

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA**

**O-13-06 (R)**

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 10th day of October, 2006:

Present:	Vote:
Stran E. Trout	Aye
W. R. Davis, Jr.	Aye
Mark W. Hill	Aye
James H. Burrell	Nay
David M. Sparks	Aye

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Motion was made by Mr. Trout, which carried 4:1, to adopt the following ordinance:

**AN ORDINANCE AMENDING  
CHAPTER 98, NEW KENT COUNTY CODE  
TO PROHIBIT CERTAIN LAND USES**

WHEREAS, the purpose of this amendment is to prohibit certain land uses that are entirely inconsistent with the Comprehensive Plan and for which no acceptable conditions can be established that would reduce this inconsistency; and

WHEREAS, the New Kent County Board of Supervisors ("the Board") requested the New Kent County Planning Commission ("the Commission") to consider if certain land uses shall be prohibited in Chapter 98 of the New Kent County Code; and

WHEREAS, the Commission scheduled and conducted a formal and duly advertised public hearing on 18 September 2006, and carefully considered the public comment received; and

WHEREAS, the Planning Commission voted 5:4:1 to forward a favorable recommendation to amend Chapter 98 of the New Kent County Code to prohibit certain land uses; and

WHEREAS, the proposed amendment has been advertised for public hearing before the Board of Supervisors in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, adoption of this Ordinance will further the public necessity, convenience, general welfare and good zoning practices in the County of New Kent; and

WHEREAS, adoption of this Ordinance will also prohibit land uses that are not consistent with the goals and objectives of the County's Vision 2020 Comprehensive Plan;

NOW THEREFORE BE IT ORDAINED this, the 10<sup>th</sup> day of October 2006, by the New Kent County Board of Supervisors that Chapter 98 of the New Kent County Zoning Ordinance be amended as follows:

**Sec. 98-64. Prohibited land uses:**

Certain uses have been determined to be entirely inconsistent with the Comprehensive Plan and for which no acceptable conditions can be established that would reduce the inconsistency. These uses, enumerated below, are prohibited in the County.

- (1) Smelting on an industrial scale
- (2) Operating an adult business or use when located within three thousand (3,000) feet of any school, place of worship, public or community park, or public building.
- (3) Manufacturing nuclear materials
- (4) Processing, storing or disposing of nuclear waste
- (5) Manufacture of biologically accumulative poisons or other poisons that are, or ever were, registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136, et seq., as that section may be amended or superseded from time to time)
- (6) Operation of a municipal solid waste landfill or sanitary landfill or solid waste management facility
- (7) Operation of a construction debris landfill
- (8) Hazardous waste incinerators
- (9) Medical waste incinerators
- (10) Transportation, storage and disposal (TSD) facilities

*Add the following definitions to:*

Sec. 98-2. Definitions and rules of construction.

*Adult business* means a use, such as an adult bookstore/video store, adult motion picture theater, a business providing adult entertainment or any other establishment, including without limitation any adult modeling studio, adult cocktail lounge or adult nightclub, that regularly emphasizes an interest in matter relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

*Adult bookstore/adult video store* means an establishment having as its principal purpose or one which derives in excess of 20% of its gross sales from the stock-in-trade of books, magazines and other periodicals and/or videotapes, computer disks, CD-ROMs, DVD-ROMs, virtual reality devices or any other similar media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas" or are intended for the sexual stimulation or titillation of patrons.

*Adult entertainment* means dancing, modeling, or other live performances if the performers' performance is characterized by an emphasis on specified anatomical areas or specified sexual activities, or is intended for the sexual stimulation or titillation of patrons. This definition also includes the showing of films, motion pictures, video cassettes, slides, photographic reproductions, virtual reality devices, internet sites, or files transmitted over the internet, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

*Adult merchandise* means magazines, books, other periodicals, videotapes, movies, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas or are intended for the sexual stimulation or titillation of patrons. This definition also includes toys, novelties, instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs and lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

*Adult motion picture theater* means an enclosed building or open area, such as a drive-in theatre, used for presenting material for observation by patrons distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

*Compost* means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, and/or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as specified in 12 VAC 5-581-630.

*Composting* means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

*Construction debris landfill* (also called "Construction/Demolition/Debris landfill" or "CDD landfill") means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, or combinations of the above solid wastes. Facilities that recycle such waste into useable products are not considered construction debris landfills. The use of inert materials to provide structural and load-bearing fill for future construction is not considered to constitute a construction debris landfill.

*Construction waste* means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes. Vegetative wastes are not construction wastes.

*Hazardous waste* means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

*Medical waste* means waste that meets either of the two criteria of this section:

1. Any solid waste, as defined in this chapter is a regulated medical waste if it is suspected by the health care professional in charge of being capable of producing an infectious disease in humans. A solid waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to healthy humans, such organism is not routinely and freely available in the community, and if such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects a contagious disease is the cause, the likelihood of pathogen transmission shall be assessed based on the pathogen suspected of being the cause of the illness.
2. Any solid waste that is not excluded from regulation is a regulated medical waste if it is listed in 9 VAC 20-120-150, as that section may be amended from time to time.

*Municipal Solid Waste Landfill* means any private or public area operated for the purpose of disposing of solid waste or putrescible waste in the county, not including transfer stations or convenience centers.

*Nuclear Material* means radioactive material, source material such as thorium or ores containing uranium or thorium; and by product material such as nuclear fuel rods which is made radioactive by exposure to the radiation incident to the process of producing or using special nuclear materials.

*Nuclear Waste* means any waste that results from using radioactive materials for purposes that include electricity production by nuclear power plants, defense activities and nuclear weapons manufacture, medical treatment, nuclear research, industrial processes, and mining and milling of uranium ore.

*Public Building* means any building or structure held, used or controlled exclusively for public purposes by any department or branch of the Federal Government, Commonwealth of Virginia, or the New Kent County government under the direct authority of the Board of Supervisors, or the New Kent County School Board without reference to the ownership of the building or structures or the realty upon which it is situated.

*Putrescible waste* means solid waste which contains organic material capable of being decomposed by micro-organisms and capable of causing odors.

*Sanitary landfill* means a disposal facility for solid waste or putrescible waste so located, designed and operated that it does not pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water.

*Sludge* means any solid, semisolid or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility or any other waste producing facility.

*Smelting* means the process of heating and melting ores and concentrates; then separating the desirable molten metals such as copper from other elements.

*Smelting on an industrial scale* means smelting is the principal use of the parcel or that smelting yields more than two (2) tons of metal within any twelve (12) month period.

*Solid waste* means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended, or (iv) compost or mulch produced from vegetative waste.

*Solid waste management facility* means a site used for planned treating, long-term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. Recycling facilities are not solid waste management facilities.

*Specified anatomical area* means the less than completely and opaquely covered human genitals; pubic region; buttock; female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified sexual activities* means the human genitals in a state of sexual stimulation or arousal; acts or simulation of human masturbation, sexual

intercourse or sodomy; and/or fondling or other erotic touching of human genital, pubic region, buttock or female breast.

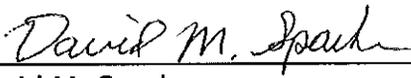
*Transportation, Storage and Disposal (TSD) Facilities* means those facilities that transport, store and dispose of hazardous waste.

*Vegetative waste* means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. Compost or mulch produced from vegetative waste is not a waste product.



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John A. Bidesky  
County Administrator



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David M. Sparks  
Chairman