

Section 8.11 Adult Entertainment

8.11.1 Authority, Purpose and Intent

The purpose of this section is to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment enterprises, in response to studies demonstrating their deleterious effect. This section addresses and mitigates the secondary effects of adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime and blight, the flight of existing businesses, and adverse impacts on public health, property values of residential and commercial properties, the business climate, and the general quality of life in the community. All of said secondary impacts are adverse to the health, safety and general welfare of the Town of Templeton and its inhabitants.

This section is intended to be consistent with the provisions of M.G.L. chapter 40A and the Town's authority under the Home Rule Amendment to the Massachusetts Constitution. The provisions of this by-law have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials that are protected by the U.S. or Massachusetts Constitutions, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Similarly, it is not the intent nor effect of this chapter to condone or legitimize the distribution of obscene or other illegal matter or materials.

8.11.2 Definitions Specific to Adult Entertainment

As used herein, and consistent with the definitions in M.G.L. c.40A, section 9A, Adult Uses shall include the following: adult bookstore, adult video store, adult paraphernalia store, adult motion picture theatre establishment, adult live entertainment, massage service establishment, sexual encounter club, adult cabaret or club, adult motel or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or sexual excitement as defined in MGL c. 272 §31.

Adult uses shall include an establishment with a combination of adult use materials as listed above including books, magazines, devices, objects, tools, or toys, movies, videos, and any similar audio/visual media for sale or rent, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL c. 272 §31, which in combination, is either:

- (a) greater than fifteen percent 15% of the subject establishment's inventory stock measured by volume and /or value; or
- (b) greater than twenty-five percent (25%) of subject premise's gross floor area, or 200 square feet, whichever is greater.

Adult Use - a use of a building or business (whether partial or entire) for the purpose of engaging in the sale, display, hire, trade, exhibition or viewing of materials or entertainment depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, §31, including adult bookstores, adult live entertainment, adult motion-picture theaters, adult paraphernalia stores and adult video stores, massage service establishments, sexual encounter clubs, adult cabaret or club, adult motel or

similar establishment customarily excluding any minor by reason of age as a prevailing practice, as may be further defined in this bylaw.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock in trade devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31.

Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade, videos, movies, computer software, computer discs, laser discs or other film material which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272, §31.

Nudity - Uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For the purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered as defined in M.G.L. c. 272, §31 as it may be amended.

Sexual Conduct - Human masturbation, sexual intercourse, actual or simulated, normal or perverted, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship, any lewd touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, and any depiction or representation of excretory functions in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted as defined in M.G.L. c. 272, §31 as it may be amended.

Sexual Excitement - The condition of human male or female genitals or the breasts of the female while in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity as defined in M.G.L. c. 272, §31 as it may be amended.

Sexual Encounter Club - A business or commercial enterprise, public or private, 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 persons is in the state of nudity; or where the activities in (A) or (B) are distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31, as amended.

Adult Cabaret or Club - A restaurant, or other establishment licensed under Section 12 of Chapter 138, of the General Laws, which, as a form entertainment, which features exotic dancers, strippers, male or female impersonators or similar entertainers, or allows a person or persons to work in a state of nudity; or provides films, motion pictures, video cassettes, compact disks, slides, photographic reproductions, or other visual and/or audio media, regardless of form or method of presentation, which are characterized by

the depiction or description of sex-related anatomical areas, or relating to any sexual activity, including sexual conduct or sexual excitement, as defined in M.G.L. c. 272 § 31, as amended.

Adult Motel - A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31, as amended.

Membership Club - A social, sports, or fraternal association or organization used exclusively by members and their guests and which may contain bar facilities, but excluding sexual encounter clubs.

8.11.3 Special Permit

Adult entertainment uses shall be only in non-residential zoning districts, where such uses shall be allowed only upon the grant of a Special Permit by the Planning Board in accordance with Site Plan Approval by the Planning Board in accordance with this zoning bylaw.

