

ARTICLE 600D: ADULT ESTABLISHMENTS

Section 600D.1. Purpose.

Studies have shown that lowered property values and increased crime rates tend to accompany and are brought about by the concentration of adult establishments as defined herein. Regulation of these uses is necessary to insure that these effects do not contribute to the blighting of surrounding neighborhoods and to protect the integrity of the City's schools, churches, child care centers, parks and playgrounds which are typically areas in which juveniles congregate. It is the intent of this provision to establish reasonable regulations to prevent a concentration of adult establishments within the City of Henderson and to separate adult establishments from those sensitive uses listed below.

Section 600D.2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult bookstore means a retail establishment that has:

- (1) As one of its principal business purposes the sale or rental of or a substantial or significant portion of its stock in trade for sale or rental:
 - a. Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities as defined in this section; and/or
 - b. Sexually oriented devices, as defined in this section.
- (2) As used in this definition, publications include, by way of illustration, books, magazines, other periodicals, movies, videotapes, and other products offered in photographic, electronic, magnetic, digital, or other imaging medium.
- (3) Any of the following shall be indicia that an establishment has as one of its principal business purposes the sale or rental of:
 - (i) Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; and/or
 - (ii) Sexually oriented devices, as defined in this section:
 - a. The business advertises the sale or rental of adult publications and/or sexually oriented devices.
 - b. Access by persons under 18 years of age to the business establishment or portions of the business establishment is restricted.
 - c. Signs or notices are posted outside and/or inside the business establishment indication that the material offered for sale or rental might be offensive.

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- d. The building or portion of the building containing the business establishment does not have windows or has windows that are screened or otherwise obstructed or are situated in a manner that restricts visual access from outside the building to materials displayed within for sale or rental.

Such indicia shall be considered along with all other factors and available information.

- (4) Notwithstanding the foregoing, a general circulation video store that does not offer for sale any sexually oriented devices shall not constitute an “adult bookstore” even though it offers for sale and/or rental videotapes which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section, so long as:
 - a. Such described videotapes are stocked and displayed in a room separate from the area of the business establishment where general circulation videotapes are stocked and displayed;
 - b. Access by persons under 18 years of age to the room where such described videotapes are stocked and displayed is restricted;
 - c. The square footage of the separate room where such described videotapes are stocked and displayed is no more than ten percent of the square footage of the area where general circulation videotapes are stocked and displayed; and
 - d. The general circulation videotape portion of the business establishment offers a quantity and selection of new release general circulation videotapes that is typical of a general circulation video store and offers a quantity and selection of other general circulation videotapes that are organized and displayed in a manner that is typical of a general circulation video store.

Adult Establishment means and includes any adult bookstore, adult live entertainment business, adult mini-motion-picture theater, adult motion-picture theater, or clothing modeling studio, as defined in this section.

Adult live entertainer means an employee who engages in or performs adult live entertainment.

Adult live entertainment means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

Adult live entertainment business means any establishment or business which has as one of its principal business purposes the presentation of adult live entertainment for observation by patrons.

Adult mini-motion-picture booth means any booth or partitioned area of less than 150 square feet in an adult mini-motion-picture theater that is designed to hold patrons for the presentation and viewing of still or motion pictures (slides, film, videotape, laser disc, CD-ROM or other imaging media) that are distinguished or characterized by their emphasis on matter depicting,

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describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section.

Adult mini-motion-picture theater means a commercial establishment with one or more adult mini-motion-picture booths where:

- (1) One of the principal business purposes is the presentation and viewing of still or motion pictures in the viewing booths that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; or
- (2) A substantial or significant portion of the stock of still or motion pictures available for viewing or that are actually viewed in the viewing booths are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section.
- (3) Any of the following shall be indicia that the business establishment has as one of its principal business purposes the presentation and viewing in viewing booths still or motion pictures which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section:
 - a. Restricted access to the business establishment or portions of the business establishment where viewing booths are located by persons under 18 years of age.
 - b. Posted signs or notices outside and/or inside the business establishment indicating that the material offered for presentation and viewing in the viewing booths might be offensive.

Such indicia shall be considered along with all other factors and available information.

Adult motion-picture theater means a commercial establishment that regularly presents motion pictures which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, in an area, whether enclosed or not, of 150 square feet or greater, for observation by patrons therein.

Applicant means and includes the owner of a sexually oriented business.

Chief of police means the chief of the Henderson Police Department, or his designee.

City Manager means the city manager, or his designee (who shall not be an employee of the Henderson Police Department).

Clothing modeling studio means any place where, for any form of consideration or gratuity, a person agrees or offers to privately model clothing, including, but not limited to, lingerie, for an individual patron.

