance is not mandatory and a quorum is not necessary for meetings of the ORC.

<u>No.</u>	<u>Page(s)</u>	<u>Agenda Item</u>
1.		CALL TO ORDER
2.	2 - 10	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – CAR SALES/RENTAL OPERATIONS To review and comment upon proposed amendments to the UDO regarding car sales and rental operations. Presenter: Michael Harvey, Current Planning Supervisor
3.	11 - 37	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – SEXUALLY ORIENTED BUSINESSES To review and comment upon proposed amendments to the UDO regarding sexually oriented businesses. Presenter: Michael Harvey, Current Planning Supervisor
4.		ADJOURNMENT

**ORANGE COUNTY
PLANNING BOARD ORDINANCE REVIEW COMMITTEE
ACTION AGENDA ITEM ABSTRACT
Meeting Date: September 2, 2015**

**Action Agenda
Item No. _____**

SUBJECT: Unified Development Ordinance (UDO) Text Amendment – Automotive Sales

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

INFORMATION CONTACT:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> 1. Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (UDO & Zoning 2015-06) 2. Proposed UDO Text Amendment | <ul style="list-style-type: none"> Michael D. Harvey, Planner III (919) 245-2578 Craig Benedict, Director (919) 245-2575 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|

PURPOSE: To review and comment upon Planning Director initiated Unified Development Ordinance (UDO) text amendments seeking to adopt regulations governing the display of automobiles for sale or rent.

BACKGROUND: The Amendment Outline Form (Attachment 1) for this amendment was reviewed and approved by the BOCC at its May 5, 2015 regular meeting.

Staff has seen an increase in the number of automotive sale business operating within the County and has begun receiving complaints related to the storage and display of vehicles being offered for sale, specifically too many cars being placed on a parcel of property blocking or impeding access for both customers and emergency vehicles. In certain instances, cars have been parked in required land use buffer areas killing required landscaping or have been encroaching into adjacent rights-of-way creating additional enforcement problems.

Staff is proposing the adoption of a ratio basing the number of allowable vehicles on the overall size of the property exclusive of septic, parking, and required landscaping areas. For more information please refer to Section B of Attachment 1.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION(S): The Planning Director recommends the Ordinance Review Committee review and comment on the proposed amendments to the UDO.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-06

Amendment(s) establishing regulations for automotive sales and rental business
addressing the display and advertising of cars for sale

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future Land Use Element Map:
From: - - -
To: - - -
- Zoning Map:
From: - - -
To: - - -
- Other:

Text Amendments

- Comprehensive Plan Text:
Section(s):
- UDO Text:
 - UDO General Text Changes
 - UDO Development Standards
 - UDO Development Approval Processes
 Section(s):
- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated a text amendment to establish regulations governing the development and operation of automotive sales.

Staff has seen an increase in the number of automotive sale business operating within the County and has begun receiving complaints related to the storage and display of vehicles being offered for sale, specifically too many cars being placed on a parcel of property blocking or impeding access for both customers and emergency vehicles. In certain instances, cars have been parked in required land use buffer areas killing required landscaping or have been encroaching into adjacent rights-of-way creating additional enforcement problems.

Staff is proposing to develop comprehensive regulations designed to limit the overcrowding of automotive sales operations within all general use zoning districts where such land uses are permitted.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners'*.

Automotive sales are allowed in the following general use zoning districts as a permitted use (i.e. administrative approval) of property:

1. Neighborhood Commercial (NC-2) with special standards;
2. General Commercial (GC-4);
3. Existing Commercial (EC-5);
4. Existing Industrial (EI);
5. Light Industrial (I-1);
6. Medium Industrial (I-2);
7. Heavy Industrial (I-3);
8. Economic Development Eno High Intensity (EDE-2); and
9. Master Planned Development Conditional Zoning (MPD-CZ) district.

This use is also permitted within the Economic Development Buckhorn Low and High Intensity (EDB-1 and EDB-2) districts with the review and approval of a Conditional Use (i.e. a rezoning and Class A Special Use Permit) application by the BOCC.

Currently, the County only limits the total number of cars that can be parked and/or displayed for an automotive sales business located within the Neighborhood Commercial (NC-2) general use zoning district. It should be noted that staff has an active code enforcement case against an existing business along Highway 70 within the Cheeks Township.

The amendments are necessary to address congestion at automotive sales operations due to too many vehicles being displayed for sale.

Additional analysis will be part of the public hearing materials.

3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. New Statutes and Rules

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

- a. BOCC Authorization to Proceed

May 5, 2015

- b. Quarterly Public Hearing

November 23, 2015

- c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

September 2, 2015 – Planning Board Ordinance Review Committee (ORC)

November 23, 2015 – Quarterly Public Hearing

January 2016 – Receive Planning Board Recommendation

- d. Other

N/A

2. PUBLIC INVOLVEMENT PROGRAM

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

- a. Planning Board Review:

September 2, 2015 – Ordinance Review Committee

December 2, 2015 – Recommendation

- b. Advisory Boards:

N/A

_____	_____
_____	_____
_____	_____

c. Local Government Review:

N/A

d. Notice Requirements

Legal advertisement published in accordance with the provisions of the UDO..

e. Outreach:

General Public: Consistent with NC State General Statutes and Orange County Ordinance requirements.

Small Area Plan Workgroup:

Other:

3. FISCAL IMPACT

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

The amendment will establish comprehensive regulations governing the number and placement of vehicles being offered for sale at an automotive sales operation in an effort to address overcrowding concerns and eliminate impediments to vehicular ingress/egress from the property.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 2.

Primary Staff Contact:
Michael D. Harvey
Planning
(919) 245-2597
mharvey@orangecountync.gov

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE A = CLASS A SPECIAL USE B = CLASS B SPECIAL USE Δ = SUBJECT TO SPECIAL STANDARDS																					
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Temporary Mobile Home (Use during construction/installation of permanent residential unit and for 30 days following issuance of Certificate of Occupancy)	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
AUTOMOTIVE / TRANSPORTATION																					
Bus Passenger Shelter	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*		*	*	*	
Bus Terminals & Garages ~													*					*	*	*	
Motor Freight Terminals ~																		*	*	*	
Motor Vehicle Maintenance & Repair (Body Shop) ~													*	*	*						
Motor Vehicle Repair Garage ~													*	*							
Motor Vehicle Sales / Rental (New & Used) ¹														Δ ¹ *	*	*		*	*	*	*
Motor Vehicle Services Stations											*	*	*	*	*						
Parking As Principal Use, Surface or Structure												*	*	*							
Petroleum Products: Storage & Distribution ~																		*	*	*	
Postal & Parcel Delivery Services													*	*		*					
UTILITIES																					
Elevated Water Storage Tanks	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Public Utility Stations & Sub-Stations, Switching Stations, Telephone Exchanges, Water & Sewage Treatment Plants	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Electric, Gas, and Liquid Fuel Transmission Lines	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Water & Sanitary Sewer Pumping	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Solar Array – Large Facility	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Solar Array – Public Utility	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

¹ As we are extending vehicle display standards/limits to all districts there is no reason to single out vehicle sales/rentals in NC-2 anymore.

from the property line.

