

## ZONING

### ARTICLE V Sexually Oriented Businesses [ Added 3-7-00, Ord. 00-04]

#### § 180-31. Purpose and Intent.

The purpose and intent of this article is to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and design of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this article are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

#### § 180-32. Definitions.

Words and phrases used in this article and in Chapter 110, Article II, shall have the following meanings ascribed to them:

ADULT ARCADE - means any commercial establishment to which the public is permitted or invited where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image or virtual reality producing machines, for viewing by five or fewer persons per machine at any one time, are used regularly to show films, motion pictures, video cassettes, slides, or other photographic, digital or electronic reproductions describing, simulating or depicting "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO - means a commercial establishment that, 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 representations however produced that depict or describe "specified sexual activities" or "specified anatomical areas"; or
- B. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

ADULT CABARET - means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment that features:

- A. Persons who appear nude or in a state of nudity or seminudity; or

- B. Live performances that are characterized by the exposure of "specified anatomical areas" or by the exhibition of "specified sexual activities."

ADULT MOTEL - means a hotel, motel or similar commercial establishment that offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other media productions, however produced, which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and which commercial establishment has a sign visible from the public right-of-way which advertises the availability of this adult type of media production.

ADULT MOTION PICTURE THEATER - means a commercial establishment that is distinguished or characterized by the showing, for any form of consideration, of films, motion pictures, video cassettes, slides, or similar photographic reproductions, on more than 100 days per year, that have an "X" rating or that have an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

ADULT THEATER - means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on exposure of "specified anatomical areas" or by "specified sexual activities."

COMMERCIAL ESTABLISHMENT - may have other principal business purposes that do not involve the depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." The term "commercial establishment" includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships.

EMPLOYEE - means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage, or other compensation by the operator of said business.

ESTABLISHMENT OF A SEXUALLY ORIENTED BUSINESS - means and includes any of the following:

- A. The opening or commencement of any such business as a new business;
- B. The conversion of an existing business into a sexually oriented business;
- C. The addition of a different sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of a sexually oriented business.

FOYER - means an architectural element of a building that consists of an entry hall or vestibule that is completely enclosed and contains one door to provide access to areas

outside of the building and a separate door to provide access to areas inside of the building.

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 sexually oriented business license.

LICENSING OFFICER - means the Town Clerk or his or her designee.

MANAGER means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

NUDITY OR STATE OF NUDITY - means:

- A. The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
- B. A state of dress which fails opaquely and fully to cover human buttocks, anus, male or female genitals, pubic region, or areola or nipple of the female breast.

NUDE MODEL STUDIO - means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

OPERATOR - means and includes the owner, license holder, custodian, manager, operator, or person in charge of any licensed premises.

PEEP BOOTH - means a room, semi-enclosure or other similar area located within a licensed premises wherein a person may view representations of "specified anatomical areas" or "specified sexual activities."

PERSON - means an individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

PREMISES OR LICENSED PREMISES - means any premises that requires a sexually oriented business license and that is classified as a sexually oriented business, including parking lots and sidewalks immediately adjacent to the structure containing the sexually oriented business.

PRINCIPAL BUSINESS PURPOSE - means as to any establishment, having as a substantial or significant portion of its stock in trade the items listed in subparagraphs (a) and (b) of the definition of *adult bookstore*, *adult novelty store*, or *adult video store* above and having on the premises at least thirty percent of the establishment's display space occupied by the display of the items described therein.

PRINCIPAL OWNER - means any person owning, directly or beneficially:

- A. Any membership or partnership interest in a limited liability company or limited liability partnership if such person has any legal control or authority over the management or operation of the entity; or
- B. In the case of any other legal entity, five (5) percent or more of the ownership interests in the entity, except for shareholders, but including such shareholders who are corporate officers or directors or who otherwise have any legal control or authority over the management or operation of the entity.

**PUBLIC PARK** - an area of land owned by a governmental entity and intended to be used for recreational purposes, but not including any such land that contains no improvements and is intended only for open space purposes, and not including any such land that is intended for use only for pathway purposes.

**SEXUALLY ORIENTED BUSINESS** - means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, or nude model studio. The definition of sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of Colorado engages in medically approved and recognized sexual therapy.

**SEMINUDE OR SEMINUDITY** - means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breasts, as well as portions of the body covered by supporting straps or devices, which supporting straps or devices are used to support or enable the wearing of such clothing.

**SPECIFIED ANATOMICAL AREAS** - as used herein means and includes any of the following:

- A. Human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, that are not completely and opaquely covered; or
- B. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

**SPECIFIED CRIMINAL ACTS** - means sexual crimes against children, sexual abuse, sexual assault, or crimes connected with another sexually oriented business including, but not limited to, distribution of obscenity, prostitution, or pandering.

