

A. INTRODUCTION

This study was initiated by the Town of Southeast to investigate the need for land use controls to regulate the establishment of adult businesses in the Town. On March 17, 2005 the Town Board passed a resolution imposing a temporary moratorium on approvals for sexually oriented businesses. The purposes of the moratorium were to give the community the opportunity to evaluate the potential effects from the establishment of adult uses and to draft the regulatory changes for the Town Board's consideration.

The current zoning regulations in the Town restrict adult uses with minimum distance requirements. In New York State, the Court of Appeals requires a municipality to conduct a study examining possible secondary effects before adopting regulations of adult uses. In this study, the Town of Southeast has relied upon studies of completed by other communities in order to document what secondary impacts can be expected.

The potential secondary effects examined relate to economic impacts, property values, fear of crime, and the negative impact on community character. In areas where commercial and residential land uses are mixed the general quality of life of residents could potentially be affected by the uncontrolled location of adult businesses.

Zoning has been determined the land use control best suited to regulating the location of adult businesses. However, adult businesses can not be entirely prohibited through local zoning. Nor can a municipality base its regulations on the content of materials sold or the nature of the entertainment provided. In order for a zoning law to be effective, adult uses need to be defined in a manner that differentiates them from traditional bookstores and bars. One method has been to use their exclusion of minors as part of the definition.

Local regulations should attempt to minimize secondary impacts to the community rather than completely prohibit them. This study has identified the land uses most sensitive to the adverse effects of adult uses. Residential properties, institutional uses (e.g. schools and houses of worship), and recreational areas were identified. Limiting adult businesses to certain districts where they will have the least effect on the most sensitive land uses is the most acceptable method of control. Adult uses can be required to first obtain a special use permit. Within the criteria established to receive such a permit key requirements can include:

- Buffers to other land uses identified as being most susceptible to the negative impacts of adult uses
- Dispersion through minimum distances between two adult uses
- Limits on the number of establishments per property
- Requirements for screening and limiting signage.

This study concludes that the possible secondary effects from adult uses to the residential neighborhoods and central business district pose a significant enough threat that zoning amendments should be adopted.

B. ADULT ENTERTAINMENT INDUSTRY

PREVIOUS STUDIES

Potential secondary effects can be assessed by looking at what has happened in other communities. Many communities in New York, and nation-wide, have prepared special studies addressing the secondary effects of adult entertainment establishments.

This study relies on the findings of other adult entertainment studies in New York State. In preparing this study, those documents and their corresponding regulations were reviewed for similarities to the Town of Southeast situation. This was done in order to develop an appropriate strategy for addressing adult uses specific to the Town. While some of the communities reviewed differ greatly from Southeast in size and urban development, the potential effects from adult uses at the neighborhood level is still applicable.

NEW YORK CITY, NY

In New York City, several studies have identified impacts associated with adult entertainment establishments. Due to its size, New York City has a large enough number of establishments to track trends in type and location of new adult businesses. In New York City, the number of adult book and video establishments grew from 29 to 86 between 1984 and 1993. The number of topless and nude bars also grew from 54 to 68 during the same period. In terms of their location, adult entertainment uses have a tendency to concentrate in specific areas. In 1994, surveys done in various business districts were compared. Differences between areas with and without high concentrations of adult entertainment establishments were identified. The Overall Findings and Conclusions of the 1994 NYC Adult Entertainment Study are summarized as follows:

- Adult entertainment uses tend to concentrate; they cluster in central locations.
- In the areas where adult uses have concentrated, the study identified numerous secondary effects. Owners of other types of businesses overwhelmingly believed that their businesses had been adversely affected. A substantially higher incidence of criminal activity was also found in the areas where adult uses were most concentrated.
- Areas with less dense concentrations of adult uses found fewer impacts than the areas with the higher concentrations. However, the community leaders still expressed fear of the results of proliferation.
- In the areas where adult entertainment uses were isolated, other businesses typically reported that the adult uses had not yet adversely affected their neighborhoods.
- Real estate brokers reported that adult entertainment establishments were perceived to negatively affect nearby property values.
- Adult entertainment business signs were found to be generally larger, more often illuminated, and graphic (sexually-oriented) compared with the signs of other nearby commercial uses. Community residents viewed this signage as out of keeping with neighborhood character and were concerned about the exposure of minors to graphic sexual images.

The consensus among those expressing opposition to the operation of adult uses is that adult entertainment establishments have a negative impact on communities in which they are located. These impacts include: inappropriate exposure of children and teenagers to graphic sexual images, increased crime, diminishing property values, adverse effects upon the climate for other types of commercial activities, and overall negative influences upon community character.