8.11.4 Filing Requirements, Siting Criteria, Conditions

8.11.4.1 Submission Requirements

- a. The application for a special permit for an adult use shall provide
 - (1) name and address of the legal owner of the establishment,
 - (2) legal owner of the property,
 - (3) manager of the proposed establishment,
 - (4) proposed number of employees
 - (5) proposed security precautions,
 - (6) description of compliance with the siting criteria set forth in Section 4.2, and
 - (7) description and illustration of the physical layout of the premises.
- b. A special permit hearing shall be held within forty-five (45) days after an application is filed with the Town Clerk. A decision on the special permit application shall be held within forty-five (45) days after the public hearing.
- c. No adult use special permit shall be issued to any applicant, or the representative of an owner, operator, or manager of an adult entertainment facility who has been convicted of violating the provisions of M.G.L. c. 119, §63 (Inducing or abetting delinquency of a child) or M.G.L. c. 272, §28 (Crimes against chastity, morality, decency and good order) or equivalent statutes in other jurisdictions. The application shall include authorization for the Town to confirm criminal record information through the appropriate authorities.

8.11.4.2 Siting Criteria

Adult entertainment uses shall comply with the following siting criteria, where the distance from the developed portion of the subject site shall:

- a. Adult uses shall not be located closer than 100 feet from a residential zoning district or residential dwelling;
- b. Adult uses shall not be located within 1,000 feet from a church, school, playground, play field, cemetery, public open space, youth center, day care center.
- c. Adult uses shall not be located within 1,000 feet from another adult use as defined herein;
- d. Adult uses shall not be located within 500 feet from an establishment licensed under M.G.L. c. 138, §12 allowing sale of alcohol for drinking on premises;
- e. The distances specified in this section shall be measured by a straight line from the nearest developed portion of the premises on which the adult entertainment use is proposed (including structures proposed to contain adult uses and associated accessory structures and parking) to the nearest property line of the uses stated in a. through d. above.
- f. All adult entertainment uses shall be located in the C-I-B district in accordance with Section 8.4.2(k).

8.11.4.3 *Conditions*

The Planning Board shall issue a special permit for an Adult Entertainment Use if the Submission Requirements of Section 4.1, the Siting Criteria in Section 4.2, and the following conditions are met:

- a. No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises. All entrances to an adult entertainment business, or portion of the business displaying material of adult content, shall be clearly and legibly posted by a notice indicating that minors are prohibited from entering the premises or portion of the business as the case may be.
- b. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- c. No adult entertainment use shall be allowed to display any advertisement, sign, placard, or other matter of visual material containing or depicting nudity, sexual conduct or sexual excitement.
- d. Any special permit granted for an adult entertainment use shall be personal to the applicant, shall not run with the land, and shall expire upon the expiration of the applicant's lease or upon sale or transfer of the subject's property/business.
- e. If the Adult Use allows for the showing of films or videos within the premises, any booths in which the films or videos are viewed shall not be closed off by curtains, doors

or screens. All booths must be able to be clearly seen from the center of the establishment.

- f. No adult use shall be allowed within a building containing residential uses.
- g. No adult use shall be allowed within a shopping center, shopping plaza or mall. For the purposes of this section “shopping center”, “shopping plaza”, and “mall” shall be defined as an integrated group of retail establishments and associated parking whether located on one or more parcels of land.
- h. No loudspeakers or sound equipment shall be used by an Adult Entertainment Business for the amplification of sound to a level discernible by the public beyond the walls of the building in which the Adult Entertainment Business is conducted.
- i. An Adult Entertainment Business shall not remain open for business, or permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 1:00 A.M. and 10:00 A.M. of any particular day. In the case of Adult Bookstores, Video Stores, and Adult Paraphernalia Stores, business hours shall be limited to hours between 9:00 A.M to 10:00 P.M. These hours of operation may be further restricted in the conditions granting a Special Permit for an Adult Entertainment Business.
- j. A Certificate of Occupancy for an Adult Use shall not be issued until the applicant has first received any required license from the appropriate Licensing Boards.
- k. Any adult entertainment use granted a special permit shall comply with all other Town Bylaws and all statutes of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

8.11.4.4 Severability

The provisions of this section are severable and, in the event, that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

Passed 12/7/06, Approved by A/G 3-6-07