

3.8 SEXUALLY ORIENTED BUSINESSES

3.8.1 Purpose and Intent

It is the intent of this Section to establish reasonable and uniform regulations to prevent the concentration of Sexually Oriented Businesses within the Town of Londonderry; and to protect the citizens of the Town of Londonderry from the secondary effects of such Sexually Oriented Businesses and, it is the intent to promote the health, safety, and general welfare of the citizens of the Town of Londonderry; and it is the intent of this Section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of Sexually Oriented Businesses; and the provisions of this article have neither the purpose nor the intent of imposing limitation or restrictions on the contact of any communicative materials, including Sexually Oriented Materials, and it is not the intent nor the effect of this article to restrict or deny access by adults to Sexually Oriented Materials protected by the First Amendment, or to deny access by the distributors and exhibitors of Sexually Oriented Entertainment to their intended market; and neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

3.8.2 Location Restrictions of Sexually Oriented Businesses

Location Restrictions of Sexually Oriented Businesses as defined in Section 4.7, shall be subject to all regulations, requirements, and restrictions for the zone in which the Sexually Oriented Businesses are permitted and shall be subject to the following distance requirements:

3.8.2.1 No Sexually Oriented Business shall be permitted within 1,000 feet of another Sexually Oriented Business which is either existing at the effective date of his article or one for which a building permit has been applied for, and no Sexually Oriented Business shall be permitted within a building, premises, structure or any other facility that contains another Sexually Oriented Business.

3.8.2.1.1 No Sexually Oriented business shall be permitted within 500 feet of any:

3.8.2.1.1.1 Residentially zoned land (AR-I and R-III)

3.8.2.1.1.2 Commercial III (office) zoned land;

3.8.2.1.1.3 Church, place of worship, parish house, convent, public or parochial or private school; kindergarten, state approved day care center, public sports or recreation park;

3.8.2.1.1.4 Town boundary line

3.8.2.2 Measure of Distance

The distancing requirements above shall be measured in a straight line, without regard to intervening structures, from the property line of any site above (unless otherwise specified) to the closest exterior wall of the structure where Sexually Oriented Business is conducted.

3.8.3 Performance Standards

3.8.3.1 Lighting

Lighting shall be high pressure sodium vapor and located adjacent to the designated parking spaces at a ratio of one light per twenty (20) spaces. Spotlights or similar illuminating devices shall be shielded and/or directed to avoid visibility of the light source and any associated beam from public right of way or adjacent property.

3.8.3.2 Screening

“Sexual Conduct” including instruments, devices or paraphernalia which are designed for use in connection with sexual conduct or their images, shall not be visible in any fashion whatsoever from the outside of the building where the business is located.

3.8.3.3 Signage

Signage shall comply with Section 3.11, Signage, of this Ordinance. Signs shall not include nudity or include images or references to sexual conduct, whether actual or simulated, or instruments, devices, or paraphernalia which are designed for use in connection with sexual conduct.

3.8.3.4 This use is subject to Site Plan Review

3.8.3.5 Noise

No prurient sounds associated with sexual conduct shall be audible outside the building or portion of the building in which business is conducted.

3.8.4 Severability

The invalidity of any Section or provision of this article shall not invalidate any other Section or provision thereof.

4.7 DEFINITIONS

SEXUAL CONDUCT: means human masturbation, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, any depiction or representation of excretory functions, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.

SEXUAL CONDUCT SUBSTANTIAL PORTION OF THE TOTAL PRESENTATION TIME: Occurring on more than seven (7) days within any fifty-six (56) consecutive day period.

SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that a substantial part of the time, 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; and where the activities in (A) or (B) is characterized by an emphasis on "sexual conduct."

SEXUALLY ORIENTED BUSINESSES:

ADULT BOOKSTORE or ADULT VIDEO STORE - A business that devotes more than 15% of the total display, shelf, rack, table, stand, or floor area, utilized for the display and sale of the following:

- A. Books, magazines, periodicals, or other printed matter, or photographs, films, video games, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which depict or describe "sexual conduct"; or
- B. Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct".
- C. An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than 15% of the total display, shelf, rack, table, stand, or floor area of the establishment to the sale of books and periodicals.

ADULT CABARET - A nightclub, bar, restaurant, or similar commercial establishment or a private membership club, fraternal membership or social club which during a substantial portion of the total presentation time features:

- A. Live performances which are characterized by "sexual conduct"
- B. Feature films, motion pictures, video cassettes, slides or other photographic reproductions, which depict or describe "sexual conduct".

ADULT DRIVE-IN THEATER - An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which depict or describe "sexual conduct".

ADULT MOTION PICTURE ARCADE - Any place in which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to four or fewer persons per machine at any one time, and in which a substantial portion of the total presentation time of the images so displayed is distinguished or characterized by the depicting or describing of "sexual conduct".

ADULT MOTION PICTURE THEATER - An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which depict or describe "sexual conduct".

ADULT THEATER: A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which depict or describes "sexual conduct".