

NOTE 18 - SEXUALLY ORIENTED BUSINESSES

1. Statutory Authorization; Findings of Fact; Purpose and Objectives

a. Statutory Authorization

The Legislature of the State of New Jersey has delegated the responsibility to the local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the City Council of Gloucester City and the State of New Jersey does ordain as follows.

b. Findings of Fact

Sexually oriented business have a deleterious affect on both the existing businesses around them and the surrounding residential areas adjacent to them: causing increased crime, especially prostitution; adversely affecting property values; creating an atmosphere which is inimical to the values of a significant segment of the township's population; and encouraging residents and businesses to move elsewhere. It is further recognized that sexually oriented business, when located in close proximity to each other, contribute to urban blight and downgrade the quality of life in the adjacent areas.

c. Purpose and Objectives

It is the purpose of this section to regulate sexually oriented business to minimize and control the adverse effects recognized in Subsection 1.b. and to promote the public health, safety and general welfare of the citizens of the township. It is not the purpose of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, nor will this chapter have the effect of restricting or denying such access.

2. Definitions - as used in this section, the following terms shall have the meanings indicated.

- a. 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 one (1) person per machine at any one (1) time and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

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- b. **Adult Bookstore or Adult Video Store** - A commercial establishment, which, as one (1) of its principal business purposes, offers for sale or for rental for any form of consideration any one (1) or more of the following:
- (1) Books magazines, periodicals or other printed materials or photographs, films, motion pictures, videocassette or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices or paraphernalia, which are designed for use in connection with specified sexual activities.
- c. **Adult Cabaret** - A nightclub, bar, restaurant or similar commercial establishment, which regularly features:
- (1) Persons who appear in a state of nudity; or
 - (2) Live performances, which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- d. **Adult Motel** - A hotel, motel or similar commercial establishment, which offers accommodations to the public for any form of consideration and which:
- (1) Provides patrons with closed-circuit television transmissions, films, motion pictures, videocassette, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from a public right-of-way which advertises the availability of these adult types of photographic reproductions;
 - (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- e. **Adult Motion-Picture Theater** - A commercial establishment where, for any form of consideration, films, motion pictures, videocassette, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. "Adult motion picture theaters" shall meet the seating criteria established for adult theaters (below).

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- f. **Adult Theater** - A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities. Seating shall be provided in a design consistent with traditional movie theaters. All sitting areas shall be visible and unobstructed.
- g. **Commercial Display** - The exhibition to the senses of another person for valuable consideration, whether the valuable consideration is paid by the recipient of the exhibition or by another and whether the exhibition occurs at the exhibitor's place of business or elsewhere.
- h. **Nudity or A State of Nudity** - The appearance of a human bare buttocks, anus, male genitals, female genitals or female breasts.
- i. **Obscene Materials** - The definition of obscene materials set for in P.L. 1978, c. 95, as amended by P.L. 1982, c. 211, Sec. 1 (effective December 23, 1982, as N.J.S.A. 2C:34-2), as the same shall be from time to time amended or supplemented, as well as in accordance with and not more strictly than judicial interpretations thereof pursuant to the Constitutions of the United States and of the State of New Jersey finally concluded in courts of jurisdiction sufficient to render decisions on constitutional questions of general application.
- j. **Person** - An individual, proprietorship, partnership, corporation, association or other legal entity.
- k. **Sexually Oriented Business:**
 - (1) A commercial establishment which as one of its principal business purposes offers for sale, rental or display any of the following: Books, magazines, periodicals or other printed material, or photographs, films motion pictures, video cassettes, slides or other visual representations which depict or describe a "specified sexual activity" or "specified anatomical area"; or still or motion picture machines, projectors or other image-producing devices which show images to one person per machine at any time, and where the images so displayed are characterized by the depiction of a "specified sexual activity" or specified anatomical area"; or instruments, devices, or paraphernalia which are designed for use in connection with a "specified sexual activity"; or

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2. k. (Cont'd)

- (2) A commercial establishment which regularly features live performances characterized by the exposure of a "specified anatomical area" or by a "specified sexual activity" or which regularly shows films, motion pictures, video cassettes, slides, or other photographic representations which depict or describe a "specified sexual activity" or specified anatomical area".