ISLIP, NY.

The study completed by the Town of Islip in 1980 was initiated in part by the public concern when a new adult book store/peep show opened. A case study, including an examination of public resentment through newspaper accounts, and an inventory of other existing adult entertainment businesses was conducted. Similar to the New York City study, the Town of Islip was able to look at the effects from existing adult uses. The case study could then be used to determine what locational factors were responsible for the outpouring of neighborhood residential opposition. The inventory of 15 existing adult entertainment uses examined zoning conformance, neighboring land use, value (assessed), and building condition. An individual site analysis was prepared for each business. After findings suggested that adult uses could potentially create a “dead zone” and hinder development in areas identified for revitalization. The Islip study encouraged the limitation of adult uses to industrial districts in order to prevent cumulative effects in the Historic Downtowns of Islip.

As a result of a 1989 court decision in *Town of Islip v. Caviglia*, a challenge brought by an adult bookstore owner was rejected. The court found that although Islip’s regulations allowed adult uses only in an area zoned for industrial use, this provided ample space for the development of such uses.

HYDE PARK, NY

In Hyde Park, an adult use study was prepared in 1996 for the Town Board by Green Plan, Inc. Hyde Park prepared a secondary effects study although it had neither an adult use nor a proposed adult use. Hyde Park’s examination analyzed studies prepared by other municipalities and discovered universal negative secondary impacts associated with adult businesses. The study estimated potential impacts of adult uses on specific land uses and found that because a significant part of the town’s economy revolved around tourists attracted to the many historic and scenic sites, adult uses could “irreparably damage” Hyde Park’s quality of life, character and tourism trade. The Hyde Park study concluded that adult uses should be regulated differently from other establishments, and that proactive land use legislation should be drafted. Proactive legislation would prevent a situation where adult use regulations are enacted hastily in response to deleterious secondary effects, thereby reducing the likelihood of a legal challenge. The Hyde Park study concluded that it is appropriate for the Town of Hyde Park to regulate adult businesses differently from other commercial establishments. The Town required any proposed adult use to apply for a special permit and added specific adult use criteria, including special dimensional requirements.

STUDY CONCLUSIONS

- Adult uses in close proximity to one another can create a “skid row effect.” Regulatory response often involves prohibiting adult use establishments from locating near each other. The Town of Southeast intends on avoiding this by establishing minimum distance requirements between two adult use establishments.

- Studies recognize the deleterious effect that adult use establishments can have to nearby residences. In order to control possible secondary effects of such uses on the community, towns and cities restrict such uses from locating within a certain distance from residential uses. These regulations are not intended to control the content of the material purveyed, but are rather to avoid any potential effect on residential neighborhoods. The Town of Southeast intends on establishing minimum distance between adult use establishment and residential areas.
- The Islip study indicates that adult use establishments have the possibility of detracting from community revitalization efforts by discouraging private investment in certain areas. In this case, effort was not made to control the content of the material, but to restrict the location of such adult uses in order to avoid a concentration of such establishments. Islip also set minimum distance requirements between adult uses and sensitive land uses such as schools, churches, parks and residential districts. In addition, non-conforming adult uses are amortized according to their capital investment and have the opportunity to appeal to the Zoning Board of Appeals. The Town of Southeast intends on instituting minimum distances between adult use establishments and identified sensitive land uses.
- A regulatory response was also employed in Hyde Park which established an “adult use” land use category and restricted them to one zoning district. In addition, Hyde Park established minimum distance requirements, required special use permits and added signage provisions. The Town of Southeast intends on requiring that an adult use establishment will require a Town Board special permit.

C. TOWN OF SOUTHEAST

The Town of Southeast currently regulates adult uses by listing a number of definitions as “restricted uses.” In Local Law No. 7, adopted on April 24, 2003, the Town added minimum distance requirements that apply to these restricted uses. Restricted uses shall not be located closer than one-thousand (1,000) feet from any residential district boundary line, school, or house of worship. Also, these uses shall not be located closer than one thousand (1,000) feet from any other restricted use including nightclubs, pawnshops, pool or billiard halls, and tattoo parlors. The Town also requires that any restricted use receive a special permit from the Town Board.

In considering their current zoning, the Town of Southeast, in adopting the temporary moratorium, intends to amend its current regulations in order to more clearly define adult uses and to develop town-specific regulations. In recognition of the findings of the above studies, the Town intends to avoid a concentration of adult uses which have the potential to create a “skid-row” effect and to protect sensitive land uses within the Town.

