

REVIEW BY P&Z: 10/17/07  
PUBLIC HEARING BY M&C: 11/05/07  
ADOPTED BY M&C: 11/05/07  
Sponsor: \_\_\_\_\_  
Ord. No.: 013-07

**AN ORDINANCE TO AMEND SECTIONS 5 AND 9 OF THE TOWN OF SMYRNA ZONING CODE SO AS TO PERMIT, AS SPECIAL EXCEPTIONS, ADULT ENTERTAINMENT ESTABLISHMENTS, AND BODY ART ESTABLISHMENTS, (HEREAFTER COLLECTIVELY "ADULT USES"), SUBJECT TO CERTAIN RESTRICTIONS IN THE HIGHWAY COMMERCIAL DISTRICT (HC), ONLY**

WHEREAS, the Zoning Code of the Town of Smyrna, and 22 *Del.C.* §301 authorize and empower the Town, for the purposes of promoting health, safety, morals or the general welfare of the community, to regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and

WHEREAS, the Town Zoning Code does not currently address or regulate uses known as "Adult Entertainment Establishments," as that term is defined by 24 *Del.C. Chapter 16*, or uses, known as "Body Art Establishments", as that term is defined in the State of Delaware "Regulations Governing Body Art Establishments", adopted by the Secretary, Delaware Health and Social Services under authority of 16 *Del.C. Chapter 1, §122(3)(w)*, effective September 30, 2002, (a copy of which is on file at the Town Hall and the contents of which are incorporated by reference); and

WHEREAS, on September 18, 2006, the Town Council of the Town of Smyrna proposed an amendment to the Zoning Code of the Town of Smyrna regarding the regulation of Body Art Establishments; and

WHEREAS, on October 2, 2006, the Town Council adopted a moratorium upon all new applications for the issuance of any permit or license or approval as to any structure, lot or parcel of property located in the Town seeking approval for a Body Art Establishment, for the purpose of seeking legal review of any such amendment and recommendations of the Planning and Zoning Commission back to the Town Council regarding same; and

WHEREAS, the Town's attorneys conducted substantial research regarding the proposed amendment, and did report same back to the Planning and Zoning Commission at its July 18, 2007 Planning and Zoning Workshop, and did summarize into the record of said

Workshop various studies of other jurisdictions, which addressed collectively the uses of Body Art Establishments and Adult Entertainment Establishments, and which concluded that such uses generate various unwanted or negative secondary effects sufficient to generate substantial governmental interests to enact content neutral time, place and manner regulations in order to promote the public health and to minimize the unwanted or negative secondary effects associated with said uses. Copies of said studies were provided to and considered by the members of the Planning and Zoning Commission, and the unwanted or negative secondary effects identified in said studies, attributable to Adult Entertainment Establishments and Body Art Establishments were summarized, on the record, as follows:

"Adverse impacts on public health, negative impacts upon retail business climate, and negative impacts on residential and commercial property values." Wilmington, Massachusetts Zoning Bylaw, April 24, 2004. (A copy of which is on file at the Smyrna Town Hall and the contents of which are incorporated herein).

"Decreased property values, attraction of transients, parking and traffic problems, increased crime, less business for surrounding non-adult businesses, and deterioration of neighborhoods." Eden, New York, Proposed Local Law No. 1-2005. (A copy of which is on file at the Smyrna Town Hall and the contents of which are incorporated herein).

"The study identified tattoo or branding shops and body piercing establishments as a magnet for organized crime and gang activities, and found that these establishments had excessive calls for (police) services." City of Santa Clara, California. Chapter 18.70 "Use Regulations Applicable to Specified Regulated Businesses. (A copy of which is on file at the Smyrna Town Hall and the contents of which are incorporated herein).

"In this study the Town of Southeast (New York) has relied upon studies completed by other communities in order to document what secondary effects can be expected." "The Town Board finds that certain business activities, by their nature, have serious objectionable operation characteristics which can lead to significant impact on the surrounding community...which increase the crime rate and undermine the economy, moral and social character of the community." Town of Southeast, New York. Adult Use Zoning Planning Report. August 18, 2005. (A copy of which is on file at the Smyrna Town Hall and the contents of which are incorporated herein).

