

Section 608 – AD ADULT USES

A. Purpose and intent:

It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town of Sparta, this article is added to the Town of Sparta Zoning Law. It is intended to restrict adult uses to certain nonresidential areas of the Town of Sparta and otherwise regulate their operation. This article is intended to promote the health, safety and welfare of the residents of the Town of Sparta by regulating the concentration of such uses and shall be included in the Town of Sparta Zoning Law as the Adult Uses article.

B. The Constitution and laws of the State of New York grant to the Town of Sparta powers to enact reasonable legislation and measures to regulate and supervise adult entertainment establishments in order to protect the public health, safety and welfare.

C. It is not the intent of the Town of Sparta in enacting this article to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the Town of Sparta to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, video tapes, books and/or other materials. Further, by enacting this article, the Town of Sparta does not intend to deny or restrict the rights of any adult to obtain and/or view any sexually oriented materials protected by the United States and/or State Constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have.

D. Definitions:

As used in this article, the following terms shall have the meanings indicated. NOTE: These definitions are to include any type of business(es) or combination of business(es) where specified anatomical areas are displayed or specified sexual activities are encountered.

ADULT BOOKSTORE:

An establishment or business, whether retail or wholesale, having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals, films and viewing materials for sale or viewing on premises by use of motion-picture devices or any coin-operated means, including video tapes and props and toys, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment or business containing a segment or section devoted to the sale or display of such material.

ADULT CABARET:

A business enterprise which serves food or beverages for consumption on the premises, with or

without carry-out service, which features entertainers or waiters and/or waitresses who display any specified anatomical area or who depict, describe or simulate specified sexual activities.

ADULT ENTERTAINMENT CABARET:

A public or private establishment that presents topless dancers, strippers, male or female impersonators or exotic dancers, or other simulate entertainment.

ADULT MOTION-PICTURE THEATER:

An enclosed building or structure or portion of a building or structure used for presenting materials having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT USE:

An adult bookstore, adult cabaret, adult entertainment cabaret, adult motion-picture theater, message establishment, body-rub establishment, peep show or any other business(es) where specified anatomical areas are displayed or specified sexual activities are encountered.

BODY RUB ESTABLISHMENT:

Any establishment having a fixed place of business where body rubs are administered for pay.

MESSAGE ESTABLISHMENT:

Any establishment having a fixed place of business where messages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic; or the office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist; or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition also shall exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages. Such establishments are not prohibited, provided they have a duly licensed massage therapist on the premises.

PEEPSHOWS:

A theater that presents material in the form of live shows, films or videotapes, viewed from an individual enclosure and that charges a fee and that is not open to the public generally.

SPECIFIED ANATOMICAL AREAS:

1. Less than the completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
2. Human male genitals in a discernibly turgid state even if completely opaquely covered.

SPECIFIED SEXUAL ACTIVITIES:

1. Human genitals in a state of sexual stimulation or arousal.
2. Acts of human masturbation, sexual intercourse, sodomy or bestiality.
3. Fondling or other erotic touching of human genitals, public region, buttock or female breast.

SUBSTANTIAL CONNECTION:

1. In a sole proprietorship, an individual who owns, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.
2. In a partnership, limited or general, an individual who shares in any potential profits or losses of the business or who shares in the ownership of any of the assets of the partnership business.
3. In a corporation, an individual who is an officer, director or a holder, either directly, indirectly or beneficially, of more than 20% of any class of stock.
4. Any person who furnishes more than 20% of the capital financing or assets of such business, whether in cash, goods or services.

E. Restrictions:

Adult uses are restricted to the adult use (AD) zone as specified on the official zoning map and are conditionally permitted. The following additional regulations apply.

1. The adult bookstores, adult cabarets, adult entertainment cabarets, adult motion-picture theaters, adult motels massage establishments, body rub establishments and peep shows or any other adult use governed by these provisions shall be allowable only for properties located in the areas zoned B Business District and subject to the requirements herein established.

2. No more than one of the uses governed by these provisions shall be permitted on any single qualifying building lot in the Town of Sparta.

3. None of the uses governed by these provisions shall be allowed in any zoned district of the Town of Sparta where conditions as herein provided for exist:

- (a) Within 500 feet of the boundary of any residential or residential/agricultural zoning district.
- (b) Within 500 feet of the property line of a public or private school, hospital, synagogue, church or other religious institution, day-care center, youth center, park or playground, public library or areas where minors congregate.
- (c) Within 500 feet of the property line of any lot containing an adult use.

4. All adult uses, adult bookstores, adult cabarets, adult entertainment cabarets, adult motion-picture theaters, adult motels, massage establishments, body-rub establishments and peep shows, with the exception of the permitted signs, landscaping and off-street parking, shall be conducted in an enclosed building, regardless of location or distance, no one who is passing by an enclosed building having a use governed by these provisions shall be able to see any specified anatomical are or any specified sexual activity by virtue of any act or display that depicts or shows said area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.

5. A person who knowingly owns, manages, operates, conducts or maintains any of the uses governed by these provisions in any manner which is contrary to these regulations shall be subject to prosecution under letter L. Penalties for offenses, of this article.

6. No such establishment as defined in this law shall employ any individual(s) below the age of 18 years.

F. Registration:

No person, firm corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains an adult use, without first complying with the provisions of this section as set forth below:

1. In addition to the completion of the short EAF (environmental assessment form) and any and all other necessary licenses and permits, no form or adult use shall be allowed to operate or continue to operate until a certificate of registration in the form of a special use permit issued according to the procedures set forth herein for such permit by the Town of Sparta. Such permit shall be issued and filed with the Town Clerk. Upon approval to issue, the special use permit (aka: certificate of registration) shall contain:

(a) The name and address of the business or the establishment subject to the provisions of this article.