- (3) Hours of operation shall be limited to the hours between 7 a.m. and 7 p.m.
- (4) Site shall have direct access to a major road, as classified in the Orange County Comprehensive Plan, and shall use said road as the primary access, unless approved otherwise in the permit.

5.14.4 Winery, production only

(A) Standards for Class B Special Use Permit or ASE-CZ Zoning District

- (1) If located in an AR or RB zoning district, the winery must be located on a bona fide farm.
 - (a) A winery, production only, that is located on a bona fide farm, and which utilizes primarily crops produced on-site is considered a bona fide farming use and is not subject to zoning regulations.
 - (b) A winery, production only, that does not utilize primarily crops produced on-site, regardless of whether it is located on a bona fide farm, is not considered a bona fide farming use and is subject to the regulations contained in this Ordinance.
- (2) If located adjacent to residentially zoned property, all buildings shall be located a minimum of 100 feet from the property line.
- (3) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

SECTION 5.15: STANDARDS FOR AUTOMOTIVE/TRANSPORTATION RELATED USES

5.15.1 Motor Vehicle Sales / Rental (New & Used) in the NC-2 Zoning District²

(A) Standards for the NC-2, EC-5, and E-I Zoning District(s)

² Originally the County adopted regulations establishing a specific limit on the display of motor vehicles for sale in the NC-2 zoning district. This amendment establishes a limit on the outdoor display of motor vehicles offered for sale in every zoning district where the land use is permitted.

- (1) This use shall only be permitted on property zoned NC-2 located within the Commercial Transition Activity or Commercial-Industrial Transition Activity Node land use classifications, as designated on the ~~Land Use Element Map~~Future Land Use Map³ of the adopted Comprehensive Plan.⁴
- (2) ~~The site~~Property shall have direct access onto a State maintained roadway.
- ~~(3)~~ A maximum of 12 cars may be stored or displayed on siteOutdoor areas devoted to the display of vehicles shall be limited to a ratio of:
- (a) .17 per acre for parcels served by individual septic system.⁵
- (b) .24 per acre for parcels served by public sewer.⁶
- Vehicles offered for sale or rent shall be located only within this area of the property.
- ~~(4)~~ No additional use shall be made of designated vehicle display area including, but not limited to, parking.⁷
- ~~(3)(5)~~ Vehicle display areas shall comply with applicable setback standards for the district in which it is located and landscaping standards as contained in Section 6.8.
- ~~(4)(6)~~ Additional vehicles not offered for sale or rent can be stored on the property so long as they are contained in a secured area surrounded by a vegetative opaque screen as viewed from adjacent properties and right-of-way.⁸
- (B) Standards for all other zoning districts.**⁹
- (1) Property shall have direct access onto a State maintained roadway.
- (2) Outdoor areas devoted to the display of vehicles shall be limited to a ratio of:
- (a) .24 per acre for parcels served by individual septic system.
- (b) .30 per acre for parcels served by public sewer.
- Vehicles offered for sale or rent shall be located only within this area of the property.
- (3) No additional use shall be made of designated vehicle display area including, but not limited to, parking.
- (4) Vehicles display areas shall comply with applicable landscaping standards as contained in Section 6.8.
- (5) Additional vehicles not offered for sale or rent can be stored on the property so

³ Staff is correcting existing language to ensure the Future Land Use Map is properly cited within the UDO.

⁴ Staff is looking to keep motor vehicle sales out of Rural Neighborhood and Rural Commercial Activity Nodes.

⁵ A typical display area for a vehicle is 288 sq. ft., which includes the required parking area for said vehicle and the portion of drive isle allowing access. This proposal limits the display of vehicles on a ratio standard connected to the size of a parcel rather than an arbitrary number. The proposed ratio would result in an acre lot being able to have a vehicle display area of 7,405 sq. ft. or approximately 25 cars (43,560 x .17 / 288). This regulation does not eliminate the property owner from having to comply with other ratio/dimensional standards contained within the UDO.

⁶ The Planning Director suggested regulations be established to recognize properties served by public sewer have additional land area to support development and, as a result, the allowable vehicle display area ought to be higher. The proposed ration would result in a 1 acre lot to display approximately 36 cars (43,560 x .24 / 288).

⁷ We have had problems in the past with required parking areas, for customers and staff, being used for display purposes. This provision will give staff greater ability to prohibit same.

⁸ In consultation with the Director, it was determined additional storage area could be allowed on-site for vehicles not intended for sale or rental so long as said storage area was screened from view.

⁹ This includes the GC-4, I-1, I-2, I-3, and the Buckhorn and Eno Economic Development districts.

long as they are contained in a secured area surrounded by a vegetative opaque screen as viewed from adjacent properties and right-of-way

SECTION 5.16: STANDARDS FOR MEDICAL USES

5.16.1 Veterinary Clinic

(A) Standards for Class B Special Use Permit or ASE-CZ or MPD-CZ Zoning District

- (1) In the AR and ASE-CZ zoning districts, this use is intended primarily for large animal facilities but may also contain an ancillary small animal component.
- (2) If located adjacent to residentially zoned property, all buildings and facilities shall be located a minimum of 100 feet from the property line.

5.16.2 Veterinary Clinic, mobile

(A) Standards for Class B Special Use Permit or ASE-CZ or MPD-CZ Zoning District

- (1) In the AR, R-1, and ASE-CZ zoning districts, this use is intended to be located on the same property as the operator's residence. The mobile clinic shall be parked to the side or rear of the residence, not in front of the residence, unless permitted otherwise in the permit.
- (2) For all zoning districts in which this use is permitted, observation shelters for up to three large or small animals shall be considered an accessory use. The permit may specify a greater number of observation shelters and may limit the maximum number of days an individual animal may be observed.
- (3) If adjacent to residentially zoned property, all mobile clinic operations shall be located a minimum of 100 feet from the property line.
- (4) Veterinary services whereby the public brings their animal to the mobile clinic location shall not be permitted, unless specifically permitted in the permit.

5.16.3 Veterinary Hospital

(A) Standards for ASE-CZ Zoning District

- (1) In the ASE-CZ zoning district, this use is intended primarily for large animal facilities but may also contain an ancillary small animal component.
- (2) If located adjacent to residentially zoned property, all buildings and facilities shall be located a minimum of 100 feet from the property line.

