

**Town of Gardner**  
**Adult Entertainment**  
**Ordinance relating to Adult-Oriented Entertainment Businesses**

**Whereas**, the location, siting design construction and use of adult orient entertainment businesses can have adverse impacts on the surrounding area;

**Whereas**, adult oriented entertainment businesses can exert a dehumanizing influence on persons attending places of worship, children attending licensed daycare homes, persons using public parks, and children and other person attending public schools; and

**Whereas**, adult oriented entertainment businesses can contribute to an increase in criminal activity in the area where such businesses are located tax local law enforcement services; and

**Whereas**, adult oriented entertainment businesses can significantly contribute to the deterioration of residential neighborhoods and can impair the value of residential housing in the area in which such businesses are located; and

**Whereas**, the concentration of adult oriented entertainment businesses in the area can have a substantially detrimental effect on the area in which such businesses are concentrated and on the overall quality of urban life. A cycle, of decay can result from the influx and concentration of sexually oriented businesses. The presence of these businesses is perceived by others as an indication that the area is deteriorating, and the result can be devastating as of businesses and residences move out of the vicinity. Declining real estate value which can result from the concentration of such business, erode the towns tax base; and

**Purpose.**

- 1) The purpose of this section is to control through this ordinance certain adult oriented entertainment uses that have a direct and detrimental effect on the character of the Town's residential neighborhoods and commercial areas.

**Definitions.**

- 1) **Adult oriented entertainment business.** An adult bookstore, adult theater, adult message parlor, adult sauna, adult entertainment center, adult cabaret, health/sport club, adult steam room/bathhouse facility, or any other business whose primary business activity is characterized by emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement, sadomasochistic abuse as defined herein.
- 2) **Nudity.** The showing of the human male or female genitals or pubic area less than a fully opaque covering or the depiction of covered male genitals indiscernibly turgid state/or the appearance of bare buttocks, anus, or female breast.
- 3) **Sexual conduct.** Acts of masturbation, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks, or, female genitals pubic area, buttocks, or, if such person be a female, her breast.

- 4) **Sexual Excitement.** The condition of human male or female genitals with a state of sexual stimulation or arousal.

### **Applicability.**

The provisions of this Section of the Zoning Code shall apply to all existing future adult-entertainment oriented businesses. However, any such existing business that does not meet the zoning district restrictions or the distance limitations, may continue its existence as a non-conforming use; provided, however, that no such business may be enlarged or increased in size or be discontinued for a period of no more than 180 days.

- 1) **Distance Limitations.** No adults-only bookstore, adult theaters, adult massage parlor, adult cabaret, health/sport club, adult steam room/bathhouse facility, or other adult oriented entertainment businesses as defined under this Section shall:
  - (a) be operated or maintained within 1000 feet of any home;
  - (b) be operated or maintained within 1000 feet of any church, parking recreation site, licensed daycare facility, public library, public or private educational facility which serve person age seventeen (17) or younger, elementary school, high school, place of worship, or elderly housing facility;
  - (c) be operated or maintained so that there are no more than two (2) such businesses within 2,500 feet as measured by the radius from each business;
  - (d) distance limitations set forth herein shall be measured in a straight line from the main public entrances of said premises or from the lot lines of properties Residentially Zoned Districts, suburban zoned Districts, or any Recreational Zoned District.
- 2) **Same use Restrictions.** No adult oriented business shall be located in the same building or upon the same property as another such use.
- 3) **Sign Limitations.** Notwithstanding any other provision of this code. An oriented entertainment business shall not be permitted more than one (1) sign advertising its business, which shall be an on-premise or building sign only. And such signs shall meet the following criteria:
  - (a) Have no merchandise or pictures of the products or entertainment on the premises displayed in window areas or any area where they can be viewed from the sidewalk in front of the building.
  - (b) No sign shall be placed in any window. A one square foot sign may be placed on the door to state hours of operation and admittance to adults only;
  - (c) No sign shall contain any depiction of the human form or any part thereof shall it contain sexually explicit language such as “nude dancing” or “Girls, Girls, Girls,” etc;
  - (d) No sign shall contain any flashing lights, moving elements, or mechanically changing message.
  - (e) No sexually-oriented business may have any off-premise sign;

**4) Operating Standards.** accordance with the following:

- (a) No employee shall solicit business outside the building in which the business is located;
- (b) No male or female person while on the premises, shall impose to public his or her genitals, pubic area, anus or anal cleft. Full nudity is prohibited;
- (c) No person on the premises shall engage in sexual conduct, sadomasochistic abuse or in any way fondle their genitals;
- (d) Nudity is prohibited for any employee of an adult oriented business where such person is in direct, personal contact with another person.
- (e) No person under the age of eighteen \*18) years of age may be admitted, may enter, or remain on, may purchase goods ore services at, or may work ore permitted to work as an employee in any capacity at any adult entertainment establishment.

**5) Buildings' Exterior Appearance.** The building's exterior shall meet the following criteria:

- (a) colors to be earth or neutral tones with primary accent colors to be within the same color family;
- (b) stripes and geometric patterns are prohibited;
- (c) a color scheme which is directly inherent to a unique recognized architectual style but not otherwise compliant with is section may be reviewed and approved by the town board;
- (d) the exterior shall be adequately maintained in good condition.

**6) Penalties and prosecution.**

- (a) Any person, partnership or corporation who is found to have violated this Ordinance shall be subject to a forfeiture not exceeding \$1,000 and shall result in revocation of any license. In addition, the person shall be responsible for the costs of prosecution and in default of payment of such forfeiture and costs of prosecution, he/she may be imprisoned in the County Jail until such forfeiture and costs are paid, but not to exceed ninety (90) days for each violation.
- (b) Each violation of this Ordinance shall be considered a separate offense, and any violation continuing more than one (1) day shall be considered a separate offense.

**7) Enforcement.** Enforcement of this ordinance shall be the responsibility of the Town Board and/or Police Department. The Zoning Administrator and Building Inspector may enforce any provisions of this ordinance relating to their position.

**SECTION 2:** All ordinances and parts of ordinances in conflict herewith are hereby repealed.

**Section 3:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by reason of a decision of any court of competent jurisdiction, such decision shall not affect validity of any other section, subsection, sentence, clause or phrase or portion thereof.

**Section 4:** This ordinance shall take effect and be in force from and after passage and publication, as provided by law.