

LOCAL LAW #1 OF 2004

APPENDIX D

ADULT ENTERTAINMENT BUSINESSES

PURPOSE

These supplemental regulations are in addition to those listed above. They are necessary because of the following secondary effects adult entertainment businesses can have on the surrounding areas:

1. Decreased property values.
2. Increased crime.
3. Loss of business for other commercial businesses.

In order to minimize these objectionable effects it has been demonstrated that it is desirable to regulate both the location and the concentration of adult entertainment businesses. This will help achieve the following:

1. Preserve the character and the quality of life in the Town of Candor.
2. Restrict minor's access to adult entertainment.
3. Maintain the general welfare and safety for the Town of Candor residents.

It is not the intent nor the effect of this Local Law to restrict or deny access by adults to sexually oriented materials protected by the First Amendment. It is not the intent nor the effect of this chapter to condone or legitimize the distribution of obscene materials.

DEFINITIONS

The words and phrases set forth below shall have the meanings respectfully ascribed to them.

1. Adult entertainment establishment: A public or private establishment, or any part thereof, which presents any of the following entertainments exhibitions, or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment, where the servers or entertainers wear only pasties or G-strings or both; adult arcades, adult bookstores or adult video stores; adult cabarets; adult motels; adult motion picture theaters; escort agencies; nude model studios and sexual encounter centers. Adult Entertainment Establishments customarily exclude minors by reason of age.

2. Adult arcade: Any place to which the public is permitted or invited or in which coin-operated or slug operated or electronically, electrically or mechanically controlled, or by any other method for which a fee is charged, still or motion picture machines, projectors

or other image producing devices are maintained to show images to an audience, and where the image is so displayed, distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

3. Adult bookstore or adult video: A commercial establishment which, 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 picture video cassettes or video reproductions, slides, compact discs, computer software, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices or paraphernalia which are primarily intended, labeled, designed, advertised or promoted for use in connection with "specified sexual activities". Alternatively, a commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified anatomical areas" and still be classified as "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas".

For purposes of this definition, "principal business purpose" shall mean twenty-five percent (25%) or more of any of the following:

(a) The gross profits of the business as a whole if such business also includes profits from other business purposes;

(b) The number of different titles or kinds of such merchandise;

(c) The number of copies or pieces of such merchandise;

(d) The amount of floor space devoted to the sale and/or display of such merchandise;

(e) The amount of advertising that is devoted to such merchandise either in print or broadcast media.

4. Adult cabaret: A nightclub, bar, restaurant or similar commercial establishments, with or without a liquor license, which regularly features:

(a) Persons who appear in a state of nudity;

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities";

(c) Films, motion pictures, video cassette, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";

5. Adult motel: A hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration and 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 for the public right-of-way which advertises the availability of this adult type of photographic productions;

(b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours;

(c) Allows a tenant or occupant of the sleeping room to sublet the room for a period of time that is less than ten (10) hours.

6. Adult motion-picture theater: A commercial establishment where for any form of consideration, films, motion pictures, video cassettes, slides or similar graphic reproductions are displayed which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

7. Adult theater: A theater, concert hall, auditorium or similar commercial establishments which regularly feature persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities".

8. Audience: One (1) or more persons who are permitted to view a performance for valuable consideration of, in or from a public place.

9. Display publicly: The exposing, placing, posting, exhibiting or in any other fashion displaying in any location, whether public or private, material or a performance in such manner that it may be readily seen and its contents or character distinguished by normal unaided vision viewing it from a public place or vehicle.

10. Escort: A person who, for consideration, agrees or offers to act as a companion, guide or date for any person or who agrees to privately model lingerie or to privately perform a striptease for another person.

11. Escort agency: A person or business association who or, which furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

12. Establishment: Includes any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of any existing business, whether or not a sexually oriented business, to a sexually oriented business;
- (c) The addition of any sexually oriented business to any other existing sexually oriented business;
- (d) The relocation of any sexually oriented business.

13. Nude model studio: Any place where persons who appear in a state of nudity or who display "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.

