

## **DRAFT**

### **CITY OF FALL RIVER, In City Council**

Be it ordained by the City Council of the City of Fall River, Massachusetts, that the Revised Ordinances of the City of Fall River (1999), are hereby amended as follows:

By replacing Sections 86-81 through 86-90 of Subdivision II (Adult Entertainment), of Division 3, of Article II, of Chapter 86, with the following:

#### **Subdivision II. Adult Entertainment Establishments**

##### **Sec. 86-81. Scope.**

The following provisions shall apply to all Adult Entertainment Establishments:

It is the purpose and intent of this Subdivision to address and mitigate the secondary effects of adult entertainment establishments, adult uses and sexually oriented businesses referenced in this subdivision, since such secondary effects have been found as a result of numerous studies, and after other public input, to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the city, adverse impacts on the property values of residential and commercial properties, and adverse impacts on the quality of life in the city, all of which secondary effects are adverse to the health, safety and general welfare of the city and its inhabitants. The provisions of this subdivision have neither the purpose nor the intent of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this subdivision to restrict or deny access by adults to adult entertainment establishments, adult uses or to sexually oriented matter or materials protected by the constitution of the United States of America and of the Commonwealth of Massachusetts, or to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this subdivision to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials or rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. It is not the intent of this Ordinance to suppress any free speech activities protected by the First Amendment of the Constitution of the United States, but to enact a content-neutral ordinance which addresses the secondary effects of adult entertainment and sexually orientated businesses and which is necessary to protect the health, safety, and welfare of the citizens of the City of Fall River, and surrounding cities and towns.

##### **Sec. 86-82. Purpose and intent of subdivision.**

It is the purpose of this Subdivision to regulate adult entertainment establishments, as defined in Section 86-83 in order to promote the health, safety and general welfare of the citizens of Fall River and surrounding communities.

It is recognized that adult entertainment establishments are known to often be the location of unlawful sexual activities. In order to protect the health, safety and welfare of the patrons of such businesses and the citizens of the City over sexually transmitted diseases reasonable regulations of adult entertainment establishments and sexually orientated businesses are in order. Based on evidence concerning the adverse secondary effects of adult uses on the community, such as:

- a. Adult entertainment establishments lend themselves to ancillary, unlawful and unhealthy activities that are currently uncontrolled by the operators of the establishments.
- b. Employees of adult entertainment establishments engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- c. Sexual acts occur at adult entertainment establishments.
- d. Adult entertainment establishments encourage illicit sexual acts that create unhealthy conditions.
- e. At least 50 communicable diseases may be spread by activities occurring in adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus (HIV-AIDS), genital herpes, hepatitis B, salmonella infections and shingella infections.
- f. Since 1981 and to the present, there have been an increasing cumulative number of reported cases of AIDS (Acquired Immunodeficiency Syndrome) caused by the human immunodeficiency virus (HIV) in the United States.
- g. The findings noted in subsections a through f raise substantial governmental concerns.
- h. Adult entertainment establishments have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns and, where necessary, should be banned or eliminated where they are or have been causing effects which are harmful to the health, safety and welfare of the citizens of Fall River and the surrounding communities.
- i. The general welfare, health and safety of the citizens of the City will be promoted by the enactment of this Subdivision.

### **86-83 Definitions.**

The following words, terms and phrases, when used in this subdivision, shall have the following meanings:

- (a) **ADULT BOOKSTORE:** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject

premise's gross floor area, or 200 square feet, whichever is greater.

- (b) **ADULT MOTION PICTURE THEATRE:** An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.
- (c) **ADULT PARAPHERNALIA STORE:** An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject's premise's gross floor area, or 200 square feet, whichever is greater.
- (d) **ADULT LIVE NUDDITY ESTABLISHMENTS:** Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in sections 31 of chapter 272 of the Massachusetts General Laws.
- (e) **ADULT ENTERTAINMENT ESTABLISHMENT:** For the purposes of this Subdivision, Adult Entertainment Establishment shall be defined as any of the following: Adult Bookstore, Adult Motion Picture Theater, Adult Paraphernalia Store, Adult Video Store, and Adult Live Nudity Establishment as defined in this section and as defined in M.G.L. c. 40A section 9A or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition an adult use is any use or combination of uses which either have greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject premise's gross floor area, or 200 square feet, whichever is greater devoted to materials for sale or rent distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.
- (f) **ADULT VIDEO STORE:** An Establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject premise's gross floor area, or 200 square feet, whichever is greater.