(b) The names, business and home addresses and business or home phone numbers of all owners of the business or establishment subject to the provisions of this article.

(c) The names, business and home addresses, and business or home phone numbers of all those persons having a substantial connection with the business or establishment subject to the provisions of this article.

(d) The date of the initiation of the adult use.

(e) The exact nature of the adult use.

(f) If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease, name of the tenant and name, address and telephone number of the property owner shall be provided.

(g) The applicant shall also submit a plan drawn to appropriate scale of the premises proposed for registration indicating the areas to be covered by the registration, all windows, doors, entrances and exits and the fixed features of the proposed registered premises. The term "fixed features" shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths and stands, immovable counters and similar appurtenances that are intended to be permanent.

(h) The applicant shall state all criminal convictions, the nature of such convictions(s), if any, and location(s) where activity occurred.

2. If any change occurs in the information required for the process or the certification of registration, the Town Clerk shall be notified of such change and a new, or amended, certificate filed within 30 days of such change.

3. The processing fee for such certificate of registration as listed in the Town's Schedule of Fees, which shall be issued as a special use permit, and renewed annually, shall be

payable to the Sparta Town Clerk annually. Any amendment to an existing certificate of registration shall constitute a fee of \$50 payable to the Sparta Town Clerk at time of filing.

4. No certificate of registration issued under the provisions of this article shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premise(s), building(s) or location(s) other than stated in the certificate of registration.

5. In regards to change of name or address, a registrant may not move the registered adult use to a new location or a new registrant without first following the same procedure for the issuance of a new registration and the payment of the application fee. The registrant shall submit to the Town Clerk an application for a change of location, or registrant, accompanied by the special use permit application fee.

6. The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this article to be prominently displayed at all times on the premises, building or location for which it is issued.

7. Any knowingly false statement or any statement which the registrant or applicant should reasonably have known to be false which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for denial, rejection, suspension or revocation of the certificate of registration.

8. It is a violation of this article for the owner or person in control of any property to establish or operate thereon or to permit an adult use without having in force and displayed a certificate of registration complying with this section.

9. No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, screen or other opening on any structure or portion of the property.

G. Registration approval process.

1. Upon the completion of the investigation of an application by the Code Enforcement Officer (CEO), and any additional police agency required by the CEO, the CEO shall submit a written recommendation for approval or disapproval along with the application to the Town of Sparta Planning Board to initiate the special use permit process.

2. If approved, the Town Clerk shall notify the applicant and issue the certificate of registration upon the payment of the registration fee.

3. If disapproved, the CEO shall indicate the reason(s) for the disapproval either on the application, or in a separate attached written document. The CEO shall inform the applicant of the disapproval. Notification of disapproval shall be by certified mail and

shall be sent to the address on the registration application, which shall be considered to be the correct address and meet requirements for complete and sufficient notice.

H. Term of registration.

1. All registration(s) issued under this article shall be classified as annual registration(s) that shall be paid for on or before October 1 and shall expire on September 30 of the following year. A registrant beginning business after October 1 and before April 1 may obtain a new registration upon application thereof and the payment of the appropriate annual registration fee, and such registration shall expire on the following September 30. A registrant beginning business after March 31 and before October 1 may obtain a new registration upon application thereof and the payment of 1/2 of the appropriate annual registration fee herein required, and such registration shall expire on September 30 of the same year. The provisions of this section shall not affect any other provisions of the regulation.

2. A registrant under this section shall be entitled to a renewal of the annual registration from year to year, as a matter of course, on or before October 1 by presenting the registration for the previous year or satisfactory evidence of its loss or destruction to the Town Clerk and by paying the appropriate registration fee. It shall also be required at this time that the registrant provide a copy of a current New York State Fire Inspection form issued by the Code Enforcement Officer showing that the establishment is in total compliance with all the codes.

I. Denial of registration.

A new or renewal application for registration shall be denied:

1. When the applicant or any of the other individuals listed as having an interest in the establishment have had their registration previously suspended or revoked or have been a partner in a partnership or an officer, director or principal stockholder of a corporation whose registration has previously been suspended or revoked.

2. When any false statement is made on the application for registration.

3. When the applicant or partner in a partnership or an officer, director or principal stockholder of a former or existing corporation or the corporation itself has been convicted of a criminal act in this state or any other state within five years immediately preceding the date of the application.

4. Any new corporation formed by an officer, directors or principal shareholders of a corporation that has been convicted of a criminal act in this state or any other state within five years immediately preceding the date of the application.

J. Revocation of registration.

The certificate of registration issued under this article shall be revoked immediately if the applicant or partner, officer or principal stockholder of a former or existing corporation or the corporation itself is convicted of a criminal act in this state or any other state during the certificate's span of issuance.

K. Provisions declared to be minimum requirements.

In the interpretation, application and enforcement of the provisions of this article, the provisions thereof shall be held to be minimum requirements necessary for the protection of the health, safety and general welfare of the residents and citizens of the Town of Sparta.

L. Penalties for offenses.

Any person who violates any provision of this article or any regulation adopted hereunder is guilty of an offense punishable by a fine up to \$5,000 or imprisonment for a period up to 30 days, or both. Each day the violation continues shall constitute a separate violation.