14. Nudity: Uncovered or less than opaquely covered post puberty human genital or pubic area, the post puberty human female breast below the point immediately above the top of the areola or the covered human male genitals in discernibly turgid state. For the

purposes of this definition, a female breast is considered nude if the nipple only or the nipple and the areola only are covered.

15. Pander: Advertising or propagandizing, in connection with the sale of material, the offering of a service or the presentation or exhibition of performance by appealing to the prurient interest of potential customers.

16. Performance: Any live or reproduced exhibition, including but not limited to any play, motion picture, film, dance or appearance presented to or performed before an audience.

17. Pornography: Any material or performance is pornography if all of the following elements are present:

- (a) Considered as a whole by the average person applying the contemporary community standards of the Town of Candor, it appeals to the prurient interest;
- (b) It depicts, describes or represents, in a patently offensive way, sexual conduct, as hereinafter defined;
- (c) It lacks serious literary, artistic, political or scientific value.

18. Pornography for minors: Any material performance is "pornography for minors" if all of the following elements are present:

- (a) Considered as a whole by the average person applying the contemporary community standards of the Town of Candor, with respect to what is suitable for minors, it is presented in such a way as to appeal to a minor's prurient interest;
- (b) It depicts, describes or represents, in a patently offensive way, nudity or sexual conduct as hereinafter defined;
- (c) It lacks serious literary, artistic, political or scientific value for minors.

19. Prurient interests: A desire or craving for sexual stimulation or gratification. In determining "prurient interest", the material or performance shall be judged with reference to average persons, unless it appears from the character of the material or performance that it is designed to appeal to prurient interests of a particular group of persons, including but not limited to homosexuals or sadomasochists. In that case, it shall be judged with reference to the particular group for which it was designed.

20. Sadomasochistic abuse: Flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexual revealing or bizarre costume; or the condition of such person being fettered, bound or otherwise physically restrained in an apparent act or sexual stimulation or gratification.

21. Sexual conduct:

- (a) Masturbation;
- (b) Sexual intercourse, whether genital-genital, oral-genital, oral-anal or anal-genital;
- (c) Any erotic fondling or touching of any parts of the covered or uncovered genitals, buttocks, pubic area or breast of the female;

- (d) Actual or simulated display or exhibition of the human pubic area or genitals or any part thereof;
- (e) Sexual excitement, as hereinafter defined;
- (f) Sadomasochistic abuse, as hereinbefore defined;
- (g) The conduct described in Subsections a through c, inclusive, is "sexual conduct", whether or not it is engaged in alone or between members of the same sex or between members of the opposite sex or between humans and animals or between humans and inanimate objects.

22. Sexual encounter center: A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

23. Sexual excitement: The facial expression, movements, utterances or other responses of a human male or female, whether alone or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal and who experiences the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

24. Sexually oriented business: An adult entertainment establishment, adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, and adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

25. Specified anatomical areas: Human genitals, pubic region, buttocks, and female breast below a point immediately above the top of the areola.

26. 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 breasts;
- (b) Sex acts. Normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated;
- (d) Excretory functions.

REGULATED USES

Special regulations are necessary to ensure that the adverse secondary effects of these specific uses will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing concentration of these uses. Uses subject to these controls and special regulations are as follows:

- (a) Adult entertainment establishment;
- (b) Adult arcade;
- (c) Adult bookstore or adult video store;

- (d) Adult cabaret;
- (e) Adult motel;
- (f) Adult motion picture theater or Adult Theater;
- (g) Escort agency;
- (h) Nude model studio;
- (i) Sexual encounter center.

LOCATION OF ADULT BUSINESSES

1. No closer than 1000 feet from any private residence.
2. No closer than 1000 feet from property line of the following:
 - a. Church, synagogue, or other place of worship
 - b. School, day care, library, or other public facilities frequented by children
 - c. Park, playground, or other public recreational facilities.
3. No closer than 1000 feet of another adult entertainment business.

SIGNS

Signs for the adult entertainment business shall be limited to the name of the business and be located only on the building for the business.

SCREENING

Screening shall be sufficient so that inside activity is not visible from the outside of the building.