

Adult Entertainment Businesses

Town of Berkshire Ordinance for Adult Entertainment Businesses

◆SECTION 1. PURPOSE

The establishment of adult entertainment businesses in the Town of Berkshire might result in significant changes in the character of our Town. It is, therefore, necessary that these businesses be regulated in such a manner so as to preserve the character of our Town.

◆SECTION 2. DEFINITIONS

(a) Person: Any person, firm, partnership, corporation, association, or legal representative, acting individually or jointly.

(b) Specific Anatomical Areas: Less than completely covered human genitals, pubic regions, buttock, and female breasts below a point immediately above the top of the areola, and the human male genitals in a discernible turgid state.

(c) Specific Sexual Activities: (1) human male genitals in a state of sexual stimulation or arousal; (2) ultimate sex acts normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation or sodomy, and (3) fondling or other erotic touching of human or animal genitals, pubic regions, buttocks or female breasts.

(d) Adult Entertainment Businesses:

(1) Adult Book Store: A person, establishment or business having more than a minimal portion of its stock in trade, such as recordings, books, magazines, periodical films, video tapes/cassettes or other reading or viewing materials for sale or viewing at the premises, materials which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific or general sexual activities or anatomical areas; or an establishment with a section devoted to the sale or display or viewing of such materials.

(2) Adult Motion Picture Theater: A structure--either indoors or outdoors--used for showing, displaying or presenting to patrons therein or thereat materials distinguished and characterized by emphasis on depicting, describing or relating to specific or general sexual activities or specific anatomical areas.

(3) Adult Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically, mechanically or otherwise controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to any one person at any machine at any time so displayed as to distinguish or characterize by emphasis on depicting or describing specific sexual activities or specific anatomical areas.

(4) Adult Entertainment Cabaret: A public or private establishment which is licensed to serve food and/or alcoholic beverages and which features topless and/or bottomless dancers, strippers, male or female impersonators or similar entertainers, or employees appearing in a bottomless and/or topless manner of dress.

(5) Massage Establishment: An establishment having a place of business where any person, firm, association, or corporation engages in, carries on, or permits to be engaged in or carried on, any of the following activities:

Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or device, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or others similar preparations.

The term "Massage Establishment" shall not apply to licensed hospitals, licensed nursing homes, or clinics or persons holding an unrevoked certificate to practice under the laws of the State of New York.

◆SECTION 3. PROHIBITION:

(a) No person shall cause or permit the establishment of any of the above specific Adult Entertainment Businesses within 500 feet of any type of residence, commercial business, or within 1000 feet to any church school, park, playground or existing Adult Entertainment Business.

(b) The establishment of an Adult Entertainment Business shall include the opening of such business as new business, the relocation of such business, or the conversion of an existing business location to any of the uses described above.

(c) For the purpose of this Ordinance, measurements shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises for an Adult Entertainment Business to the nearest property line of a property containing a residential dwelling or rooming unit, a church, school, commercial business, Adult Entertainment Business, or to the nearest boundary of a park or playground.

(d) Violation of this Ordinance is punishable by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed three (3) months, or by both such fine and imprisonment. Each day during any portion of which any violation of the Ordinance is committed, permitted or continued, shall constitute a separate offense.

(e) If any provisions or clauses of this Ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect the other provisions or clauses or applications thereof, which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of the Ordinance are declared to be severable

◆SECTION 4. APPLICATION FOR A PERMIT TO OPERATE AN ADULT ENTERTAINMENT BUSINESS:

(a) Applicants for a permit to operate an Adult Entertainment Business shall submit the following:

(1) Name, address and telephone number of applicant.

(2) A map showing the location of the premises for which such permit is sought, and the existing or proposed location of structures upon such premises.

(3) Name and address of the person, firm, corporation or association which will operate the Adult Entertainment Business if the permit is granted.

(4) Such other information as the Town Board shall request in order to have all facts before it prior to making a decision.

(b) Upon receipt of such application and any necessary supplementary information, the Town Board shall set a date for a Public hearing in regard to the granting of such a permit, and a notice of such public hearing shall be published no earlier than twenty (20) days and no later than ten (10) days before the date of such public hearing.

(c) At the time of the public hearing, the applicant must present to the Town Board an affidavit certifying that written notice of the public hearing was given by the applicant to all owners of real property, as shown on the latest completed assessment roll, within the footage specified above under Section 3 (a) of the premises for which a permission is sought. Such notice must be given no earlier than twenty (20) days and no less than ten (10) days before the date of such public hearing.

◆SECTION 5. EFFECTIVE DATE:

This Ordinance shall take effect ten (10) days after posting and publication as required by law and immediately as to any person personally served with a certified copy thereof.