**SPECIFIED SEXUAL ACTIVITIES** - means and includes any of the following:

- A. The fondling or other intentional 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;
- D. Human genitals in a state of sexual stimulation, arousal, or tumescence; or

- E. Excretory functions as part of or in connection with any of the activities set forth in subsections A through D of this definition.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS - means and includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, management arrangement, gift or other similar legal device that transfers ownership or control of the business, including a transfer by bequest or operation of law.

**§ 180-33. Interior Lighting Regulations.**

- A. The interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5.0) foot candles as measured at the floor level.
- B. It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

**§ 180-34. Location of Sexually Oriented Businesses and Design of Same.**

- A. It shall be unlawful to operate or cause to be operated a sexually oriented business outside of the accommodations district zone, auto-oriented commercial district zone, mixed use district zone, contractor trades district zone, and the central core district zone.
- B. It shall be unlawful to operate or cause to be operated a sexually oriented business within the accommodations district zone, auto-oriented commercial district zone, mixed use district zone, contractor trades district zone, and the central core district zone within five hundred (500) feet of:
  - 1. Any church;
  - 2. Any school meeting all requirements of the compulsory education laws of the State of Colorado;
  - 3. An existing dwelling;
  - 4. A public park; or
  - 5. A licensed childcare facility.

- C. It shall be unlawful to operate or cause to be operated a sexually oriented business within the contractor trades district zone on any property that has frontage on School Road.
- D. It shall be unlawful to cause or permit the operation, establishment, or maintenance of a sexually oriented business within 100 feet of any other sexually oriented business.
- E. All exterior windows in a sexually oriented business shall be opaque to such an extent that interior objects viewed from outside shall be so obscure as to be unidentifiable. Exterior windows in sexually oriented businesses shall not be used for any display or sign except for a sign that complies with the requirements of Section 180-45 of this Code.
- F. All doors for ingress and egress to a sexually oriented business, except emergency exits used only for emergency purposes, shall be located on the front of the sexually oriented business. For purposes of this subsection, the front of a sexually oriented business shall be deemed to be that facade of the building that faces the front lot line of the lot or parcel on which the business is located. Every sexually oriented business shall have a foyer at every point of ingress or egress, except for emergency exits. In the case of a sexually oriented business having more than one front lot line, the sexually oriented business shall be oriented such that the front of the business faces away from the nearest of any of the land uses listed in subsection (B) above.

**§ 180-35. Measurement of Distance.**

- A. The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business, or, in the case of a sexually oriented business operating within a condominium estate or leasehold estate, from the closest airspace boundary of such condominium estate or from the closest wall of such leasehold estate.
- B. The distance between any sexually oriented business and any church, school, dwelling, public park or childcare facility shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the sexually oriented business to the nearest property line of the premises of a church, school, dwelling, public park or childcare facility. If the premises where the sexually oriented business is conducted is comprised of a condominium estate or leasehold estate, such distance shall be measured in a straight line, without regard to intervening structures or objects, from the nearest airspace boundary of the condominium estate or the nearest wall of the leasehold estate used as part of the premises where the sexually oriented business is conducted to the nearest property line of the premises of a church, school, dwelling, public park or childcare facility.

**§ 180-36. Other Locational Regulations.**

- A. Any sexually oriented business lawfully operating on the effective date of this ordinance that is in violation of section 180-34 will be permitted to continue for a period of six (6) months from the effective date hereof.
  
- B. Upon application made by the owner of a sexually oriented business within four months of the effective date of this ordinance, and notwithstanding the provisions of subsection (A), the Town Manager may, after a hearing to be held within 30 days of the application, grant an extension of time during which a sexually oriented business in violation of section 180-34 will be permitted to continue upon a showing, by competent evidence, that the owner of the business has not had a reasonable time to recover the initial financial investment in the business. At the hearing, the Town Manager shall hear such statements and consider such evidence as the Town Attorney, the owner, occupant, lessee, or other party in interest, or any other witness shall offer that is relevant to issue of whether the owner of the business has had a reasonable time to recover the initial financial investment in the business. The Town Manager shall make findings of fact, from the statements and evidence offered, as to whether the owner of the business has had a reasonable time to recover the initial financial investment in the business. If the Town Manager grants an extension of time during which a sexually oriented business in violation of section 180-34 will be permitted to continue, he or she shall issue an order to that effect which states exactly the period of the extension. A copy of the order shall be mailed to or served on the owner within 30 days of the hearing. No extension of time shall be for a period greater than that reasonably necessary for the owner of the business to recover his or her initial financial investment in the business. A sexually oriented business in violation of section 180-34 may continue during such extended period unless the business is sooner terminated for any reason, or voluntarily discontinued for a period of thirty (30) days or more. Such business shall not be enlarged, extended, or altered except that the business may be brought into compliance with this article. In performing his duties pursuant to this section, the Town Manager may retain independent counsel to advise him with regard to any matter.
  