"Tattoo and body piercing parlors can also have objectionable impacts on a community. This use has been found to contribute to the blighting of surrounding residential and commercial areas, which can undermine a community's economic, physical and social welfare. Moreover, tattooing and body piercing can have serious health risks." Comprehensive Plan of the Village of Wappingers Falls, New York. §4 at pages 17-18. (A copy of which is on file at the Smyrna Town Hall and the contents of which are incorporated herein).

WHEREAS, and in consideration of the foregoing studies, the Planning and Zoning Commission during its regular July 18, 2007 Meeting made, seconded and passed the following motion:

"Pursuant to discussions held in the Workshop to Discuss Pros and Cons of an Adult Use/Body Art Ordinance, I move that the Planning and Zoning Commission request that the Town's attorneys prepare a draft ordinance which the Planning and Zoning Commission could recommend to the Town Council, which, in consideration of various studies from other jurisdictions, would permit as a Special Exception Use, Body Art Establishments and/or Adult Entertainment Establishments, in the Highway Commercial District (HC) only, and subject to certain additional time, place, or manner regulations, so as to serve the substantial governmental interest of promoting the public health and minimizing certain negative secondary effects associated with such uses." ; and

WHEREAS, the Planning and Zoning Commission has reviewed and approved this Ordinance and has recommended it to the Town Council for its consideration; and

WHEREAS, the Town Council has carefully reviewed this Ordinance, together with all Exhibits referenced hereby and incorporated herein; and

WHEREAS, the Town Council, in reliance upon the recommendation of the Planning and Zoning Commission, and in reliance upon the Exhibits referenced hereby, finds and concludes that the uses herein sought to be regulated create and attract certain unwanted and negative secondary effects, and the Town Council concludes that there exist substantial governmental interests sufficient to impose time, place, and manner regulations upon said uses so as to prevent or minimize said unwanted or negative secondary effects to the extent possible.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly

met, that the Zoning Code of the Town of Smyrna be and is hereby amended as follows:

Section 1. Amend Section 5(10) by adding a new Subsection (20) as follows:

(20) If approved as a special exception by the Board of Adjustment pursuant to Section 9(2) of this Ordinance, Adult Entertainment Establishments, as defined by 24 Del.C. Chapter 16, and Body Art Establishments as defined by the State of Delaware "Regulations Governing Body Art Establishments", adopted by the Secretary, Delaware Health and Social Services, under authority of 16 Del.C. Chapter 1, §122 (3)(w), effective September 30, 2002, shall be permitted in the Highway Commercial District (HC), only, subject to additional time, place and manner restrictions set forth at Section 9(2) of this Ordinance.

(a) Nonconforming uses pre-existing the effective date of this Ordinance shall be governed by Section 4 of the Zoning Code.

Section 2. Amend Section 9(2)(b) of the Zoning Code by:

(a) Renumbering existing Section 9(2)(b) as Section 9(2)(b)(i).

(b) Adding new Section 9(2)(b)(ii), which shall read as follows:

(ii) In granting a special exception for Adult Entertainment Establishments and/or Body Art Establishments, as these terms are defined at Section 5(10)(20) of the Zoning Code, the Board of Adjustment shall impose the following time, place, and manner restrictions:

1) All Adult Entertainment Establishments shall strictly comply with all provisions of 24 Del.C. Chapter 16, as now in effect or as hereafter amended. Failure to comply with this requirement shall void the special exception permit.

2) All Body Art Establishments shall strictly comply with all provisions of the State of Delaware "Regulations Governing Body Art Establishments", adopted by the Secretary, Delaware Health and Social Services under authority of 16 Del.C. Chapter 1, §122(3)(w), effective September 30, 2002, as now in effect or as hereafter amended. Failure to comply with this requirement shall void the special exception permit.

3) Adult Entertainment Establishments and Body Art Establishments shall be permitted in the Highway Commercial District (HC), only.

