

ZONING ORDINANCE DISTRICT DESCRIPTIONS*

Addendum to Industrial Zoning District Defining and Regulating Sexually Oriented Businesses

A. Purpose of this Addendum[.] It is the purpose of this addendum to define and regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to prevent concentration of sexually oriented businesses within the city. The provisions of this addendum have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this addendum to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to the intended market. Sexually Oriented Businesses are an allowable use only in the Industrial District

B. Definitions.

In this section:

1. Adult Arcade: means 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 of five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”
2. Adult Bookstore or Adult Video Store: means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:
 - (a) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representation which depict or describe “specified sexual activities” or “specified anatomical areas”
 - (b) instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”
3. Adult cabaret: means a nightclub, bar, restaurant or similar commercial establishment which regularly features:
 - (a) persons who appear in a state of nudity; or

(b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or

(c) films, motion pictures, video cassettes, slides or other photographic reproductions are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

4. Adult motel: means a hotel, motel or a similar commercial establishment which:
 - (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, 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 the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
 - (b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - (c) 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.
5. Adult Motion Picture Theater: means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
6. Adult Theater: means 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.”
7. Nude Model Studio: means any place where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.
8. Nudity or a State of Nudity: means the appearance of a human bare buttocks, anus, male genitals, female genitals, or female breast.
9. Persons: means an individual, proprietorship, partnership, corporation, association, or other legal entity.

10. Sexually oriented business: means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, or nude model studio.
11. Specified Anatomical Areas: means human genitals in a state of sexual arousal.
12. Specified Sexual Activities: means and includes any of the following:
 - (a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
 - (c) masturbation, actual or simulated; or
 - (d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

C. Location of Sexually oriented businesses.

1. A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,000 feet of:
 - (a) a church;
 - (b) a public or private elementary or secondary school;
 - (c) residentially zoned property;
 - (d) a public park; or
 - (e) a lot devoted to residential use.
2. A person commits an offense if he operates or causes to be operated, a sexually oriented business within 1,000 feet of another sexually oriented business.
3. A person commits an offense if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof or the increase of any floor area of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
4. For the purposes of subparagraph (1) above, 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 part of the premises where a sexually

oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.

5. For purposes of Subparagraph (2) above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

6. Any sexually oriented business lawfully operating prior to the effective date of this ordinance, that is in violation of Subparagraph (1), (2), or (3) of this paragraph shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed six (6) months, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be change[d] to conforming use. If two or more sexually oriented businesses are within one thousand (1,000) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

7. A sexually oriented business lawfully operating as a conforming use after the effective date of this ordinance is not rendered a nonconforming use by the location, subsequent to the operation of the sexually oriented business, of a church, public or private elementary or secondary school, public park, residential district, or residential lot within one thousand (1,000) feet of the sexually oriented business.

8. A sexually oriented business must be located on a parcel of land having at least three hundred (300) feet of street footage on at least one (1) side of such parcel of land.

D. Additional Regulations for Adult Motels

1. Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this section.

2. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment, he rents or sub-rents a sleeping room to a person, and within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

3. For purpose of Subparagraph (2) of this paragraph, the terms “rent” or “sub-rent” mean the act of permitting a room to be occupied for any form of consideration.

E. Enforcement[.]

Any person violating Paragraph C, upon conviction, shall be punished by a fine not to exceed Two Hundred Dollars (\$200.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(Ordinance 1006-01 adopted 11/12/01)