

 §500-88 Adult Businesses Updates old §500-48. See discussion of adult business studies on next page.

- A. Findings. In adopting these standards which apply to adult businesses, the Borough has made the following findings in regard to the secondary effects on the health, safety and welfare of the citizens of The Borough. The findings are based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Borough, and on findings incorporated in the cases of City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986), Young v. American Mini Theaters, 427 U.S. 50 (1976), and Northend Cinema, Inc., v. Seattle, 585 P. 2d 1153 (Wash. 1978), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Saint Paul, Minnesota; Manatee County, Florida; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; Austin Texas; Seattle, Washington; Oklahoma City, Oklahoma; Beaumont, Texas; and New York City, New York; and also on findings found in the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, June 6, 1989, State of Minnesota.
- (1) Health Concerns. The concern over sexually transmitted diseases is a legitimate health concern which demands reasonable regulation of adult businesses and adult uses in order to protect the health and well-being of the citizens.
 - (2) Behavior. Certain employees of sexually oriented business regulated by this chapter as adult theaters and cabarets engage in higher incidents of certain types of sexually oriented behavior at these businesses than employees of other establishments.
 - (3) Sexual Acts. Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows, as regulated by this chapter as adult book stores, adult novelty shops, adult video stores, adult motion picture theaters, or adult arcades.
 - (4) Unhealthy Conditions. Offering and providing such space, encourages such activities, which create unhealthy conditions.
 - (5) Sexual Activities. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
 - (6) Communicable Diseases. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, non B amebiasis, salmonella infections and shigella infections; and, the incidence of many of these diseases is on the increase.
 - (7) Unhealthy Conditions. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the

activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

- (8) Bodily Fluids. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view *adult* oriented films.
 - (9) Accountability. Classifying adult businesses as conditional uses is a reasonable means of accountability to ensure that operators of adult businesses comply with reasonable regulations and conditions, and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
 - (10) Externalities. There is convincing documented evidence that adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, and the decline of the overall character of the community. A number of municipal studies, including the 1986 Austin, Texas study, have demonstrated this.
 - (11) Operational Characteristics. It is generally recognized that adult businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to neighborhood blight and downgrading the quality of life in the adjacent area. A number of municipal studies, including the 1986 Austin, Texas study, have demonstrated this.
 - (12) Reason for Control. The Borough desires to minimize and control these adverse secondary effects and thereby protect the health, safety and welfare of the citizenry, protect the citizens from increased crime; preserve the quality of life, preserve property values and the character of the surrounding community.
- B. Intent. It is the intent of this §500-88 to:
- (1) Secondary Effects. Regulate adult business in order to promote the public health, safety and welfare by minimizing the secondary effects on the community which are associated with such businesses, and which include difficulties for law enforcement, trash disposal, deleterious effects on business and residential property values, increased crime (particularly the corruption of morals of minors and prostitution), and drive residents and businesses to move elsewhere.
 - (2) Zoning District. Designate a zoning district where adult businesses are permitted, and establish reasonable, content neutral standards applicable to such uses.
 - (3) Content. Have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials including sexually oriented or adult materials.
 - (4) First Amendment. Not totally restrict or deny access by adults to sexually oriented materials or adult materials protected by the First Amendment of the Bill of Rights of the U.S. Constitution.
 - (5) Intended Market. Not deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
 - (6) PA Code. Not condone or legitimize the distribution of obscene material, or to encourage any violation of the PA Crime Code or PA Obscenity Code.

- C. Standards. In addition to all other applicable requirements the following standards shall apply to adult businesses:

Is setback exclusionary? (OK per committee)

