

ORDINANCE NO. 2004-8

AN ORDINANCE OF THE BOROUGH OF NORTHUMBERLAND REGARDING THE DEFINITION OF ADULT ENTERTAINMENT AND ADULT-ORIENTED BUSINESSES, DISPERSING SUCH BUSINESSES AND LIMITING THEM TO A SPECIFIED ZONING DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, there is convincing evidence that adult entertainment and adult-oriented 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 and the downgrading of property values; and

WHEREAS, it is recognized that adult entertainment and adult-oriented businesses, due to their nature, have serious objectionable characteristics, which substantially downgrades the quality of life in the adjacent area; and

WHEREAS, the Borough Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult entertainment businesses; and

WHEREAS, it is not the intent of the Borough Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene material and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the Borough; and

NOW, THEREFORE BE IT ENACTED AND ORDAINED by the Borough of Northumberland, Northumberland County, Pennsylvania, and it is hereby enacted and ordained as follows:

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Section 1. Definition of Adult Entertainment and Adult-Oriented Businesses.

DEFINITIONS.

1.01 ADULT ENTERTAINMENT AND ADULT-ORIENTED BUSINESS shall mean any store, establishment, tavern, club, or theater having as more than fifty (50%) percent of its stock in trade, books, magazines, or other periodicals or video movies, films, photographs, live appearances, or performances which are distinguished or characterized by their emphasis on matters depicting, describing, or related to "specified anatomical areas" or "specified sexual activities", as defined below. Any establishment or premises having as substantial or significant portion of its trade, the display, barter, rental or sale of printed matter, pictures, graphics, or other materials or paraphernalia distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specific sexual activities" or "specified anatomical areas" as defined hereinafter, or any "sexually oriented adult entertainment premises", as defined hereafter, including but not limited to adult bookstores, adult entertainment shows, adult motion picture theaters, and adult arcades, as well as tattoo parlors and body piercing establishments as defined hereafter.

1.02 SPECIFIED ANATOMICAL AREAS shall mean:

A. Less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola.

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

1.03 SPECIFIED SEXUAL ACTIVITIES shall mean:

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

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

C. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

1.04 "ENTERTAINMENT" means any exhibition or dance of any type, pantomime, modeling, or any other performance.

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1.05 "SEXUALLY ORIENTED ADULT ENTERTAINMENT" means any entertainment conducted in a public place of amusement where such entertainment involves a person appearing or performing in a state of nudity, as defined herein.

1.06 "PUBLIC PLACE OF AMUSEMENT," "PUBLIC AMUSEMENT/ENTERTAINMENT," AND "PUBLIC ENTERTAINMENT" mean an amusement, diversion, entertainment, show, performance, exhibition, display or like activity, for the use or benefit of a member or members of the public, or advertised for the use or benefit of a member of the public, held, conducted, operated or maintained for a profit, either direct or indirect.

1.07 "SEXUALLY ORIENTED ADULT ENTERTAINMENT PREMISES" means any premises to which the public, patrons or members are invited or admitted and wherein an entertainer provides sexually oriented adult entertainment on a regular basis and as a substantial part of the business operation.

1.08 "ENTERTAINER" means any person who provides sexually oriented adult entertainment within a public place of amusement as defined in this section whether or not a fee is charge or accepted for such entertainment.

1.09 "MEMBER OF THE PUBLIC" is defined as any customer, patron or person, other than an employee, who is invited or admitted to a sexually oriented adult entertainment premises.

1.10 "NUDITY" is defined as: The showing of the human male or female genitals or pubic area, the showing of the female breast, with less than a fully opaque covering of any part of the areola, or the showing of the covered male genitals in a discernibly turgid state.

1.11 "SEXUALLY ORIENTED ADULT ARCADE" AND "SEXUALLY ORIENTED ADULT ARCADE PREMISE" shall mean any premise on which any sexually oriented adult arcade device is located and to which patrons, customers and/or members of the public are admitted.