4) All Adult Entertainment Establishments and Body Art Establishments, (hereafter referred to collectively as "Adult Uses") shall be subject to the following time, place, and manner regulations:

a. No more than one activity constituting an adult use shall be permitted on any lot.

b. No adult use shall be permitted in any building otherwise used in whole or part for residential purposes.

c. No adult use shall be permitted on any lot which is located within 1,000 feet of any other lot on which is located an adult use. This distance shall be measured from the nearest property line of such use to the nearest property line of the proposed adult use.

d. No adult use shall be permitted on any lot which is located within 1,000 feet of any lot in any residential district. This distance shall be measured from the nearest property line of any residential district to the nearest property line of the proposed adult use.

e. No adult use shall be permitted on any lot which is located within 1,000 feet of any lot on which is located a church, community center, funeral home, school, day-care center, hospital, alcoholism center or drug treatment center, counseling or psychiatric treatment facility or public park. This distance shall be measured from the nearest property line of such above use to the nearest property line of the proposed adult use.

f. No adult use shall be permitted on any lot which is located within 1,000 feet of any school bus stop. This distance shall be measured from the nearest school bus stop to the nearest property line of the proposed adult use premises.

g. No adult use shall be permitted on any lot which is located within 1,000 feet of any commercial enterprise that customarily employs minors. This distance shall be measured from the nearest commercial enterprise to the nearest property line of the proposed adult use premises.

h. No adult use shall be permitted on any lot which is located within 1,000 feet of any establishment that sells or serves alcoholic beverages. This distance shall be measured from the establishment that sells or serves alcoholic beverages to the nearest property line of the proposed adult use premises.

i. The proposed use shall meet all other requirements of the laws of the Town of Smyrna, including but not limited to district lot and bulk regulations, parking regulations and signage requirements.

j. It shall be a condition of any special permit issued for an adult use that no person under the age of 18 years shall be permitted into the premises.

k. Explicit messages or drawings on signs and/or the public display of explicit sexual material associated with any adult entertainment use is prohibited.

l. Adult uses may operate only between the hours of 10:00 a.m. 8:00 p.m., Mondays through Fridays, and between 10:00 a.m. and 11:00 p.m. on Saturdays, only.

m. All adult uses shall continuously carry liability insurance with minimum limits of one million dollars, (\$1,000,000.00) single limit.

5. In the event the Adult Use Special Exception Applicant shall meet all of the above requirements, the Adult Use Special Exception Permit shall be issued, subject to forfeiture for a violation of any of the requirements imposed by this Ordinance.

6. Any Adult Use Special Exception issued or granted pursuant to this Amendment to the Zoning Code shall be personal to the Applicant only, and shall not be deemed to go with the land or lot upon which the adult use is located, and shall not be transferable.

7. All Adult Use Special Exceptions issued or granted pursuant to this Amendment to the Zoning Code shall be of a limited duration of three (3) years, however, any such Adult Use Special Exception Applicant may apply to the Board of Adjustment for renewal of said Adult Use Special Exception within six (6) months of the expiration date of the current Adult Use Special Exception.

8. All Adult Use Special Exception holders shall permit the State of Delaware, through its designated agents, and the

Town of Smyrna, through its designated agents, to enter upon the entirety of the premises upon which the Adult Use is conducted during its hours of operation, for the purpose of inspection and testing, and for the purpose of determining whether the terms of applicable State and Town laws are being complied with.

9. If any section, paragraph, sentence or clause of this Amendment is determined or declared to be invalid or unenforceable by any court of competent jurisdiction, the remainder hereof shall remain in full force and effect.

Synopsis

This Ordinance amends the Town of Smyrna Zoning Code so as to permit Adult Entertainment Establishments and Body Art Establishments (collectively "Adult Uses") as a special exception use in the Highway Commercial District (HC), only, subject to certain time, place, and manner regulations specifically enumerated in the Ordinance. Pre-existing adult uses are "grandfathered".

This shall certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at a duly noticed and convened meeting at which a quorum was present on November 5, 2007.

So Certifies:

Attest: \_\_\_\_\_  
Council Secretary

\_\_\_\_\_  
Mayor

This shall certify that this amending ordinance was considered at a public meeting held before the Town Planning Commission on October 17, 2007 and a public hearing before the Town Council on November 5, 2007, public notice of which was published in the Smyrna/Clayton Sun Times on October 10, 2007.

So Certifies:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Clerk