SECTION 5.17: STANDARDS FOR MISCELLANEOUS USES

5.17.1 Churches

(A) General Standards

- (1) Churches are required to provide setbacks in residential districts; the minimum shall be as follows:

TABLE 5.14.1.A: CHURCH SETBACK STANDARDS IN RESIDENTIAL DISTRICTS	
SETBACK	DISTANCE (FEET)
Front	45
Side	50
Rear	50

**ORANGE COUNTY
PLANNING BOARD ORDINANCE REVIEW COMMITTEE
ACTION AGENDA ITEM ABSTRACT
Meeting Date: September 2, 2015**

**Action Agenda
Item No. _____**

SUBJECT: Unified Development Ordinance (UDO) Text Amendment – Sexually Oriented Business Regulations

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

INFORMATION CONTACT:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (UDO & Zoning 2015-05)</p> <p>2. Proposed Amendment(s) to Chapter 8 of Orange County Code of Ordinances Establishing Business License Regulations</p> <p>3. Proposed UDO Text Amendment</p> | <p>Michael D. Harvey, Planner III (919) 245-2578
Craig Benedict, Director (919) 245-2575</p> <p>Attorney Involvement</p> <p>John Roberts, County Attorney
James Bryan, Staff</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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PURPOSE: To review and comment upon Planning Director initiated Unified Development Ordinance (UDO) text amendments seeking to adopt licensing, permitting, and operational guidelines for sexually oriented businesses.

BACKGROUND: The Amendment Outline Form (Attachment 1) for these amendments was reviewed and approved by the BOCC at its May 5, 2015 regular meeting.

Sexually oriented businesses, because of their very nature, are recognized as having potentially objectionable operational characteristics and regulation is necessary to ensure adverse secondary effects do not impact public health, safety or welfare. Such regulations, however, are required to be content neutral and shall not have the effect of denying access by adults to sexually oriented materials protected by the US Constitution's First Amendment or deny access by distributors and exhibitors of sexually oriented entertainment to their intended market.

The proposed regulations would: (1) establish a business licensing process for operators and (2) establish land use regulations requiring sexually oriented businesses to be separated from identified sensitive uses. For more information please refer to Section B of Attachment 1.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION(S): The Planning Director recommends the Ordinance Review Committee review and comment on the proposed amendments to the UDO.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-05

Amendment(s) addressing establishment of regulations for sexually oriented businesses.

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future Land Use Element Map:
From: - - -
To: - - -
- Zoning Map:
From: - - -
To: - - -
- Other:

Text Amendments

- Comprehensive Plan Text:

Section(s):

- UDO Text:

- UDO General Text Changes
 UDO Development Standards
 UDO Development Approval Processes

Section(s): Section(s)

1. 5.2.1 *Table of Permitted Uses*,
2. 5.17 *Standards for Miscellaneous Uses*, and
3. Article 10 *Definitions*

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified*

Development Ordinance Amendments of the UDO, the Planning Director has initiated a text amendment to establish regulations governing the development of sexually oriented businesses. Proposed UDO text amendments will be presented in conjunction with amendments to the County Code of Ordinances establishing business licensing provisions for these businesses as well.

Currently, Orange County does not permit the development of sexually oriented businesses within any general use zoning district. Existing definitions, including adult uses as contained in Article 10 of the UDO, are out of date and inconsistent with State regulations and recent court decisions.

Proposed amendments shall establish locational criteria for such businesses including mandatory setbacks from identified sensitive uses (i.e. church, school, single-family residence, etc.) while allowing for their development consistent with applicable State and Federal requirements.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners'*.

The amendment(s) are necessary to ensure the County is consistent with provisions of State and Federal law. The County cannot prohibit sexually oriented businesses outright but is afforded the opportunity to regulate their location and certain operational characteristics in an effort to ensure identified secondary impacts are mitigated as much as possible.

As defined within NCGS 14-202.10 a sexually oriented business 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."*

Sexually oriented businesses, because of their very nature, are recognized as having potentially objectionable operational characteristics. Regulation of these uses are necessary to ensure adverse secondary effects do not contribute to the blighting of surrounding neighborhoods and to regulate acts, omissions or conditions that could be construed as detrimental to the public health, safety or welfare. This includes ensuring development of such businesses does not create a disincentive for additional economic development in a given area.

Such regulations, however, are required to be content neutral and shall not have the effect of imposing a limitation or restriction on the content of any communicative materials or deny access by adults to sexually oriented materials protected by the US Constitution's First Amendment. Regulations also cannot be so restrictive as to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. New Statutes and Rules

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

- a. BOCC Authorization to Proceed

May 5, 2015

- b. Quarterly Public Hearing

November 23, 2015

- c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

September 2, 2015– Planning Board Ordinance Review Committee (ORC)

November 23, 2015 – Quarterly Public Hearing

February 2016 – Receive Planning Board Recommendation

- d. Other

N/A

2. PUBLIC INVOLVEMENT PROGRAM

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

- a. Planning Board Review:

September 2, 2015 – Ordinance Review Committee

December 2, 2015 and January 6, 2016 (if necessary) – Recommendation

- b. Advisory Boards:

N/A

- c. Local Government Review:
 Staff will transmit the proposed amendment to the Towns of Chapel Hill, Carrboro, and Hillsborough for courtesy review in the month of September 2015.

The Orange County Sheriff's office will also be asked to comment on the proposal.

- d. Notice Requirements

Legal advertisement published in accordance with the provisions of the UDO.

- e. Outreach:

<input checked="" type="checkbox"/> General Public:	Consistent with NC State General Statutes and Orange County Ordinance requirements.
<input type="checkbox"/> Small Area Plan Workgroup:	
<input type="checkbox"/> Other:	

3. FISCAL IMPACT

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

The amendment will establish comprehensive regulations governing the development and operation of sexually oriented businesses consistent with applicable State and Federal law.

E. SPECIFIC AMENDMENT LANGUAGE

See <u>Attachment 2</u> and <u>Attachment 3</u> .

Primary Staff Contact:

Michael D. Harvey

Planning

(919) 245-2597

mharvey@orangecountync.gov

That Chapter 8 *Business* of the Orange County Code of Ordinances be amended by adding a new Article IV *Sexually Oriented Businesses* reading as follows:

Article IV. SEXUALLY ORIENTED BUSINESSES

Section 8-100 Scope.

(a) Orange County is committed to protecting the general welfare of residents, property owners, and visitors through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. The purpose of this article is to establish a licensing provision for sexually oriented businesses to reduce and eliminate their deleterious effects while preserving constitutionally protected forms of expression by establishing reasonable and uniform regulations. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, restricting or denying access by adults to materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Further, the provisions of this article have neither the intent nor effect of condoning or legitimizing the distribution of obscene material.

