Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 2980	**DATE**	4/26/2001
CASE TITLE	Palmetto Prop. et al. vs. County of DuPage		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

County of DuPage's Motion to Clarify Judgment

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] For the reasons stated on the reverse side of this order, the Court GRANTS the County's motion [# 96], clarifies its previous order [# 94], and declares unconstitutional only the portion of subsection (4) of Section 37-4.16.2 that refers to a "forest preserve."

David H. Coar

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.		number of notices
	No notices required.		date docketed
	Notices mailed by judge's staff.		docketing deputy initials
	Notified counsel by telephone.		date mailed notice
	Docketing to mail notices.		mailing deputy initials
	Mail AO 450 form.		
	Copy to judge/magistrate judge.		

mrl	courtroom deputy's initials	Date/time received in central Clerk's Office	**Document Number**

(Reserved for use by the Court)

ORDER

On March 29, 2001, this Court declared unconstitutional a DuPage County zoning ordinance that regulates the location of strip clubs in relation to, among other things, forest preserves. The County of DuPage moved this Court to clarify the Court's order. Specifically, the County asks this Court sever the forest-preserve provision of Section 37-4.16.2. For following reasons, the Court GRANTS the County's motion and declares unconstitutional only the portion of subsection (4) of that Section that refers to a "forest preserve."

The DuPage County zoning ordinance contains a severability provision. That section provides that if a court "adjudges any part of this Ordinance or any amendment thereto, to be invalid, such judgment shall not affect any other provisions of this Ordinance, or amendment thereto, not specifically included in said judgment." See Section 37-4.2-1. If a legislature would have enacted the constitutional aspects of a law without the unconstitutional provisions, then the offending provisions should be severed. See Zbaraz v. Hartigan, 763 F.2d 1532, 1544 (7th Cir. 1985) (citations omitted). By contrast, severance is improper if the unconstitutional provision is an "integral part of the statutory enactment viewed in its entirety." Id.

The severance provision here and the structure of Section 37-4.16.2 suggests that the County would have enacted it with or without the provision related to forest preserves. The Court will therefore sever the reference to forest preserves. See Makula v. Village of Schiller Park, No. 95 C 2400, 1998 U.S. Dist. Lexis 7173 at *32-3 (N.D. Ill. April 24, 1998).

In opposition to the County's motion, the Plaintiffs argue that this Court's pronouncement swept more broadly and invalidated Section 37-4.16.2 in its entirety. The Plaintiffs are mistaken. The fact that the Court invalidated the forest-preserve provision under both the second and third prongs of the test set forth in Renton v. Playtime Theaters, Inc., 475 U.S. 41, 49 (1986), does not mean that the entire section is invalid. Both this Court's narrow-tailoring and other-avenues-of- speech analysis focused on the separation requirement of strip clubs from forest preserves. The parties did not present any other aspect of the zoning ordinance in the cross-motions for summary judgment.[1]

Finally, the fact that this Court did not reach the Plaintiffs' prior restraint claim also does not support their contention that the prior ruling invalidated all of Section 37-4.16.2. Plaintiffs claimed on summary judgment that the forest preserve restriction was the only impediment to locating their strip club on the subject property. As presented to this Court, in the absence the forest preserve separation requirement, the ordinance would not have prevented the Plaintiffs' operation of a strip club. Based on this presentation and the result that this Court reached – invalidating the forest-preserve provsion – there was no reason to address the prior restraint claim.

David H. Coar

[1] The Plaintiffs state that their complaint addressed issues broader than the forest preserve provision, but the issues addressed on summary judgment were confined to that separation requirment.