- (1) Setback. Adult businesses shall not be located less than 500 feet from any of the uses listed in this §500-88C. The distance between any adult business and any listed use shall be measured in a straight line, without regard to intervening structures, from the closet point of the adult business lot line and associated parking to the closet point on the lot line of the listed use.
 - (a) Place of worship.
 - (b) Public or private school or college.
 - (c) Public recreation building or facility.
 - (d) Public library.
 - (e) Public museum.
 - (f) Child day care center.
 - (g) Commercial enterprises catering primarily to persons less than 18 years of age.
 - (h) Gaming establishment.
 - (i) Any R-1, R-2, R-3 or R-4 Districts.
- (2) Similar Businesses. Adult businesses shall not be located within 1,000 feet from any other adult business. The distance between any two adult businesses shall be measured in a straight line, without regard to intervening structures, from the closest point of the adult lot line and associated parking to the closest point of the other adult business and associated parking lot line.
- (3) Setbacks; Buffer. An adult business shall have sufficient buffer yards as required by §500-60, subject to such additional or stricter setbacks from the regular setback, said regular setbacks to apply as a minimum setback, to the structure housing the actual use and subject to the stricter screening as in the discretion of the Council shall be necessary for the public health, safety and welfare in particular situations and which assures appropriate buffer yards between the proposed use and surrounding and contiguous lots. Any such additional setback or screening requirements shall be stated as conditions for the use.
- (4) Enlargement.
 - (a) No type of adult business may expand or change to another adult business, except upon approval as an additional conditional use.
 - (b) An existing, lawful nonconforming adult business may be expanded as a conditional use once in total floor area beyond the floor area that lawfully existed in such use at the time of adoption of this provision of this chapter, but only in accord with the limitations of this chapter.
- (5) Limit of One Use. It shall be a violation of this chapter for any person to cause or permit the operation, establishment, or maintenance of more than one adult business in the same building, structure or portion thereof, or an increase of floor area of any adult business in any building, structure, or portion thereof that contains another adult business.
- (6) Nonconformity. Any adult business lawfully operating on the date of enactment of this chapter that is in violation of any of the provisions of this §500-88 shall be deemed a nonconforming use. Such nonconforming uses shall not be increased, enlarged, altered or extended, except as permitted in §500-

- 88C(4). The use may be changed to a conforming use. However, under no circumstances shall a non-conforming use as defined and regulated by this chapter be changed to any other type of adult business.
- (7) Location of New Neighboring Uses. An adult business lawfully operating as a conforming use shall not be rendered a nonconforming use if, subsequent to the grant of a conditional use permit, a use from which an adult business is required to provide a setback under §500-88C(1) is developed within the required setback distance.
- (8) Lighting. Overhead lighting shall be provided to illuminate all improved areas of the property; and said lighting shall be in compliance with all requirements of this chapter.
- (9) Visibility. No materials, merchandise, or film offered for sale, rent, lease, loan or for view upon the premises shall be exhibited or displayed outside of a building or structure or shall be visible from a window, door, or exterior of a building or structure. Any building, structure, or room used and occupied as an adult business shall be windowless or have an opaque covering over all windows or doors of any area in which materials, merchandise, film, service, or entertainment are exhibited or displayed, and no sale materials, merchandise, film, or offered items of service or entertainment shall be visible from outside the structure.
- (10) Signs. Exterior signs shall comply with the provisions of Article XI. Content of such signs shall be limited to only the text of the name of the business and the hours of operation. No sign shall be erected upon the premises depicting or giving a visual representation of the type of materials, merchandise, film, service, or entertainment offered therein.
- (11) Entrances. ~~No person under the age of 18 years of age shall be permitted within a building whose operation would be considered an adult use ????~~ Each and every entrance to the structure shall be posted with a notice that the use is an Adult Business, that persons under the age of 18 are not permitted to enter, and warning all others that they may be offended upon entry.
- (12) Physical or Sexual Contact. No use shall include live actual or simulated sex acts or any physical or sexual contact between employees and contractors, entertainers or dancers, nor between employees, contractors, entertainers or dancers and customers. At an adult live entertainment use or facility, employees, entertainers and dancers shall maintain a minimum distance of three feet from customers.
- (13) Hours of Operation. The use shall not operate between the hours of 2:00 a.m. and 7:00 a.m.
- (14) Viewing Booths. For public health reasons, private or semi-private viewing booths of any kind are prohibited. This specifically includes, but is not limited to, booths for viewing adult movies or nude dancers.
- (15) Garments. All persons within any adult use shall wear non-transparent garments that cover their genitals and the female areola, except within a permitted lawful Adult Live Entertainment Use or Facility.
- (16) State Law Compliance. As a specific condition of approval under this chapter, the applicant shall prove compliance with all applicable State laws, including, but not limited to, the Pennsylvania Liquor Code, Act 219 of 1990; Act 207 of 1990 (which pertains to obscenity); and Act 120 of 1996 (which pertains to Adult-Oriented Establishments and which limits enclosed viewing booths among other matters).
- (17) Exemption for Modeling Class. Any modeling class which involves a person appearing in a state of nudity and which is operated by or involves any of the following shall be exempt from the provisions of this §500-

88:

- (a) By a proprietary school, licensed by the State, or an academically accredited college or university;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation;
- (c) In a structure.
 - [1] which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - [2] where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
 - [3] where no more than one nude model is on the premises at any one time; or
- (d) By an organization which qualifies under §501(c)(3) of the U.S. Internal Revenue Code as a non-profit organization or foundation.