

ORDINANCE NO. 605

AN ORDINANCE OF THE TOWN OF DENTON AMENDING THE TOWN OF DENTON ZONING ORDINANCE TO PROVIDE DEFINITIONS, PERMITTED LOCATIONS AND SUPPLEMENTAL STANDARDS FOR ADULT ORIENTED BUSINESSES

INTRODUCED BY \_\_\_\_\_

WHEREAS, the Town of Denton is authorized by Maryland Annotated Code Article 66B §4.01 *et seq.* to enact and administer a zoning ordinance, which ordinance is Chapter 128 of the Denton Town Code; and

WHEREAS, the Town of Denton is authorized by Maryland Annotated Code Article 66B §§4.04 and 4.05 to amend, supplement, modify or repeal sections of the zoning ordinance; and

WHEREAS, the Town of Denton is authorized by Maryland Annotated Code Article 66B § 4.01(b) to develop and adopt zoning restrictions to promote the health, safety, morals or general welfare of the community, including the location and use of buildings, signs, structures, and land; and

WHEREAS, the Town Council recognizes the significant planning, zoning, property and secondary effects surrounding or arising from the location and operation of Adult Oriented Businesses; and

WHEREAS, the Town adopted Ordinance 587, which placed a nine month moratorium on Adult Oriented Businesses; and

WHEREAS, the Town also adopted Ordinance 590, which established Adult Oriented Businesses as a use, but did not permit the use in any zoning district pending the study and

investigation during the nine month moratorium; and

WHEREAS, during the nine month moratorium, the Town Attorney, Planning and Codes staff, Planning Commission, Town staff, and Town Council have studied the issue and have prepared a summary of the investigation in the study attached hereto as Exhibit A; and

WHEREAS, for the reasons set forth in the attached study and based on the information reviewed and provided in the attached study, the Town proposes amendments to the Town's Zoning Ordinance provisions; and

WHEREAS, simultaneously herewith, the Town Council has also introduced Ordinance 604 to add Chapter 30 to the Town Code regarding Adult Oriented Businesses; and

WHEREAS, the Council believes that the two companion pieces of legislation provide reasonable channels of communication while at the same time address the adverse secondary effects of Adult Oriented Businesses; and

WHEREAS, the Town Council, in an effort to further prevent and address the adverse secondary effects typically associated with unregulated Adult Oriented Businesses have had this Ordinance and Ordinance 604 drafted for the purpose of protecting and promoting the safety, health, morals, and general welfare of the citizens of Denton, and have determined that the nature of the adverse secondary effects at unregulated Adult Oriented Businesses requires the enactment of the provisions set forth in this Ordinance and in Ordinance 604; and

WHEREAS, the Denton Planning Commission considered the zoning ordinance amendments at its March 30, April 27, and May 25, 2010 meetings and has recommended that the Town Council approve this Ordinance.

NOW, THEREFORE, the Town of Denton hereby ordains that the sections of the Town of Denton Zoning Ordinance set forth below be amended as hereinafter provided:

Section 1: The recitals set forth above and the study attached hereto are incorporated herein by reference and made a part of this Ordinance.

Section 2: Section 128-8 definitions is hereby amended as follows:

~~**ADULT BOOKSTORE/ADULT ENTERTAINMENT CENTER/MASSAGE AND CONVERSATION/RELAXATION STUDIOS**—An establishment, store, shop, cocktail lounge, theatre, etc., the principal use of which is to offer for sale or viewing items such as books, printed materials, photographs, films, tapes, video tapes, video disks, peep shows, and live acts which depict, describe or relate to sexual activities or specified anatomical areas which are less than completely and opaquely covered. Sexual activities and specified anatomical areas are further defined below.—~~

~~A. Sexual activities such as:~~

- ~~\_\_\_\_\_ (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, public region, buttock or \_\_\_\_\_ female breast.~~

~~B. SPECIFIED ANATOMICAL AREAS are defined as:~~

- ~~\_\_\_\_\_ (1) Human genitals, public region;~~
- ~~\_\_\_\_\_ (2) Buttocks;~~
- ~~\_\_\_\_\_ (3) Female breast below a point immediately above the top of the areola.~~