In allowing these uses, the County balances its constitutional obligations with the need to guarantee our local economy and quality of life is not impeded.

Section 8-102 Definition of Terms

The definition of specific terms shall be consistent with those detailed within Article 10 of the County Unified Development Ordinance (UDO).

Section 8-103 Licensing of sexually oriented businesses.

(a) It shall be unlawful for any person, group of people, or corporation to operate a sexually oriented business without a valid sexually oriented business license approved by the County pursuant to this Ordinance.

(b) Every application for a sexually oriented business license prescribed herein shall be upon a form approved by the County and shall be filed with the Orange County Sheriff's office and contain the following information:

(1) The applicant's name, including any aliases or other names by which the applicant is known or has used; current physical address of the applicant's residence; contact telephone

numbers; date and place of birth; social security number; drivers license number including state of issuance; and a recent photograph.

If the applicant is a partnership, corporation, association, or other entity the same information is a requirement for all corporate officers, directors, and any individuals having a ten (10) percent or greater interest.

(2) The address and Orange County Parcel Identification Number (PIN) of the property where the proposed sexually oriented business is to be located;

(3) A complete statement of all convictions of any person whose name is required to be given in subsection (b)(1) for any sexually related crime; prostitution or any violation of any law relative to prostitution; or of any crime involving sexual misconduct as codified in the laws of the United States, this or any other state, including, but not limited to, convictions or violations of any of the offenses enumerated in Article 26, 26A and 27 of Chapter 14 of the North Carolina General Statutes, or the same offenses as codified in the laws of the United States, this or of any other state;

(4) A description of any other business proposed to be operated on the same premises or on adjoining premises owned or controlled by the applicant or any other person or entity listed in (b)(1) above.

(5) A completed Non-residential Site Plan Application form, supplied by the Orange County Planning Department, including a professionally prepared site plan completed in accordance with the provisions of the Orange County Unified Development Ordinance (UDO).

(6) A scaled floorplan showing the configuration of the proposed facility.

(7) All applicants, and any individual listed in (b)(1) herein, shall submit to fingerprinting by an Orange County Sheriff. The fingerprint cards shall be submitted to the S.B.I for processing. Returned fingerprint cards and any criminal histories shall be kept on file in the Orange County Sheriff's Department.

(8) A statement signed under oath that the applicant has personal knowledge of the information contained in the application, that

the information contained therein is true and correct, the applicant consents to the investigation of his/her background by the County to verify the information provided, and that the applicant has read and understands the provisions of this article regulating sexually oriented businesses.

Section 8-104 Issuance of license.

(a) The Orange County Sheriff's office shall transmit a copy of the completed application, containing all the required information outlined in this section to the Orange County Planning and Inspections Department, Emergency Services, and Health Department to determine compliance with applicable regulations.

(b) These departments shall, within a reasonable time, not to exceed 60 working days, report the results of their examinations to the Sheriff's office.

(c) If these departments do not respond within 60 working days, then the application and site plan shall be deemed to meet the approval of the various departments.

(d) The license shall be issued upon the receipt by the Sheriff's office of an affirmative finding of all applicable review agencies that:

(1) The application contains no misstatement of fact;

(2) The applicant, or any person or entity having any legal or beneficial ownership interest in the application, has not been convicted of a sexually related crime, prostitution or a violation of any law relative to prostitution, crime involving sexual misconduct as codified in the laws of the United States, this or any other state, including, but not limited to convictions of violations of the offenses enumerated in Articles 26, 26A and 27 of Chapter 14 of the North Carolina General Statutes, or the same offenses as codified in the laws of the United States, this or any other state.

(3) The application conforms to all requirements of applicable zoning, building, and fire prevention codes.

(4) The applicant or any person, corporation, partnership, association or other entity having a legal or beneficial ownership interest in the applicant has not, for the five-year period preceding the application, had a previously issued

license for engaging in any sexually oriented business that has been suspended or revoked anywhere.

- (e) The issuance of the license prescribed herein shall not convey onto the applicant the ability to commence operations until all applicable permits (i.e. Health Department Permit, Zoning Compliance Permit, Certificate of Occupancy, etc.) have been issued.
- (f) If the Sheriff's office has not approved or denied the sexually oriented business license application within thirty (30) days from receiving the completed assessments from applicable review agencies, the license shall be deemed granted.

Section 8-105 Inspection of a sexually oriented business.

An applicant or licensee shall permit representatives of the Sheriff's Department, Emergency Services, the Orange County Planning and Inspections Department, the Orange County Health Department, or any other county, state, or federal department, division, or agency that enforces codes, regulations, ordinances, or statutes relating to human health, safety, or welfare to inspect the premises of any sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business. Failure or refusal by any person to permit a lawful inspection of the premises during regular business hours shall be punishable in accordance with County code and, in addition, may result in the revocation of the license.

Section 8-106 Denial or revocation of license.

- (a) Before the County revokes a license issued pursuant to this article, or determines reasonable grounds exist to deny an application for a license pursuant to this article, the Sheriff's Office shall cause a written notice to be sent by certified mail to the licensee or applicant affected, at the address stated in the license or application.
- (b) A license issued pursuant to this section shall be revoked if the Sheriff's office determines that:
- (1) The licensee has violated any provision of this article;
 - (2) The licensee, or the legal or beneficial owner of any interest in the licensee is convicted of any felony; prostitution or any violation of any law relative to prostitution; crime involving sexual misconduct; as codified in the laws of the United States, this or any other state, including, but not limited to convictions of violations of any of the offenses enumerated in Articles 26,

26A and 27 of Chapter 14 of the North Carolina General Statutes, or the same offenses as codified in the laws of any other state.

(3) The licensee has knowingly, willingly, or intentionally operated a sexually oriented business during a period of time when the licensee's license was suspended for any reason.

(4) The licensee has knowingly, willingly, or intentionally allowed prostitution and/or the possession, use, or sale of controlled substances on the premises.

(5) The licensee has knowingly, willingly, or intentionally violated state ABC laws.

(c) When the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the County finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

Section 8-107 Posting of license.

Every person, corporation, partnership, or association licensed under this section shall display such license in a prominent place.

Section 8-108 Hours of operation.

(a) No sexually oriented business shall be open for business before 8:00 a.m. or after 2:00 a.m. daily, local time.

(b) No business, nor any owner, agent or employee, licensed under this section shall admit customers or prospective customers, or remain open for business, or allow, permit or condone any customer or patron upon the premises of a sexually oriented business before 8:00 a.m. or after 2:00 a.m. daily, local time.