Sexually oriented businesses include, but are not limited to, adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion-picture theater or adult theater.

i. Specified Anatomical Areas

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks or female breasts below the point immediately above the top of areola; or
- (2) Human male genitals in a discernable turgid state, even if completely and opaquely covered.

m. Specified sexual activities - Includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
- (2) Any actual or simulated act of human masturbation, sexual intercourse or deviate sexual intercourse.

3. **Location of Sexually Oriented Businesses**

a. A person commits an offense if he operates or causes to be operated a sexually oriented business:

- (1) within one thousand feet (1,000 ft.) of a place of worship;
- (2) within one thousand feet (1,000 ft.) of any elementary or secondary school, whether public or private or within one thousand feet (1,000 ft.) of any school bus stop;
- (3) within one thousand feet (1,000 ft.) of a municipal or county playground or place of public resort and recreation;
- (4) within one thousand feet (1000 ft.) of any area zoned for residential use;

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3. a. (Cont'd)

- (5) within one thousand feet (1,000 ft.) of any existing sexually oriented business;
- (6) within one thousand feet (1,000 ft.) of a residential use.
- (7) within one thousand feet (1,000 ft.) of any premises licensed for the sale of alcoholic beverages, either consumption, distribution, or club licensees. [Amended 09-03-98 by Ord. No. 20-98].

b. Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a place of worship, a school, a boundary of a residential district, a public area, a lot devoted to residential use or another sexually oriented business.

c. A sexually oriented business, lawfully operating as a conforming uses, is not rendered a non-conforming use by the location, subsequent to the establishment of the sexually oriented business, of a place of worship, school, public area, residential district or residential to within one thousand feet (1,000 ft.) of the sexually oriented business.

4. Development standards for Sexually oriented businesses

Sexually oriented businesses shall conform to the location and development requirements established in the Gloucester City Development Ordinance and with the following:

- a. Every sexually oriented business shall be surrounded by a perimeter buffer of at least fifty (50) feet in width with plantings, fence, or other physical divider along the outside of the perimeter sufficient to impede the view of the interior of the premises in which the business is located. This subsection shall not apply to a sexually oriented business already lawfully operating on the effective date of this ordinance.
- b. No sexually oriented business shall display more than two (2) exterior signs, consisting of one (1) identification sign and one sign giving notice that the premises are off limits to minors. The identification sign shall be no more than forty (40) square feet in size.

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- c. No private booths shall be permitted. Video screens may be shielded by the placement of a covering enclosure around the viewing screen only. The screening enclosure shall be constructed in a manner which precludes patrons of adjacent or adjoining video machines from engaging in anonymous sexual activity.
- d. The interior of any adult arcade, adult bookstore or adult video store shall be adequately lighted and constructed so that every portion thereof is readily visible to the clerk or other supervisory personnel at the counter or other regular station.

5. Prohibition against commercial display of obscene materials or acts.

A person is in violation of this ordinance if he knowingly conducts or maintains any premises, place or resort as a place where obscene materials, as defined in N.J.S.A. 2C:34-2 and N.J.S.A. 2C:34-3, is sold, photographed, manufactured, exhibited or otherwise prepared or shown in violation of N.J.S.A. 2C:34-2, N.J.S.A. 2C:34-3 AND N.J.S.A. 2C:34-4.

6. Enforcement

- a. Any person violating any provision of this section, upon conviction, is punishable by a fine not to exceed one thousand dollars (\$1,000) or a term of imprisonment not to exceed ninety (90) days, or both. In no event shall any person violating this section, upon conviction, receive a fine below the amount of one hundred dollars (\$100).
- b. Each day a sexually oriented business is operating in violation of Subsections 3 or 4 of this section shall constitute a separate offense under this section.
- c. Each separate film, videocassette or other visual reproduction or each showing of live entertainment, which is displayed to another in violation of Subsection 4 of this section, is a separate offense under this section.