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Convicted means an adjudication of guilt and entry of judgment following a trial or a plea of guilty or no contest in a criminal case arising under local, state, or federal law.

Employee describes and pertains to any person who performs any service or entertainment upon the premises of a sexually oriented business, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and regardless of whether or not the person is paid a salary, wage, or other compensation by the operator of the business. The term “employee” does not include a person exclusively on the premises for any of the following:

- (1) The repair or maintenance of the premises;
- (2) The delivery of goods to the premises; or
- (3) The delivery of services, such as legal, accounting, insurance, or other similar services provided to business generally.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

Operator means and includes any person who is both present on and in charge of any sexually oriented business premises.

Owner means the legal owner of a sexually oriented business and includes the following:

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association, or general partnership;
- (3) Each general partner in a limited partnership; or
- (4) Each officer, director, and owner of 50 percent or more of the stock of a corporation.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Sexually oriented business means and includes any adult bookstore, adult live entertainment business, adult mini-motion-picture theater, adult motion-picture theater, or clothing modeling studio, as defined in this section.

Sexually oriented crime means and includes any criminal offense under local, state, or federal law involving or related to rape, sex offense, sexual abuse of minors, crime against nature, incest, prostitution, indecent exposure, or this article.

Sexually oriented devices means, without limitation, any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities, but does not mean any contraceptive device.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered:

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- a. Human genitals, pubic region; or
 - b. Buttock; or
 - c. Female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Sex acts, normal or perverted, actual or simulated, including human masturbation, sexual intercourse, oral copulation, or sodomy;
- (3) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
- (4) Excretory functions, as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

Straddle means the straddling of the legs of one person over any part of the body of any other person, regardless of whether there is a touch or touching.

Touch means to touch with a portion of the human body or with any object.

Section 600D.3. Location.

Adult establishments are permitted as a matter of right in Adult Establishment Overlay Zoning Districts subject to the requirements set forth in this Article 600D, including (but not limited to) the following:

- (a) Any structure in which an adult bookstore or adult mini motion picture theatre establishment is the principal or accessory use shall be separated by a distance of at least five hundred (500) feet from any residential district, school, church, child care center, park or playground. An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a residential district, school, church, child care center, park or playground within the 500-foot separation distance.
- (b) Any structure in which an adult establishment, other than an adult bookstore or adult mini motion picture theatre, is the principal or accessory use shall be separated by a distance of at least five hundred (500) feet from any residential district, school, church, child care center, park or playground. An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a residential district, school, church, child care center, park or playground within the 500-foot separation distance.
- (c) Any structure in which an adult bookstore or adult mini-motion-picture theatre establishment is the principal or accessory use shall be separated by a distance of at least one thousand (1,000) feet from any other adult establishment.

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- (d) Any structure in which an adult establishment, other than an adult bookstore or adult mini motion picture theatre, is the principal or accessory use shall be separated by a distance of at least five hundred (500) feet from any other adult establishment.
- (e) The distance for the separation from residential zoning and protected uses shall be measured in a straight line from the closest edge of the building occupied by an adult use to the nearest residential zoning district or to the property line of a protected use. The distance for the separation between adult uses shall be measured in a straight line from the closest edges of the buildings occupied by adult uses.
- (f) No more than one adult establishment may be located on the same property or within the same structure.
- (g) In addition to the standards set forth in section 802.3, before granting a variance from the separation requirements set forth in subsection (a) or (b) of this section, the board of adjustment shall find that thoroughfares, traffic circulation patterns, structures or other natural or man-made geographic or topographic features are likely to provide an adequate measure of protection for the protected zoning or use from any secondary effects of the adult establishment.

Section 600D.4. Other Supplemental Requirements.

- (a) There must be on site off street parking of at least 1 parking space for every 200 square feet of gross floor area of all buildings on the premises used as an adult establishment.
- (b) No solid or opaque fencing shall be permitted on the site within any applicable building setback lines as set forth in Article 300B hereof.
- (c) No merchandise or pictures of the products or entertainment on the premises shall be displayed in any area where they can be viewed from the street in front of the building.
- (d) No graphic or textual sign that is customarily construed as promoting the public's prurient may be directly or indirectly displayed (so they can be viewed from the street in front of the building) referencing any of the following:
 - (1) Any nude or semi-nude activity occurring at the adult establishment,
 - (2) Any portion of the human anatomy or reference to any "specified anatomical areas",
or
 - (3) Any other paraphernalia intended for use in "specified sexual activities".

Section 600D.5. Other Licenses.

Although the same shall not be required relative to obtaining a zoning permit, nothing herein shall modify or alleviate the requirement for the Adult Entertainment establishment from complying with any applicable provisions of Article V or Chapter 3 of the City Code.

(New Section 600D added – 6/28/2010)

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