Section 8-109 Patronage of a sexually oriented business by minors and employment of minors.

(a) No business, nor any owner, agent, or employee, licensed under this article shall allow, permit or condone the patronage of any person

under the age of 18 years upon the licensed premises. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.

- (b) No business, corporation, partnership, association, or other entity licensed pursuant to this article shall employ any person under the age of 18 years. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.

Section 8-110 Specific regulations pertaining to sexually oriented businesses.

- (a) At least one employee shall be on duty at all times when a patron is inside the premises to ensure that no illegal activity is taking place within the establishment.
- (b) Sexually oriented businesses shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every area to which patrons are permitted access.
- (c) Adult motion picture theaters and adult theaters shall be in an enclosed building with no less than 100 fixed seats. No private viewing rooms or semi-private booths are allowed.
- (d) An adult mini motion picture theater shall not allow more than one person in a viewing room at any time.
- (e) No owner or operator shall allow openings of any kind to exist between viewing rooms within an adult mini motion picture theater.
- (f) Violation of these provisions shall be grounds for revocation of the business license issued pursuant to this Article.

Section 8-111 Prohibited conduct on premises of sexually oriented businesses.

- (a) It shall be a violation of this article for any person in a sexually oriented business to appear in a state of full nudity or to depict specified sexual activities.
- (b) No owner, operator, manager, employee, entertainer or contract personnel, nor any customer or patron, shall appear bottomless or in a state of full nudity while on the premises of a sexually oriented business.

- (c) No owner, operator, manager, employee, entertainer or contract personnel, nor any customer or patron, shall perform any specified sexual activities, wear or use any device or covering exposed to view which stimulates or simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities, as defined within the Orange County Unified Development Ordinance (UDO), or participate in any act of prostitution while on the premises of a sexually oriented business.
- (d) No owner, operator, manager, employee, entertainer or contract personnel, nor any customer or patron, shall knowingly touch, fondle or caress any specified anatomical area of another person, knowingly permit another person to touch, fondle or caress any specified anatomical area of his or hers, whether such specified anatomical areas are clothed, unclothed, covered or exposed, or sit on or in or otherwise occupy the lap of anyone while on the premises of a sexually oriented business.
- (e) No owner, operator, manager, employee, entertainer or contract personnel shall knowingly or intentionally appear in a semi-nude condition unless the person, while semi-nude, is at least ten (10) feet from any patron or customer and on a stage that is at least two (2) feet from the floor.
- (f) No employee shall solicit any pay or gratuity from any patron or customer while said employee is in a state of semi-nudity while on the premises of a sexually oriented business.
- (g) No private dance, viewing, projection or meeting areas shall be allowed within a sexually oriented business.
- (h) Consumption and/or sale of alcoholic beverages shall be prohibited within a sexually oriented business.
- (i) Violation of these provisions shall be grounds for revocation of the business license issued pursuant to this Article.

Section 8-112 Expiration of license.

All licenses shall expire one year from the date of issuance and may be renewed only by making application as provided in this Article.

Section 8-113 Severability.

It is hereby declared to be the intention of the board that the sections, paragraphs, sentences, clauses, and phrases of this article are severable, and if any phrase, clause, sentence, paragraph, or section of this article is declared unconstitutional or invalid by the valid judgment 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 article of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE A = CLASS A SPECIAL USE B = CLASS B SPECIAL USE Δ = SUBJECT TO SPECIAL STANDARDS																					
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Repair Service Electronic & Appliance										*	*	*	*								
Restaurants: Carry Out											*	*	*	*							
Restaurants: Drive In												*	*	*							
Restaurants: General											*	*	*	*							
Retail, Class 1										*	*	*	*	*							
Retail, Class 2											*	*	*	*							
Retail, Class 3												*	*								
Rural Guest Establishment: Bed & Breakfast ^	*	*	*																		
Rural Guest Establishment: Bed & Breakfast Inn ^		B	B																		
Rural Guest Establishment: Country Inn ^		A	A																		
Sexually Oriented Businesses ¹																			*	*	
Storage of Goods, Outdoor ~														*				*	*	*	
Storage or Warehousing: Inside Building													*	*	*			*	*	*	
Studio (Art)										*	*	*	*		*			*	*	*	
Taxidermy ^		B								*	*	*	*					*			
Tourist Home						*	*	*	*						*						
Wholesale Trade ~												*	*	*	*			*	*	*	
Winery with Minor Events ^	B	B																B	B	B	
EXTRACTIVE USES																					
Extraction of Earth Products ~		A														A		A	A	A	

¹ Staff is recommending the uses be allowed in our medium and heavy industrial districts as a permitted use of property. This is due to the lack of identified sensitive uses (i.e. residential, schools, church, etc.) typically found in those areas of the County where large scale industrial/manufacturing operations are intended for development.

TABLE OF PERMITTED USES – ECONOMIC DEVELOPMENT DISTRICTS									
* = PERMITTED USE	A = CLASS A SPECIAL USE	B = CLASS B SPECIAL USE	C = CONDITIONAL USE (REZONING & CLASS A SUP)						
USE TYPE	GENERAL USE ZONING DISTRICTS								
	BUCKHORN EDD		ENO EDD		HILLSBOROUGH EDD				
	EDB-1	EDB-2	EDE-1	EDE-2	EDH-1	EDH-2	EDH-3	EDH-4	EDH-5
# Shall be noted on Zoning Atlas as “Zoning District” – CU (e.g., EDB-2-CU)									
• Groceries and related products		*		*					
• Paper and paper products		*		*					
• Pharmaceuticals and cosmetics		*		*					
MISCELLANEOUS									
Accessory uses	*	*	*	*					
Electric, Gas, and Liquid Fuel Transmission lines	B	B	B	B					
Elevated water storage tank (Permitted as accessory use without Special Use Permit)	B	B		B				*	*
Historic buildings for non-residential/mixed use	A	A	A	A					
Public utility stations and sub-stations, switching stations, and telephone exchanges	A	A	A	A				*	*
Radio and television transmitting and receiving towers	B	B		B					*
Sexually Oriented Businesses ²				*					
Solar Array – Large Facility	B	B	B	B					
Solar Array – Public Utility	A	A	A	A					
Storage and warehousing, inside building		*		*					
Storage of goods, outdoors (Accessory only and subject to screening)		*		*					
Water and sanitary sewer pumping stations	*	*	*	*				*	*

² Staff is recommending allowing the use only in the Eno High Intensity general use zoning district given existing development trends in the area. There are less identified ‘sensitive uses’ in this area versus the Buckhorn Economic Development district. The use is also not consistent with the purpose and intent of the various Hillsborough EDD districts.

from adjacent residentially zoned property.

