

Chapter 72

ADULT-ORIENTED ESTABLISHMENTS

[HISTORY: Adopted 1-4-1999 by the Board of Selectmen of the Town of Somers, effective 1-22-1999. Amendments noted where applicable.]

~ 72-1. Findings and purpose.

The Board of Selectmen of the Town of Somers, Connecticut, finds:

A. Adult-oriented establishments require special supervision from the town's public safety agencies in order to protect and preserve the health, safety and welfare of the patrons of such establishments, as well as the health, safety and welfare of the town's citizens.

B. Statistics and studies performed by a substantial number of cities and towns in the United States indicate that:

(1) Large numbers of persons, primarily male, frequent such adult-oriented establishments, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures and/or videotapes and/or live entertainment; and

(2) Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such adult-oriented establishments for the purpose of engaging in certain sexual acts; and

(3) Male and female prostitutes have been known to frequent such establishments in order to provide sex for hire to the patrons, clients or customers of such establishments within such booths, cubicles and rooms; and

(4) Doors, curtains, blinds and/or other closures installed in or on the entrances and/or exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in sexual acts therein with prostitutes or others, thereby promoting and encouraging prostitution and the commission of sexual acts which cause blood, semen and urine to be deposited on the floors and/or walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits; and

(5) The reasonable regulation and supervision of such adult-oriented establishments tends to discourage such sexual acts and prostitution and thereby promotes the health, safety and welfare of the patrons, clients and customers of such establishments.

C. Unregulated operation of adult-oriented establishments, including, without limitation, those specifically cited at Subsection A hereof, is and would be detrimental to the general welfare, health and safety of the citizens of Somers.

D. The Constitution and laws of the State of Connecticut grant to the town powers, especially police power, to enact reasonable legislation and measures to regulate and supervise adult-oriented establishments as hereinafter defined in order to protect the public health, safety and welfare.

E. It is not the intent of the Board of Selectmen, in enacting this chapter, to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the Board of Selectmen to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and/or other materials. Further, by enacting this chapter, the Board of Selectmen 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 to sell, distribute or exhibit such materials.

~ 72-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT BOOKSTORE -- An establishment having a substantial or significant portion of its stock and trade in books, films, videocassettes or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, and in conjunction therewith has facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies or live entertainment, for observation by patrons therein.

ADULT ENTERTAINMENT -- Any exhibition of any adult-oriented motion pictures, live performance, display or dance of any type which has as a significant or substantial portion of such performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling or any other personal services offered customers.

ADULT MINI MOTION-PICTURE THEATER -- An enclosed building with a capacity of fewer than 50 persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.

ADULT MOTION-PICTURE THEATER -- An enclosed building with a capacity of 50 or more persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by patrons therein.

ADULT-ORIENTED ESTABLISHMENT -- Shall include, without limitation, adult bookstores, adult motion-picture theaters, adult mini motion-picture theaters and further means any premises to which the public, patrons or members are invited or admitted and which

are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or any premises wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult-oriented establishment further includes, without limitation, any adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

EMPLOYEE -- Any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment.

ENTERTAINER -- Any person who provides entertainment within an adult-oriented establishment as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

INSPECTOR -- An employee of the Town of Somers designated by the First Selectman who shall hereby be authorized to inspect premises regulated under this chapter and to take the required actions authorized by this chapter in case of violations being found on such premises and to require corrections of unsatisfactory conditions found on said premises.

MINOR -- A person under the age of 18 years.

OPERATOR -- Any person or any proprietor, shareholder, general partner or limited partner who holds 25% or more of the shares or partnership interest of any business which is operating, conducting, owning or maintaining an adult-oriented establishment.

SEXUAL ACTIVITIES -- As used in this chapter, is not intended to include any medical publications or films or bona fide educational publication or films, nor does it include any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography. Nor does this definition apply to any news periodical which reports or describes current events and which, from time to time, publishes photographs of nude or seminude persons in connection with the dissemination of the news. Nor does this definition apply to publications or films which describe and report different cultures and which, from time to time, publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the population.

SPECIFIED ANATOMICAL AREAS:

A. Less than completely and opaquely covered:

(1) Human genitals or pubic region;

(2) Buttocks; or

(3) Female breasts below a point immediately above the top of the areola.

B. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

SPECIFIED SEXUAL ACTIVITIES:

A. Human genitals in a state of sexual stimulation or arousal.

B. Acts of human masturbation, sexual intercourse or sodomy.

C. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

~ 72-3. Requirements for adult-oriented establishments.

A. No operator or employee of an adult-oriented establishment shall allow or permit any minor or intoxicated person to loiter in any part of such establishment, including parking lots immediately adjacent to such establishment used by patrons of such adult-oriented establishment.

B. Every adult-oriented establishment doing business in the town on or after the effective date of this chapter shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls wherein adult entertainment is provided shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult-oriented entertainment.

C. Upon the effective date of this chapter, the operator of each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be well-lighted and readily accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1.0 footcandle as measured at the floor level. It shall be the duty of the operator and his agents to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

D. Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

E. An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the

provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this chapter.

F. All adult-oriented establishments shall be open to inspection at all reasonable times by an inspector employed by the town or such other person(s) as the First Selectman may designate.

G. No adult-oriented establishment shall be permitted on a site that is less than 1,000 feet from any lot that is zoned for residential uses or any lot that contains other adult-oriented establishments or any lot containing an existing residential use or from any building or premises used for the purpose of a hotel, motel, public schools (or a duly authorized school other than a public school, conducted for the instruction of children under 18 years of age and giving instruction at least three days a week for eight or more months a year), a church, charitable institution (whether supported by public or private funds), hospital, convalescent home, cemetery, library, museum, child day-care center, park or recreation facility, public playground, municipal fire or police station or municipal Town Hall. The required minimum distance shall be determined by measuring along a radius from the property of the use in question to the nearest property line of any protected use.

~ 72-4. Penalties for offenses.

A. Any person, partnership or corporation who or which is found to have violated this chapter shall be fined a definite sum not exceeding \$100 for each such violation.

B. Each violation of this chapter shall be considered a separate offense, and any violation continuing more than one hour of time shall be considered a separate offense for each hour of violation.