POTENTIAL FOR ADULT USES

The adult entertainment industry is growing and spreading geographically. In recent years, several adult use establishments have opened in and around the Town.

The Town of Southeast’s existing zoning allows commercial/residential mixing in many areas increasing the potential for conflicts between adult entertainment and sensitive land uses.

POTENTIAL SECONDARY EFFECTS

Previous studies by other municipalities have documented that secondary effects from adult entertainment establishments may include increased crime, decreased property values, negative impact upon other commercial businesses and a deterioration of residential neighborhoods. A common conclusion of those studies has been that if adult entertainment uses are not regulated (with districting and separation distances) the adjoining neighborhoods may decline.

Both the New York State Court of Appeals and the United States Supreme Court have affirmed the right of a community to regulate the location of adult uses based on these secondary effects.

Municipalities can regulate adult entertainment businesses by limiting them to certain zoning districts or neighborhoods where the secondary impacts are minimized. The regulations must leave some reasonable alternatives to where they can locate.

SENSITIVE LAND USES

There are certain land uses that are more susceptible to the impacts from an adult entertainment neighbor. They include, but are not limited to, residential neighborhoods, schools, churches, public facilities, parks and playgrounds and historic resources at which the public may congregate. Separation distances or buffers can be utilized to mitigate impacts to these most sensitive land uses.

Additional control is available by placing adult entertainment businesses in a land use category that requires review and approval of a special use permit.

- **Institutional**

This category includes land devoted to county and local government functions, schools, churches and other social, civic and religious functions of the community. The JFK Elementary School, Henry Wells Middle School and Brewster High School comprise one of the major institutional uses in Southeast. The schools, playing fields, and administration and maintenance buildings form a substantial educational campus. The other significant parcel is Morningthorpe on Turk Hill Road, a non-profit drug rehabilitation center.

- **Recreation Areas, Parks and Play Grounds**

This category includes Scolpino Park, the park at Lake Tonetta and several other Town-owned parcels.

- **Residential Neighborhoods.**

Residential areas are located throughout the Town often within close proximity of commercial areas. For this reason, it is important that the Town consider adequate zoning regulations that would protect sensitive land uses from potential adult use establishments.

PROPOSED DISTRICTS AND SEPARATION DISTANCES

The Town of Southeast, in support of the findings above, proposes to restrict adult uses as well as other identified restricted uses to two districts within the Town: Highway Commercial HC-1 and Highway Commercial HC-2 Zoning Districts. In order to locate adult uses in areas where their effect on adjoining neighbors will be minimized, minimum separation distances will also be established in order to provide an appropriate buffer between adult uses and those land uses

determined to be sensitive to the possible negative secondary effects of adult uses. Minimum separation distances also prevent concentrations of adult uses. The attached map shows the potential location of adult uses in these districts, subject to the proposed minimum distance requirements. Any proposed use would also be subject to the standards defined in the proposed amended zoning below.

PROPOSED ZONING AMENDMENTS

Section 1. Amendments to Article 1, “General Provisions; Definitions”

Section 138-4, “Definitions.” is amended, in part, to add:

All definitions found in § 138-25. “Definitions” shall be added with the additions and modifications indicated below.

Add: “Adult Cabaret — A building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is distinguished or characterized by an emphasis on the exhibiting of specific sexual activities or specified anatomical areas for observation by patrons therein .”

Add: “Adult Retail Shop — An establishment having as a substantial or significant portion of its stock-in-trade videotapes, digital video disks, compact disks, other electronic formats, films, slides, books, magazines or adult accessories, whether for sale or rent.”

Add: “Adult Use — Any activity covered by the definitions of adult bookstore, adult cabaret, adult motel, adult motion-picture theater, adult retail shop, massage parlor, model studio, or sexual encounter center or any other activity that appeals to the prurient interest of the general public.”

Combine and Revise the definitions of “Adult Mini-Motion-Picture Theater” and Adult Motion-Picture Theater” to read: An enclosed or unenclosed building, structure or portion thereof used for presenting materials distinguished or characterized by primary emphasis on matter depicting, describing or relating to sexual activities or sexual anatomical areas for observation by patrons.