- (4) The site shall be located on a major road, as classified in the Orange County Comprehensive Plan, unless permitted as an ASE-CZ.
- (5) Parking shall not be located in the front yard space.
- (6) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

5.6.15 Sexually Oriented Businesses

(A) Standards of Evaluation

- (1) No sexually oriented business(es) shall be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.**
- (2) Sexually oriented business(es) shall not be located in any building, or portion thereof, that is:**
 - (a) Within 1,000 feet of an existing sexually oriented business.**
 - (b) Within 1,000 feet of a:**
 - (i) Residential land use including any open space established as part of the residential subdivision approval process,**
 - (ii) Church and/or place of worship,**
 - (iii) School (public, private, or specialty),**
 - (iv) Public or private library,**
 - (v) State licensed child care facility, or**
 - (vi) Public park or recreational facility.**
 - (c) Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted to the nearest portion of a building, structure, or open space area of a use listed above.**
- (3) Signs are allowed, as permitted by Section 6.12, but may not include promotional displays, flashing lights, or photographs, silhouettes, drawings, or pictorial representations of any manner depicting sexual activity, themes or nudity.**

- (3) Required front setback;
- (4) Required side and rear setback;
- (5) Maximum building height;
- (6) Required landscaping; and
- (7) Required parking.
- (C) A non-conforming commercial or industrial structure destroyed to the extent of 60% or more of its floor area and located on a non-conforming lot shall not be required to comply with dimensional requirements regulating minimum lot area per use and/or minimum lot width but shall comply with the dimensional requirements regulating (3) through (7) in subsection (B) above.
- (D) A non-conforming residential structure destroyed to the extent of 75% or more of its floor area may only be reconstructed in accordance with the regulations of the district in which located, including those regulating:
- (1) Minimum lot area per dwelling unit;
- (2) Minimum lot width;
- (3) Required front setback;
- (4) Required side and rear setback; and
- (5) Maximum building height.
- (E) A non-conforming residential structure destroyed to the extent of 75% or more of its floor area and located on a non-conforming lot shall not be required to comply with either or both dimensional requirements regulating minimum lot area per dwelling unit and/or minimum lot width but shall comply with the dimensional requirements regulating (3) through (5) in subsection (D) above.
- (F) Appeal(s) for a variance from the requirements of subsections (B) through (E) of this Section shall be heard by the board of adjustment.

SECTION 8.11: Sexually Oriented Businesses³

In addition to the provisions of this Section, the following additional standards shall govern nonconforming sexually oriented businesses.

- (A) Any sexually oriented business lawfully operating on February 2, 2016⁴, the effective date this Ordinance, deemed to be in violation of this Ordinance shall be deemed a nonconforming use.
- (B) Such uses shall be permitted to continue for a period not to exceed one year from the date of adoption. After this period the use shall either be brought into conformity with established regulations or shall discontinue operation.
- (C) If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the business that was established first and continually operating at its present location shall be considered the conforming use and the later established business(es) shall be considered the nonconforming use.
- (D) A sexually oriented business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of any land use identified within Section 5.6.15, locating within 1,000 feet of the subject property.

³ Insertion of this new section will automatically renumber subsequent sections of the UDO.

⁴ This date is subject to change based on the BOCC's 2016 meeting calendar.

ARTICLE 10: DEFINITIONS

SECTION 10.1: DEFINITIONS

For the purpose of this Ordinance, certain terms and words are herein defined and interpreted as follows:

AASHTO

American Association of State Highway and Transportation Officials

Accessory Structure

A structure that is located on the same lot as a principal structure and houses an accessory use.

Accessory Use

An activity that may or may not be listed in the Permitted Use Table, which is conducted in conjunction with a permitted principal use, but constitutes only an incidental or insubstantial part of the total activity that takes place on the lot and is customary and ancillary to the established principal use of property. Accessory uses shall comply with all setback requirements for the district in which the use is located. For example, an in-ground swimming pool is required to meet all applicable setbacks including any required fencing around the physical pool, the concrete walkway around the pool, and any pump or utilities associated with the operation of the facility.

Adult Uses

~~An establishment which has a majority of its business which excludes minors by reason of age because of the sexually explicit nature of the material. Such establishments include, but are not limited to, adult bookstores, adult theaters (drive-in, picture and mini-picture), adult cabaret, etc.~~

Adult Arcade

~~Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.~~

Adult Bookstore

A bookstore:

- ~~(a) Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this article; or~~
- ~~(b) Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein.~~

Adult Cabaret

~~A nightclub, bar, restaurant, or similar commercial establishment that for at least ten percent of its business hours in any day features:~~

- ~~(a) Persons who appear in a state of nudity or semi-nudity; or~~
- ~~(b) Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or~~

- (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
- (d) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

Adult Escort

A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person for the purpose of participating in, engaging in, providing, or facilitating specified sexual activities.

Adult Escort Agency

A person or business that furnishes, offers to furnish, or advertises to furnish adult escorts as one of its business purposes for a fee, tip, or other consideration.

Adult Live Entertainment

Any performance involving of the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

Adult Live Entertainment Business

Any establishment or business wherein adult live entertainment is shown for observation by patrons. Classified herein as an Adult Cabaret.

Adult Merchandise

Any product dealing in or with explicitly sexual material as characterized by matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

Adult Mini Motion Picture Theatre

An enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this article, for observation by patrons therein.

Adult Motion Picture Theatre

An enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this article, for observation by patrons therein. "Adult motion picture theatre" does not include any adult mini motion picture theatre as defined herein.

Adult Motel

A hotel, motel or similar commercial establishment that:

- (a) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public rights-of-way that advertises the availability of this adult type of photographic reproductions; or
- (b) Offers a sleeping room for rent for a period of time that is less than six hours; or
- (c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twelve hours.

Adult Theater

A theater, concert hall, auditorium, or similar commercial establishment that for at least ten percent of its business hours in any day, features persons who appear in a state of nudity or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Adult Patron

Any person who is physically present on the premises of a sexually oriented business and who is not an owner, employee, agent, subcontractor, or independent contractor of said business, or any entertainer or performer at said business.

Adult Video Store

A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video tapes or cassettes, video reproductions, CD-ROMs, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or any combination thereof.

Agricultural Processing Facility, Community

A facility utilized for the processing of produce and/or other commodities produced by no more than 5 cooperative farm partners for the consumption of others (e.g. small canning operation); Activities shall include, but may not be limited to, canning, dehydrations, washing, cutting or basic preparation of raw produce but does not include processing of live animals (see Meat Processing Facility). May include accessory retail sales of products processed on-site.

