

**TOWN OF RINDGE
NEW HAMPSHIRE**

**SEXUALLY ORIENTED
BUSINESS ORDINANCE**

ADOPTED MARCH 9, 1999

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SECTION 1 -- AUTHORITY

Pursuant to the authority conferred by chapter 674:16 of the New Hampshire Revised Statutes, the Town of Rindge adopts the following ordinance regulating Sexually oriented Businesses. This ordinance shall be considered part of the Zoning Ordinance for the purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

SECTION 2 -- PURPOSE

It is the purpose of this ordinance to regulate sexually oriented business and related activities to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of the ordinance to restrict or deny access by adults to sexually oriented materials protected by the First amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

SECTION 3 -- DEFINITIONS

Pursuant to this ordinance, the following definitions shall apply to sexually oriented businesses.

Adult Arcade -- means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

Adult Bookstore or Adult Video Store-- means a business that devotes more than 15 % of the total display, shelf rack, table, stand or floor area for the display, sale or rental of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, computer disks, CD-ROM's or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct"; or instruments, devices, or paraphernalia, which are designed for use in connection with "sexual conduct" as defined by NH RSA 571-B:1, other than birth control devices.
2. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as Adult Bookstore or Adult Video Store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an Adult Bookstore or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specific sexual activities" or "specified anatomical areas" as defined by NH RSA 571-B:1.

Adult Cabaret - means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

1. Persons who appear in a State of Nudity or Semi-Nudity; or
2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" or;
3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area".

Adult Material --means any one or more of the following regardless of whether new or used:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to "sexual conduct" as defined by NH RSA 571-B:1 or specified anatomical areas; or
2. Instruments, devices or paraphernalia which are designed for use in connection with "sexual conduct", as defined by NH RSA 571-B:1, other than birth control devices.

Adult Theater - means a theater, concert hall, auditorium or similar commercial establishment, either indoors or outdoors in nature, which regularly features the presentation

of motion pictures, films, theatrical productions, and other forms of visual production, by persons who appear in a state of nudity or semi-nudity or live performances which are characterized by the exposure of "specified sexual anatomical areas" or by "specified sexual activities" which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

Establishment - means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business whether or not a sexually oriented business, to any sexually oriented business;
3. The additions of any sexually oriented business to any other existing sexually oriented business; or
4. The relocation of any sexually oriented business.

Harmful to Minors --As defined in NH RSA 571-B:1, as may be amended.

Nudity or a State of Nudity - means the appearance of a human bare buttock, anus, male genitals, female genitals, or full female breasts.

Person - means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Semi-Nude - means a state of dress in which clothing is specifically designed to cover no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual Conduct- As defined in NH RSA 571-B:1, as may be amended.

Sexual Encounter Center - means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex or;
2. Activities between two or more people when one or more of the persons is in a state of nudity or semi-nude.

Sexually Explicit Material- see definition for - Adult Material.

Sexually Oriented Business - means an Adult Arcade, Adult Bookstore or Adult Video Store, Adult Cabaret, Adult Theater, or Sexual Encounter Center.

Specified Anatomical Areas - means any part of the male or female genitals.

Specified Sexual Activities- means and includes any of the following;

1. The fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated; or
4. Excretory functions as part of or in connection with any of the activities set forth in 1 through 3 above.

Transfer of Ownership or Control - of a sexually oriented business means and includes any of the following:

1. The sale, lease, or sublease of the business;
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 4- ALLOWED DISTRICT

A sexually oriented business may be allowed in the Business-Light Industry District, as a Special Exception, provided that it is otherwise lawful and meets all other zoning requirements.

For existing businesses in any district which sells sexually explicit goods, paraphernalia or adult materials, but does not meet the 15% threshold outlined in Section 3, such goods and paraphernalia shall be located either behind a counter, or in a separate room or enclosure where citizens under the age of 18 are not allowed to enter. Such sexually explicit goods and paraphernalia must be located so that the materials in question are not within view of minors.

SECTION 5- SPECIAL EXCEPTION

A sexually oriented business use, may be allowed by the Board of Adjustment as a Special Exception, subject to the following conditions:

1. After a review of the plans showing the location, layout, a scale drawing and location of any signs and utilities, the board, in its judgment, must find that the use will not create excessive traffic congestion, noise, or odors, nor tend to reduce the value of surrounding property, has adequate sewage and water facilities and sufficient off-street parking and will preserve the attractiveness of the town.
2. No sexually oriented business use shall be located within 1,000 feet from any property line of the following:
 - a) A public, religious or private nursery school, kindergarten school, elementary school, middle school, junior high school, high school or similar educational facility.
 - b) Licensed Child Day Care Facility.
 - c) A public park, public recreational field or any publicly owned property or facility.
 - d) A religious institution or place of worship.
 - e) Any existing residential dwelling.
3. The proposed site may be required to be screened in such a manner that limits pedestrian and vehicular access to adjacent properties, but which does not restrict adequate lines of sight or create unsafe site conditions. This visual barrier shall be maintained by the owner of the property.
4. There shall be a minimum of 1,000 feet between any two sexual oriented businesses.
5. There shall be sufficient parking as established by local and state fire, building, or health codes, whichever is greater.
6. The site shall be maintained daily in a condition that is free and clear of any sexual paraphernalia or packaging.
7. Signs shall not visually depict any person in a "State of Nudity" or "Semi-Nude", and no sexually explicit material or advertising shall be visible from outside the building.

SECTION 6 -- SAVINGS CLAUSE

The invalidity of any provision of this ordinance shall not affect the validity of any other provision of this ordinance.