Section 2. Amendments to Article V, “Nonresidential Districts”

Section 138-24, “General” the Commercial Zoning Schedule is amended, in part, by amending the column labeled “Permitted Principal Uses (see Notes G and N)” as follows:

HC-1	Permitted Principal Uses Retail Use Office Personal Services Professional Services Restaurant Recreation Special Permit Uses*
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	Car wash Public Utilities <u>Adult uses, nightclubs, pawnshops, pool or billiard halls, and tattoo parlors</u>
HC-2	Permitted Principal Uses Retail Use Office Personal Services Professional Services Restaurant Recreation Special Permit Uses* Car wash Fast food Public Utilities <u>Adult uses, nightclubs, pawnshops, pool or billiard halls, and tattoo parlors</u>

Section 3. Amendments to Article VII, “Restricted Uses”

Section 138-34, 138-35, and 138-36 are renumbered to 138-63.3 and is renamed to “Adult Uses, Nightclubs, Pawnshops, Pool or Billiard Hall and Tattoo Parlors. Article VII would be replaced with “Reserved.”

Section 138-63.3 is modified to read:

~~Restricted Uses, as defined in § 138-35, are subject to the following criteria:~~

- ~~A. Such uses shall not be located closer than five hundred (500) feet from any residential district boundary line, school, or house of worship.~~
- ~~B. Such uses shall not be located closer than one thousand (1,000) feet from any other restricted use, as defined by § 138-55.~~

~~“Prohibited acts”~~

~~No persons shall cause or permit the use, occupancy or establishment of any land, building or structure as or for an adult use, nightclub, pawnshop, pool or billiard hall or tattoo parlor a restricted unless a special permit, in accordance with Article X of this chapter is received from the Town Board, subject to any the special standards identified below as may hereinafter be required.~~

A. Purpose.

The Town Board finds that certain business activities, by their nature, have serious objectionable operation characteristics which can lead to a significant impact on the surrounding community. The Town Board further finds that the unrestrained proliferation of such business is inconsistent with existing development and future plans for the Town of Southeast in that they often result in influences on the community which increase the crime rate and undermine the economy, moral and social character of the community. To preserve the integrity and character of residential

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neighborhoods and important natural and human resources of the town, the Town intends to restrict the proximity of adult use establishments to churches, schools, nursery schools, day-care centers, educational institutions, parks, historic and scenic resources, civic and cultural facilities and residential areas. It is found by the Town Board of the Town of Southeast that a concentration of certain restricted uses in areas of the community tends to result in the blighting and deterioration of said areas of concentration.

B “Standards”

Adult uses, nightclubs, pawnshops, pool or billiard halls, and tattoo parlors may be permitted by the Town Board in the HC-1 and HC-2 Districts subject to the following requirements:

- (1) No more than one activity constituting an adult use shall be permitted on any lot.
- (2) No adult use shall be permitted in any building otherwise used in whole or part for residential purposes.
- (3) 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 or nightclub, pawnshop, pool or billiard hall, and tattoo parlor. This distance shall be measured from the nearest property line of such use to the nearest property line of the proposed adult use.
- (4) 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 public entrance door of the adult use premises.
- (5) No adult use shall be permitted on any lot which is located within 1,000 feet of any lot on which is located near 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 public entrance door of the adult use premises.
- (6) 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 public entrance door of the adult use premises.
- (7) No adult use shall be permitted on any lot which is located within 1,000 feet of any commercial enterprise that customarily employs minors.
- (8) 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.
- (9) The proposed use shall meet all other requirements of the law of the Town of Southeast, including but not limited to district lot and bulk regulations, parking regulations and signage requirements.
- (10) 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.
- (11) Explicit messages or drawings on signs and/or the public display of explicit sexual material associated with any adult entertainment use is prohibited.
- (12) The Town Board may impose such terms and conditions upon the issuance of the special permit required hereunder as it deems appropriate to further the aims of this subsections, including but not limited to restrictions on advertising, outdoor displays and the location of merchandise.

D “Effect on existing uses”

- (1) Any adult use lawfully in existence on the date on which the provision of this subsection become effective shall be permitted to continue, provided that such use is registered with the Building Inspector within 30 days of the effective date of this subsection and it is established to the satisfaction of the Building Inspector that such use complies with all the requirements set forth herein.
- (2) Any adult use in existence on the date on which the provisions of this subsection become effective which fails to conform to the regulations herein shall be discontinued in accordance with the following amortization schedule:

Amount of Capital Investment (as of effective date of Article)	Date Before Which Use Shall Terminate
\$0 to \$25,000	September 1, 2006
\$25,001 to \$50,000	September 1, 2007
\$50,001 to \$75,000	September 1, 2008
\$75,001 to \$100,000	September 1, 2009
\$100,001 or more	September 1, 2010