Agricultural Processing Facility

A facility utilized for the processing and packaging of produce and/or other commodities for transport to off-site wholesale or retail establishments. Facilities may be utilized by farm-based producers, restaurateurs, caterers, food entrepreneurs, and the like. Activities shall include, but may not be limited to, canning, dehydrations, washing, cutting or basic preparation of raw produce prior to shipment but does not include processing of live animals (see Meat Processing Facility). May include accessory retail sales of products processed on-site.

Agricultural Services

Commercial activities offering goods and services which support production of agricultural products or processing of those products to make them marketable. Examples include, but are not limited to, soil preparation, animal and farm management, landscaping and horticultural services, specialized commercial horticulture, specialized animal husbandry, biocide services, retail sales of farm/garden products, supplies and equipment, equipment rental and repair service, tack shop, farrier, blacksmith, welding shops, facilities for animal shows, animal sales and auctions, agriculture-based clubs/meeting halls, storage of agricultural supplies and products, and processing plants for agricultural products including wineries and canneries.

Agricultural Water Uses

The use of waters for stock watering, irrigation and other farm purposes.

Agritourism

A business directly related or incidental to agricultural activities occurring on the bona fide farm on which it is located and conducted for the enjoyment or education of the public.

Airport (Heliport: S.T.O.L. Port), Air Carrier

A public airport served by a certified air carrier. This includes any runways, land areas or other facilities designed or used for landing, taking off, processing passengers or cargo.

Airport, Commuter Service (Heliport: S.T.O.L. Port)

A public airport, not served by a certified air carrier, but is served by one or more commuter airlines which enplaned 2500 or more passengers in the preceding calendar year.

Airport, General Aviation (Heliport: S.T.O.L. Port)

A public airport serving aviation other than airlines. This includes any runway, land area, or other facility designed or used for the landing and taking off of small aircraft.

Anchoring

The fastening of the mobile home to its mobile home stand in order to prevent upset or damage due to wind, erosion, flooding, or other natural forces.

Appeal

A request from a review of an administrative interpretation of any provision of this Ordinance by the Board of Adjustment.

Applicator

Any person, firm, corporation, wholesaler, retailer, distributor, any local, state or federal governmental agency, or any other person who applies fertilizer to the land of a consumer, or client, or to land they own, or to land they lease or otherwise hold rights.

Area of special flood hazard

See "Special Flood Hazard Area (SFHA) Overlay District"

Assembly/Packaging Operation

Assembly and packaging of merchandise for distribution by mail or carrier.

Auditorium

A place of assembly to watch and/or to hear athletic events, musical performances, dramatic or dance performances, speeches and/or ceremonies. The term is intended to include such uses as stadiums, coliseums, athletic centers, theaters and arenas.

Bed and Breakfast Inn

See "Rural Guest Establishments."

Base flood

The flood having a 1% chance of being equaled or exceeded in any given year. It is often referred to as the 100-year flood.

Base flood elevation (BFE)

A determination as published in the Flood Insurance Study of the water surface elevations of the base flood. This elevation, when combined with the "Freeboard" (see definition) establishes the "Regulatory Flood Protection" (see definition) elevation.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Best Management Practices (BMPs)

A structural or non-structural management-based practice used singularly or in combination to reduce non-point source pollution to receiving waters in order to achieve water quality protection goals. (See also, Detention Pond and Engineered Stormwater Controls) (Unless otherwise specified, "BMP", when used in this Ordinance, refers to structural BMPs.)

Biosolids

Solid, semi-solid, or liquid residue (sewage sludge) generated during primary, secondary or advanced wastewater treatment processes of domestic sewage that is treated to state and/or federal standards for beneficial use (such as land application as fertilizer).

Bottomless

A state of nudity or semi-nudity where a person exposes to view a human bare buttock, anus, male genitals, or female genitals.

Buffer

Land Use Plan

A set of documents and maps that categorize existing patterns of land development and set guidelines for the desirable intensity, density, quantity, type, location and timing of future development based upon the goals and policies set forth in the Plan. The Land Use Plan can be found in the Land Use Element of the Comprehensive Plan.

Lap

The area between a person's knees and his or her waist.

Length of Wall

The horizontal distance from corner to corner. Where walls in continuous general frontage (as in the case of attached dwellings) are off-set by angles or setbacks of six feet or more, the length of each segment so set off shall be measured separately in establishing pertinent yard depth. Length of the wall of a circular building shall be construed as the diameter of the building.

Level of Service

A qualitative measure that describes the operational conditions of a road or intersection, as defined by the Highway Capacity Manual. The various service levels are defined by a range from A to F, with A representing free flow traffic conditions and F representing stop-and-go traffic.

Light, Flashing

A light that intermittently flashes on and off.

Light Source

The point of origin illumination emanates; usually a lamp. Please refer to the definition of Outdoor Lighting, Lamp for additional information.

Light Trespass

Intrusion of direct light projected from one property or roadway onto another property or roadway.

Livability Space

Livability space is part of total open space appropriately improved and located as outdoor living space for residents and for aesthetic appeal. Such spaces include lawns and other landscaped areas, walkways, paved terraces and sitting areas, outdoor recreational areas, and landscaped portions of street rights-of-way. Such space shall not be used for vehicles, except for incidental service, maintenance or emergency action.

Livability Space Ratio

Livability space ratio is the minimum square footage of non-vehicular outdoor space required for each square foot of land area in residential development. It is open space used for people, planting and visual appeal and does not include vehicular parking and access areas.

Lodgings

Living quarters which do not contain independent kitchen facilities, provided, however, that dwelling units occupied by transients on a rental or lease basis for periods of less than one week shall be considered lodging units even though they contain independent kitchen facilities.

Lodging Unit

A room or rooms connected together, constituting a separate lodging for one family only, physically separated from any other rooms or dwelling or lodging units. Where two or more rooms are connected by a doorway or doorways, and arranged, equipped and furnished in such a manner that they might reasonably be rented, leased or occupied, either individually or in combination, each room shall be construed as a lodging unit.

institutions of higher learning (universities, colleges and technical institutes). On-site faculty development workshops and fellowship training programs may also be provided as part of the organization's purpose.

Non-Residential Development

Development of any land use which is not residential in nature, including uses (such as churches) which are allowed in residential zoning districts.

Non-Residential Floor Area - Inclusions and Exclusions

The sum of areas for non-residential use on all floors of the building measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and below-grade floor areas used for non-residential access and storages. Not countable as floor area are:

- a) Open terraces, patios, atriums, or balconies.
- b) Any residential space.

Non-Residential Land Area

All land for non-residential development and related uses, including open space, within the district in the case of locations which are controlled by these regulations. Non-residential land area shall not be construed to include lands not beneficial to non-residential use due to location or character, or areas used predominantly for residential purposes.