- C. A sexually oriented business which at the time it received its sexually oriented business license was in compliance with the location requirements of section 180-34 does not violate that section if when the sexually oriented business applies to renew its valid sexually oriented business license a church, school, dwelling, public park or childcare facility is now located within five hundred (500) feet of the sexually oriented business. This provision applies only to the renewal of a valid sexually oriented business license and does not apply to an application for a sexually oriented business license that is submitted as a result of the previous sexually oriented business license at the same location expiring or being revoked.

**§ 180-37. Stage Required in Adult Cabaret and Adult Theater.**

Any adult cabaret or adult theater shall have one or more separate areas designated as a stage in the diagram submitted as part of the application for the sexually oriented business license. Entertainers shall perform only upon a stage. The stage shall be fixed and immovable and located inside the building in which the adult use operates. No seating for the audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage.

**§ 180-38. Conduct in Sexually Oriented Business.**

- A. No licensee, manager or employee mingling with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity. It is a defense to any prosecution for a violation of this subsection that an employee of a sexually oriented business exposed any specified anatomical area only during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room that is accessible only to employees.
- B. No licensee, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress, or fondle the genitals, pubic region, buttocks, anus or breasts of any person.

**§ 180-39. Employee Tips.**

- A. It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in subsection C of this section.
- B. A licensee that desires to provide for tips from its patrons shall establish one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.
- C. A sexually oriented business that provides tip boxes for its patrons as provided in this section shall post one or more signs to be conspicuously visible to the patrons on the premises, in bold letters at least one inch high to read as follows:

"All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

**§ 180-40. Unlawful acts.**

It shall be unlawful for a licensee, manager or employee to violate any of the requirements of this Chapter, or of Article II of Chapter 110, or knowingly to permit any patron to violate the requirements of this article.

**§ 180-41. Exemptions.**

- A. The provisions of this article regulating nude model studios do not apply to:

1. A college, junior college, or university supported entirely or partly by taxation;
2. A private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
3. A business located in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and where no more than one nude model is on the premises at any one time.

**§ 180-42. Regulation of Peep Booths.**

- A. It shall be unlawful for a person who operates or causes to be operated a sexually oriented business with peep booths to violate the following requirements of this section:
1. At least one employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises. The interior of the premises shall be configured in such a manner that such employee shall be clearly visible from every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the employee in at least one of the manager's stations from each area of the premises to which any patron is permitted access for any purpose. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any opaque coverings, two-way mirrors, doors, walls, merchandise, display racks, or other materials at all times, and no patron shall be permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Article II of Chapter 110 of this Code.
  2. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video display equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any opaque coverings, two-way mirrors, doors, walls, merchandise, display racks, or other materials at all times, and no patron shall be permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Article II of Chapter 110 of this Code.

3. No peep booth may be occupied by more than one person at any one time.
4. No door, two-way mirror, screen, opaque covering or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths.

**§ 180-43. Hours of Operation.**

- A. It shall be unlawful for a sexually oriented business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons upon the licensed premises during the following time periods:
  - (1) On any Tuesday through Saturday from 2:00 a.m. until 7:00 a.m.;
  - (2) On any Monday, other than a Monday that falls on January 1, from 12:00 a.m. until 8:00 a.m.;
  - (3) On any Sunday from 2:00 a.m. until 8:00 a.m.;
  - (4) On any Monday which falls on January 1 from 2:00 a.m. until 7:00 a.m.

**§ 180-44. Minimum Age.**

- A. Except for such employees as may be permitted by law, it shall be unlawful for any person under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that operates pursuant to a type A sexually oriented business license. It shall be unlawful for any person under the age of eighteen (18) years to be upon the premises of a sexually oriented business.
- B. It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of twenty-one (21) years, except for such employees as may be permitted by law, to be upon the premises of a sexually oriented business operated pursuant to a type A sexually oriented business license. It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of eighteen (18) years upon the premises of a sexually oriented business.

**§ 180-45. Signs for Sexually Oriented Businesses.**

In addition to complying with all other sign regulations of this Code, a sexually oriented business shall display a sign, clearly visible and legible at the entrance to the business, that gives notice of the adult nature of the sexually oriented business and of the fact that the premises is off limits to minors or those under the age of 21 years, as the case may be. No sign for a sexually oriented business shall contain flashing lights, words, lettering, photographs, silhouettes, drawings or pictorial representations that emphasize specified anatomical areas or specified sexual activities.