#### **Sec. 86-84. Special permit.**

No Adult Entertainment Establishment as defined in Section 86-83 shall be allowed except by special permit granted by the city zoning board of appeals pursuant to M.G.L. c. 40A, § 9A. The zoning board of appeals shall grant a special permit to an Adult Entertainment Establishment which complies with the procedures and standards of this Subdivision.

#### **Sec. 86-85. Special permit application.**

(a) *Application.* A written application for a special permit for an Adult Entertainment Establishment must be filed with the zoning board of appeals and must include the following:

(1) The name and address of the legal owner of the proposed Adult Entertainment Establishment.

(2) The name and address of each person who has or will have a legal, equitable, beneficial or security interest in the proposed Adult Entertainment Establishment.

(3) A sworn statement stating that neither the applicant nor any person having a legal, equitable, beneficial or security interest in the proposed Adult Entertainment Establishment has been convicted of violating M.G.L. c. 119, § 63 or M.G.L. c. 272, § 28.

(4) The name and address of the manager of the proposed Adult Entertainment Establishment.

(5) A site plan shall be submitted to the Planning Board for approval showing at a minimum building footprint, landscaping, screening from residential properties, parking, loading area, lighting, proposed and existing contours, utilities and drainage; a scale showing the lot on which the proposed Adult Entertainment Establishment will be located, including all buildings, structures, signs, fencing, landscaping, parking spaces, driveways and abutting streets; a floor plan to scale showing the interior layout of the proposed Adult Entertainment Establishment, including the main entrance and all other entrances and exits; exterior drawings to scale showing the exterior appearance of the proposed Adult Entertainment Establishment, including any proposed sign and the screening of doors, openings, entries and windows; all of said plans and drawings shall be in compliance with the site development and operation standards establish in this Subdivision. Said site plan shall be prepared and signed by a professional engineer or land surveyor.

(b) *Public hearing.* The zoning board of appeals shall hold a public hearing within sixty-five days after the filing of a completed application as provided above. The zoning board of appeals shall act on an application within ninety days following the public hearing. Failure by the zoning board of appeals to take final action upon an application for a special permit within said ninety days shall be deemed to be a grant of the special permit applied for. Issuance of a special permit shall require a vote of at least four of the five members of the board.

(c) *Denial or revocation.* Failure of an Adult Entertainment Establishment to comply with the procedures and standards of this Subdivision shall be grounds for the denial or revocation of a special permit by the zoning board of appeals.

(d) *Ineligibility for special permit.* No special permit for an Adult Entertainment Establishment shall be issued to any person convicted of violating M.G.L. c. 119, § 63 or M.G.L. c. 272, § 28.

(e) *Expiration.* Any special permit for an Adult Entertainment Establishment issued under this subdivision shall lapse within one year after its grant if substantial use thereof has not sooner commenced, except for good cause, or, in the case of a permit for construction, if construction has not begun by such date except for good cause; excepting

such time required to pursue or await the determination of an appeal from the grant thereof.

**Sec. 86-86. Special permit site development.**

Adult Entertainment Establishments shall comply with the following site development and operation standards:

(a) *Dimensional requirements.* Any lot, building or structure containing an Adult Entertainment Establishment shall comply with the dimensional, frontage and setback requirements of the underlying zoning district in which said Adult Entertainment Establishment is located.

(b) *Distance between establishments.* The main entrance of an Adult Entertainment Establishment shall not be within 300 feet of the main entrance of any other Adult Entertainment Establishment.

(c) *Interior requirements.* The interior of an Adult Entertainment Establishment may not exceed a total of 2,000 square feet of gross floor area. No Adult Entertainment Establishment facility shall exceed one story in height. Basement areas shall not be accessed by patrons for any purpose and shall not be furnished for retail or entertainment purposes. Any pre-existing Adult Entertainment Establishment facility exceeding 2,000 square feet must comply with this section upon re-issuance of the annual adult entertainment license to operate pursuant to M.G.L. Chapter 140, Section 183A. In order to comply, the pre-existing Adult Entertainment Establishment facility shall either erect fully opaque interior partitioning walls to reduce the size of the Adult Entertainment Establishment facility (including ancillary supporting areas such as storage, kitchens, restrooms, meeting rooms, office rooms, and dressing rooms) to an area not exceeding 2,000 square feet or shall demolish any portion of the facility exceeding 2,000 square feet in area. In determining compliance, the Building Department of the City of Fall River shall conduct an inspection of the premises to determine that the Adult Entertainment Establishment area does not exceed 2,000 square feet prior to the re-issuance of the adult entertainment license

(d) *Parking requirements.* Adequate space for off street parking of vehicles for employees and customers of an Adult Entertainment Establishment shall be reserved on the same lot as the Adult Entertainment Establishment as follows:

(1) At least one parking space per each three seats of maximum seating capacity for an adult motion picture theatre or establishment which displays live nudity for its patrons; or

(2) At least one parking space for each 200 square feet of gross floor area for an adult bookstore, adult paraphernalia store or adult video store;

(3) In any event there shall be a minimum of eight parking spaces for any Adult Entertainment Establishment;

(4) Required off-street parking spaces for Adult Entertainment Establishments shall be located on the same lot as the principal use they are required to serve; and

(5) Parking and loading facilities shall be setback a minimum of 50' from any street or property line and 750' from any structure used in whole or in part for residential purposes.