Nudity or a State of Nudity.

The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Nursing Home

A facility, licensed by the appropriate state agency for the care of aged or infirmed individuals, that meet the requirements set forth in this Ordinance.

Nutrient Sensitive Waters

Those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorous). They are designated by "NSW" following the water classification.

Obstruction

Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across, or projecting into any watercourse, which may alter, impede, retard, or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Office Use

A use of property for professional and clerical activities associated with the operation of a business.

Offices & Personal Services, Class 1

Offices and personal services that attract few customers or clients on premises other than employees, generate low traffic volumes (< 100 trips/day), and have no adverse impacts beyond the space occupied by the building.

Offices & Personal Services, Class 2

Offices and personal services that generate medium traffic volumes (100-400 trips/day), and have no adverse impacts beyond the lot boundaries.

Offices & Personal Services, Class 3

Any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.

Septic Tank System

A subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.

Setback

Yard space other than a court unoccupied and unobstructed by any structure or portion of a structure from thirty inches above the general ground level of the graded lot upward, except as specifically provided in these regulations; provided, however, that fences and walls may be permitted in any setback subject to height limitations established generally or for the district and, further provided that poles, posts and other customary accessories, ornaments, furniture and landscaping shall be permitted in any setback if they do not constitute substantial impediments to free flow of light and air across the setback or violate provisions of these or other regulations regarding visibility.

Sexually Oriented Devices

Without limitation, any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

Sexually Oriented Business.

A business which offers its customers or adult patrons any device, activity or demonstration depicting specified sexual activities, or which is intended to appeal to sexual interests, titillation or arousal of the customer or adult patron. A sexually oriented business shall include an adult establishment as defined herein as well as NCGS § 14-202.10(2) and, in addition, without limitation shall include: adult arcade, adult bookstore, adult video store, adult cabaret, adult media center, adult live entertainment business, adult motel, adult motion picture theater, adult mini motion picture theater, adult theater, and adult escort agency.

Sign

Any letter, figure, character, mark, plane, point, marquee, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter, or illuminated surface which is constructed, placed, attached, painted, erected, fastened or manufactured in any manner so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise, which are displayed in any manner, including out-of-doors.

Sign, Abandoned

A sign for which no legal owner can be found or any sign face or sign structure that advertises a business not conducted on the premises for over 90 days. In making the determination that a sign advertises a business no longer being conducted, the Planning Director shall consider the following: the existence or absence of a current occupational license, utility service deposit, or account; use of the premises; and relocation of the business.

Abandoned Sign shall also include the following:

- a) Through age and/or obsolescence a sign that no longer conforms to structural or maintenance specifications of Section 6.12, or
- b) Any pole, pylon, or structure expressly installed for the purpose of affixing a sign that bears no sign or copy.

Sign, Advertiser

Any person who is a lessee or owner of a sign, an agent of same, or anyone that has beneficial use of a sign.

Sign, Advertising Display Area

The advertising display surface area encompassed within any polygon that would enclose all parts of the sign. The structural supports for a sign, whether, they be columns, pylons, or a building, or a part thereof, shall not be included in the advertising area. Also known as Sign Area.

- An example of how advertising display area or sign area is calculated is as follows:

Special Event

A commercial activity attracting at least 20 people at any given time, that typically does not involve permanent structures, and does not occur more frequently than seven days in a 30-day period or more than 50 days per year. Examples of special events are craft shows, small festivals, concerts, medical or veterinary clinics, and sites operated by businesses engaged in hosting outdoor social events such as picnics or receptions sponsored by a restaurant or caterer.

Activities which are not included in this definition include:

- a) Events of a personal or non-profit, nature such as family reunions and church activities;
- b) Farm-related or rural events such as horse shows, 4-H events and auctions; and
- c) Fund-raising events for non-profit organizations.

Special Flood Hazard Area (SFHA)

The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in Section 4.3 of this Ordinance, as defined by the base flood elevation. The mapped special flood hazard area approximates the base flood elevation.

Special Flood Hazard Area Overlay District

An overlay district establishing standards for development for properties within identified floodplains.

Special-Purpose Unit of Government

Any special district or public authority.

Special Use

A use which would not be appropriate generally throughout the zoning district or without special study, but which, if controlled as to number, area, location or relation to neighborhood, would be appropriate. Such uses which are listed as Special Uses in the Permitted Use Table, Section 5.2, may be installed and operated only after approval by the Board of Commissioners or by the Board of Adjustment, as appropriate, subject to the general and specific standards.

Specified Anatomical Areas

- (a) Less than completely and opaquely covered human: (i) genitals, pubic region, (ii) buttocks, or (iii) female breast below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities

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

Start of Construction

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

State Agency

Every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina.

Telecommunication Facilities, Whip Antenna

A cylindrical antenna that transmits and/or receives signals in 360 degrees.

Telecommunication Facilities, Wireless facility

The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area. This may also be referred to as a Personal Wireless Facility.

Telecommunication Facilities, Wireless facility Stealth

A wireless support structure designed using stealth technology such that its primary purpose is, or visually appears to be, something other than the support of telecommunications equipment, the apparent purpose of the wireless support structure is customarily considered as accessory to a use that is allowed in the zoning district, and the structure and its primary use comply with this Ordinance.

Telecommunication Facilities, Wireless support structure

A new or existing structure, such as a monopole, lattice, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

Telecommunication Facilities, Wireless Telecommunications Facility (WTF), Includes both Telecommunications Site and Personal Wireless Facility

A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit wireless support structures of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the facility. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC.

Temporary Residential Mobile Home

A mobile home, intended for residential use for a limited period of time, for purposes of providing for custodial care under a Class B Special Use Permit or providing temporary residential space during the installation of a replacement mobile home or construction of a stick-built or modular residential unit on the same lot, and for 30 days after the issuance of Certificate of Occupancy for the permanent unit. The temporary mobile home is not attached to a permanent or semi-permanent foundation.

Temporary Use Building

A building, not intended for residential use, consisting of one or more modules constructed off the ultimate site of use. The building is also not attached to a permanent or semi-permanent foundation.

Ten-Year Transition Land

Land located in areas that are in the process of changing from rural to urban densities and/or intensities, that are suitable for higher densities and/or intensities and could be provided with public utilities and services within the first 10-year phase of the Comprehensive Plan update or where such utilities and services are already present or planned. Non-residential uses implemented in accordance with small area plans and/or overlay districts may be appropriate.

Touch or Touching.

In the context of a sexually oriented business any form of intentional physical, bodily contact regardless of whether exposed or clothed parts of any body are involved.

Tourist Home