

## Chapter 97

### ADULT USES

**[HISTORY: Adopted by the Town Board of the Town of Pendleton 7-6-1982. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Zoning — See Ch. 247.

#### § 97-1. Purpose.

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 Pendleton, this chapter is intended to restrict adult uses to nonresidential and nonbusiness areas of the Town of Pendleton and otherwise regulate their operation. Moreover, in light of the fact that the operational characteristics of adult uses increase the detrimental impact on a community when such uses are concentrated, this chapter is intended to promote the health, safety and general welfare of the residents of the Town of Pendleton by regulating the concentration of such uses.

#### § 97-2. Word usage and definitions.

- A. General. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.
- B. Specific terms. As used in this chapter, the following terms shall have the meanings indicated:

**ADULT BOOKSTORE** — An establishment or business, whether retail or wholesale, having as a substantial or significant portions 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, 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 ENTERTAINMENT CABARET** — A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dancers, strippers, male or female impersonators or similar entertainers.

**ADULT MINI-MOTION-PICTURE THEATER** — An enclosed building with a capacity of less than fifty (50) persons used for presenting 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 MOTION-PICTURE THEATER** — An enclosed or unenclosed building or structure or portion of a building or structure, including drive-in theaters, used for presenting materials having as a dominant theme material distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

**ADULT USE** — Any establishment or business involved in the dissemination of material distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, including, but not limited to, book stores, adult motion-picture theaters and adult entertainment cabarets.

**BUSINESS** — Any commercial enterprise, association or arrangement for profit.

**DISSEMINATION** — The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**PERSON** — Any person, firm, partnership, corporation, association or legal representative acting individually or jointly.

#### **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 and opaquely covered.

#### **SPECIFIED SEXUAL ACTIVITIES**

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

#### **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 twenty percent (20%) of any

class of stock.

- (4) Any person who furnishes more than twenty percent (20%) of the capital financing or assets of such business, whether in cash, goods or services.

**§ 97-3. Restrictions.**

In addition to the requirements of Chapter 247, Zoning, adult uses shall be permitted subject to the following restrictions:

- A. No adult use shall be allowed within five hundred (500) feet of another existing adult use.
- B. No adult use shall be located within five hundred (500) feet of the boundaries of any zoning district which is zoned FP, R-1, R-2, CO or LI-1.
- C. No adult use shall be located within two thousand (2,000) feet of a preexisting school or place of worship.
- D. No adult use shall be located in any zoning district, except those districts zoned for Special Light Industrial (SLI).

**§ 97-4. Prohibition regarding public observation.**

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, design, show window, screen or other opening.

**§ 97-5. Penalties for offenses.**<sup>1</sup>

Any violation of this chapter shall be an offense punishable by a fine not exceeding two hundred fifty dollars (\$250.) or imprisonment for not more than fifteen (15) days, or both. Each and every day that a violation of this chapter is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.

**§ 97-6. Registration.**

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

- A. In addition to any and all other necessary licenses and permits, no form of adult use shall be allowed to operate or allowed to continue to operate until a certificate of registration is filed with the Code Enforcement Officer of the Town of Pendleton containing:

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1. Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

- (1) The address of the premises.
  - (2) The name and address of the owner(s) of the premises and the name and address of the beneficial owners(s) if the property is in a land trust.
  - (3) The name of the business or the establishment subject to the provisions of this chapter.
  - (4) The name, business and home address and business or home phone numbers of all owners of the business or establishment subject to the provisions of this chapter.
  - (5) The name, business and home address 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 chapter.
  - (6) The date of the initiation of the adult use.
  - (7) The exact nature of the adult use.
  - (8) If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease.
- B. If there occurs any change in the formation required for the registration, the Code Enforcement Officer shall be notified of such change and a new amended certificate shall be filed within thirty (30) days of such change.
- C. The processing fee for each certificate of registration or amendment thereto shall be five hundred dollars (\$500.).
- D. No certificate of registration issued under the provisions of this chapter shall be transferable to any other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than stated in the certificate of registration.
- E. The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this chapter to be prominently displayed on the premises, building or location for which it is issued.
- F. 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 rejection, suspension or revocation of the certificate of registration.
- G. It is a violation of this chapter for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate an adult use without having in force a certificate of registration complying with this chapter.
- H. Any certificate of registration shall be immediately revoked if an owner or person in control of property operated or established as an adult use, or his employee, is convicted of any violation of the Penal Law of the State of New York or violates

this chapter in any manner.<sup>2</sup>

**§ 97-7. Special use permit.**

- A. No use as described in this chapter shall be established until the issuance of an annual special use permit by the Town Board of the Town of Pendleton, following an annual public hearing. Application for such a special use permit shall be in conformity with this chapter and as provided for herein. The application shall be in writing to the Town Board and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed and such additional information as shall be required by the Town Board. The Town Board shall call an annual public hearing for the purpose of considering each request for a special use permit.<sup>3</sup>
- B. A special use permit issued under the provisions of this chapter shall not be transferable.
- C. The fee for each special use permit shall be five hundred dollars (\$500.).
- D. Any special use permit shall be immediately revoked if an owner or person in control of property operated or established as an adult use, or his employee, is convicted of any violation of the Penal Law of the State of New York, or violates this chapter in any manner.<sup>4</sup>

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2. Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

3. Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

4. Editor's Note: Added at time of adoption of Code; see Ch. 1, General Provisions, Art. I.