***ADULT ORIENTED BUSINESS - means any business, operation, or activity, a significant amount of which consists of:***

- (i) the conduct, promotion, delivery, provision, or performance of adult entertainment or material; including, but not limited to, that occurring in, at, or in connection with a cabaret, lounge, night club, modeling studio, bar restaurant, club or lodge, or other establishment; or***
- (ii) the sale, provision, rental, or promotion of adult entertainment or material, in any format, form, or medium, including, but not limited to, books, magazines, videos, DVDs, CDs, sexual devices, movies, photographs, and/or coin operated or pay-per-view viewing devices, including, but not limited to, the operation of***

*an adult book or video store or viewing booth.*

*For the purposes of this definition, the term “significant” shall have the meaning set forth in § 30-1 of the Denton Town Code.*

*ADULT ENTERTAINMENT OR MATERIAL - shall have the meaning set forth in § 30-1 of the Denton Town Code.*

*ADULT VIDEO OR BOOK STORE - shall have the meaning set forth in § 30-1 of the Denton Town Code.*

*LIVE VIEWING BOOTH- means any booth, cubicle, stall or room of less than six hundred (600) square feet of floor space or area to which patrons may gain admittance, wherein the following are regularly featured:*

- (i) persons who appear in a state of semi-nudity; and/or*
- (ii) live entertainment characterized by the depiction or description of specified anatomical areas or specified sexual activities*

*SEXUAL DEVICE – shall have the meaning set forth in § 30-1 of the Denton Town Code.*

*VIEWING BOOTH - means any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat patrons and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other means or media (including but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines, or periodicals) for observation by patrons therein. A viewing booth shall not mean a theater, movie house, playhouse, or a room or enclosure or portion thereof that contains more than 600 square feet.*

Section 3. The Official Table of Use Regulations by General Zoning Districts shall be amended as follows:

**Official Table of Use Regulations  
by General Zoning Districts**

Use	Zoning Districts									
	SR	TR	MR	GC	CC	CM	HC	LI	HI	PN
<b>RESIDENTIAL</b>										
Single family detached	P	P	P	P	P	P				P
Mobile home park/subdivision			E							

Two-family conversion of single family house			C	C	C					
Accessory apartment in combination with primary residence	C	C	C	C	C	C				P
Accessory apartment in combination with commercial use. See also § 128-69.				C	C	C				P
Duplex			C	C	C					P
Multifamily conversion of single-family house			C	E	E					
Multifamily townhouses			C	E	E					P
Multifamily apartments			C	E	E					P
Homes for handicapped or infirm	E	E	E	E	E	P				E
Nursing care, intermediate care homes	E	E	E	E	E	P				E
Child-care homes	E	E	E	E	E	P				E
Halfway houses			E	E	E					
Rooming houses, boardinghouses			E	C	C					E
Tourist home and other temporary residences renting by the day or week (bed-and-breakfast)	E	E	E	C	C		C			E
Temporary emergency, construction and repair residences	P	P	P	P	P		P	P	P	P
Guesthouse	P	P	P							P
Planned Residential Development	E	E	C							
<b>COMMERCIAL</b>										
<b>Sales</b>										
Adult Oriented Business								P	P	
<i>Viewing Booth and Live Viewing Booths</i>										
Agricultural machinery, service, supplies							C	C	C	
Neighborhood center	E	E	E							E
Lumber and/or other building materials							C	C	C	
Retail shops and stores selling antiques, apparel, art supplies, beverages, books, cards, confections, dry goods, drugs, fabrics, floor covering, flowers, food stuffs, furniture, garden, supplies, gifts, hardware, hobbies, household appliances, jewelry, luggage, musical instruments, novelties, paint, periodicals, records, shoes, sporting goods, fishing supplies, boating and marine supplies and equipment, stationary, tobacco, and other miscellaneous related items which generate typical retail traffic				C	C	C	C			C

volumes										
Convenience store and other retail uses designed to attract a large volume of stop-and-go traffic.				C			C			C
Supermarket (retail and wholesale)				C	C		C	C		E
Department store (retail and wholesale)			C	C			C	C		C
Yard sales and garage sales, so long as such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any ninety-day period		P	P	P	P	P	P	P	P	P
Wholesale or warehouse establishments (under 20,000 square feet)					E		C	C	C	
Wholesale or warehouse establishments (20,000 square feet and over)							C	C	C	
<b>Office, clerical research and services primarily related to goods or merchandise</b>										
<b>Sales</b>										

Section 4. Section 128-95A shall be amended to read as follows:

**§ 128-95A. Adult Oriented Business**

~~A. The Denton Town Council enacted a moratorium on Adult Oriented Businesses on \_\_\_\_\_, 2009 pursuant to Ordinance Number \_\_\_\_\_ for the purpose of establishing appropriate rules and regulations regarding this use. This moratorium is expected to expire on \_\_\_\_\_ unless extended by the Town Council.~~

~~B. During the life of this moratorium including any extension thereto, no retail shop or store selling apparel, books, gifts, hobbies, novelties, periodicals, records, stationary, or other similar uses that can otherwise legitimately operate, may sell a significant amount of adult entertainment or material as those terms are defined in the Adult Oriented Business Moratorium Ordinance Number \_\_\_\_\_.~~

A. Viewing booths and Live Viewing Booths are prohibited in all zoning districts.

B. In addition to any buffer, buffer yard, setback, or other design criteria generally applicable to permitted uses in the Light Industrial (LI) or Heavy Industrial (HI) Zoning Districts, an Adult-Oriented Business must meet the following setback criteria:

- (1) The closest portion of a building or structure in which an Adult Oriented Business is located shall not be within 1,000 feet of the boundary of any parcel of land that is zoned residentially.

- (2) The closest portion of a building or structure in which an Adult Oriented Business is located shall not be within 1,000 feet from the boundary of any parcel of land containing a school, place of worship, park or recreation facility, day-care center, or day-care home.
  - (3) For the purposes of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects.
  - (4) A lawfully operating Adult Oriented Business shall not be rendered a non-conforming use by the location, subsequent to the grant or renewal of an Adult Oriented Business license pursuant to Denton Town Code § 30-4, of a residential zoning district, school, place of worship, park or recreation facility, day care center, or day care home within buffer distances provided for above.
- C. An Adult Oriented Business shall provide or cause to be provided for all exterior areas, including but not limited to, parking lots or areas, loading docks, and sidewalks sufficient lighting to illuminate the exterior areas of the business to an illumination level of not less than two footcandles and shall be equipped with video surveillance cameras that monitor the exterior portions of the premises from a management station located within the business.
- D. An Adult Oriented Business may not erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- E. An Adult Oriented Business must post appropriate signage prohibiting parking at the premises for persons other than patrons of the business and prohibiting the use of the exterior of the premises for other than ingress, egress, parking and solid waste deposit/processing for bona fide employees and patrons of the business.
- F. In the case of Adult Oriented Businesses other than an adult book or video store, and to the extent not regulated under Article 2B of the Annotated Code of Maryland (or successor provisions thereof), shall be constructed and maintained in such manner that the conduct, promotion, delivery, provision, or performance of adult entertainment or material is not visible in any way or manner, or to any degree, from outside the building.
- G. No Adult Oriented Business may be conducted on the same parcel as, in the same building as, or in conjunction with any hotel, motel, motor court, motor hotel, lodge, inn, bed and breakfast facility, boarding house, or in any structure or

portion thereof not generally open to the public and freely accessible to patrons at all time.

H. An Adult Oriented Business shall not have displayed on or about the exterior of any building in, or premises on, which an Adult Oriented Business is located, any sign, advertisement, or depiction visible to the general public, wherever located, containing any adult oriented entertainment or material.

Section 5: In accordance with § C3-12 of the Town Charter, this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect seven (7) days from and after the date of its final passage and adoption, except that in accordance with Article 66B, Section 4.04 of the Maryland Annotated Code, this ordinance shall not be effective until at least ten (10) days after a public hearing is held.

ENACTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

DENTON TOWN COUNCIL:

\_\_\_\_\_  
Conway Gregory, Mayor

\_\_\_\_\_  
Robert L. Clendaniel, Vice-Mayor

\_\_\_\_\_  
Dennis Porter, Councilperson

\_\_\_\_\_  
Agnes Case, Councilperson

\_\_\_\_\_  
Dean Danielson, Councilperson

ATTEST:

\_\_\_\_\_  
Karen L. Monteith

Approved for legal sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

---

Stephen H. Kehoe, Esquire

Date Introduced \_\_\_\_\_

Date Amendments Introduced \_\_\_\_\_

Date Passed \_\_\_\_\_

Effective Date \_\_\_\_\_

Text that is stricken reflects language omitted from the Town Code

Text in **bold** and *italicized* reflects additions to the Town Code