1.12 "SEXUALLY ORIENTED ADULT ARCADE DEVICE," sometimes also known as "panorama," "preview," "picture arcade," or "peep show," means any device which, for payment of a fee, membership fee, or other charge, is used to exhibit or display a picture, view, film, videotape, or videodisc, live show or other graphic display of "specified anatomical areas." All such devices are denominated under this ordinance by the term "sexually oriented adult arcade device."

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1.13 "ADULT BOOKSTORE" is defined as any premises from which minors are excluded and in which the retail sale of books, magazines, newspapers, movie films, devices, slides, or other photographic or written reproductions distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas is conducted as a principal use of the premise; or as an adjunct to some other business activity, but which constitutes the primary or a major attraction to the premises.

1.14 "ADULT ENTERTAINMENT SHOWS" means any premises from which minors are excluded and in which live entertainment is provided, or any device is provided in which the subject matter is distinguished or characterized by the emphasis on matter depicting, describing, or relating to specified sexual activities or displaying specified anatomical areas as the principal use of the premises or is shown as an adjunct to some other business activity which is conducted on the premises and constitutes a major attraction; and wherein fees of any kind are charged.

1.15 "ADULT MOTION PICTURE THEATER" means any establishment from which minors are excluded in which motion pictures, slides, or similar photographic reproductions are shown depicting adult entertainment as the principal use of the premises, or are shown as an adjunct to some other business activity which is conducted on the premises and constitutes a major attraction; and wherein fees of any kind are charged; and wherein such movies are shown on a regular basis; and not to include a theater showing adult-movies less than 5% of the total showing time of the theater.

1.16 "TATOO PARLOR" means any establishment that uses any method of placing ink or pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This includes all forms of cosmetic tattooing.

1.17 "BODY PIERCING" means puncturing or penetration of the skin of a person with presterilized single-use needles and the insertion of presterilized jewelry or other adornment thereto in the opening, except that puncturing the outer perimeter or lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system shall not be included in this definition.

Section 2. ADULT ENTERTAINMENT RESTRICTIONS

2.01 RESTRICTION ON LOCATIONS OF ADULT ENTERTAINMENT. It shall be unlawful for anyone to establish an adult entertainment or adult-oriented business or to relocate an adult entertainment or adult-oriented business within

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one thousand (1000) feet measured in a straight line without regard to intervening structures or objects, of any existing adult business or public park, church, public or private elementary, middle, junior high, or high school [add any daycare center]. It shall further be unlawful to locate or relocate any adult entertainment or adult-oriented business within five hundred (500) feet of any public or private elementary, middle, junior high, high school or residential zone. The location of a newly established public park, church or school within one thousand (1000) feet, or the establishment of a residential zone within five hundred (500) feet of an existing adult entertainment or adult-oriented business shall not thereby cause the existing adult entertainment or adult-oriented business to be deemed a non-conforming use. Subject to the above conditions, an adult entertainment or adult-oriented establishment will only be permitted in the Highway Commercial District of the Borough.

Section 3. ENFORCEMENT/PENALTIES.

3.01 Any individual, corporation, business, or other type of entity which attempts to locate an adult entertainment or adult-oriented establishment within the Borough in violation of the terms and provisions of this Ordinance shall be subject to the enforcement provisions set forth in the Borough Code. In addition, the schedule of fees and penalties as set forth in the Borough Code or applicable Resolution, shall be controlling in the event of a violation of this provision.

Section 4. Repeal. All ordinances or resolutions or parts of ordinances or resolutions, insofar as they are inconsistent herewith, be and the same are hereby repealed.

Section 5. Severability. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid shall not affect or impair any of the remaining provisions, sentences, clauses, section, or part of this Ordinance. It is hereby declared as the intention of the Council Members of the Borough of Northumberland, that this Ordinance would have been adopted had such constitutional, illegal or invalid sentence, clause, section or part thereof not been included.

Section 6. Effective Date. This Ordinance shall become effective five (5) days after its enactment.

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ENACTED AND ORDAINED into an Ordinance this 21st day of December, 2004 by the Northumberland Borough Council in the lawful public session duly assembled.

ATTEST:

BOROUGH OF NORTHUMBERLAND

Secretary

Mayor