(e) *Landscaping.* A five foot high solid fence or a landscaped buffer of evergreen trees or shrubs five foot high at the time of planting shall be provided and maintained along the property line of an Adult Entertainment Establishment abutting any lot used for residential purposes.

(f) *Screening.* All building doors, openings, entries and windows shall be screened in such a manner as to prevent visual access of the public to the interior of an Adult Entertainment Establishment.

(g) *Displays.* No signs, graphics, pictures, publications, videotapes, movies, covers, merchandise, or other implements, items or advertising, depicting, describing or related to sexual conduct or sexual excitement as defined in M.G.L. c. 272, § 31 shall be displayed in the windows of, or on the building of, any Adult Entertainment Establishment, or be visible to the public from the pedestrian sidewalks or walkways or from other areas outside such Adult Entertainment Establishment.

(h) *Signs.* An Adult Entertainment Establishment shall be allowed one exterior sign, not to exceed 150 square feet, displaying the name of the establishment which shall be mounted on the exterior wall face of the building. No roof signs shall be permitted and no signs containing any flashing lights, reflective or fluorescent elements, or which is animated or rotating shall be permitted.

(i) *Booths.* If the Adult Entertainment Establishment allows for the showing of films or videos in booths located at the establishment, then such booths in which the films or videos are shown shall not be closed off by curtains, doors or screens. All such booths must be clearly visible from the center of the establishment.

(j) *Posting of notice prohibiting minors.* All entrances to an Adult Entertainment Establishment shall be clearly and legibly posted with a notice indicating that minors are prohibited from entering the establishment.

(k) *Notification of change in owner or manager.* The owner of an Adult Entertainment Establishment shall immediately inform the zoning board of appeals of any change in the name or address of the owner or manager of such establishment and if anyone so identified is or is found to be convicted of violating M.G.L. c. 119, § 63, or M.G.L. c. 272, § 28 the special permit for such establishment shall be subject to revocation by the zoning board of appeals.

(l) *Exception.* Notwithstanding the provisions of this section, height, dimensional or setback requirements shall not apply to Adult Bookstores as defined in this Subdivision or otherwise defined in law.

(m) Any pre-existing Adult Entertainment Establishment facility must comply with section above upon re-issuance of the annual adult entertainment license to operate pursuant to M.G.L. Chapter 140, Section 183A.

## **86-87 Operation**

1. No Adult Entertainment Establishment facility shall open for business prior to 5:00 p.m. No Adult Entertainment Establishment facility shall permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 1:00 a.m. and 5:00 p.m. of any particular day.

2. Minors: No Adult Entertainment Establishment facility shall be allowed to disseminate adult matter to minors, cause Adult Entertainment Establishment displays to be viewed by minors, or allow minors to linger on the premises.

3. Prohibition of physical contact: While on the premises of an Adult Entertainment Establishment facility, no customer shall be permitted to have physical contact with any adult entertainment employee while the employee, is entertaining, dancing or otherwise involved in the display of or exhibition of specified anatomical areas.

4. Tipping or Gratuity of any kind shall not be permitted in any Adult Entertainment Establishment facility.

5. All employees of Adult Entertainment Establishment facilities must submit to Criminal Offender Record Investigation (CORI) background checks. The employer shall provide CORI background checks for all employees, at the expense of the employer, to the Fall River Police Department for review prior to engaging that employee at the premises. The employer may engage the employee for work at the premises immediately upon the furnishing of the CORI background check to the City. Employees convicted of any of the following offenses shall not be allowed to interact in any manner with patrons of the establishment:

- a. assault, assault and battery, assault and battery with a dangerous weapon, mayhem;
- b. manslaughter or murder;
- c. robbery or other crimes of violence against a person;
- d. stalking, civil rights violations;
- e. enticement, prostitution, engaging in sexual acts for a fee, common nightwalker, support from or sharing in earnings from prostitution, procuring a person to practice or enter into prostitution;
- f. sexual assault, rape or other sex related offenses;
- g. drugging persons for sexual intercourse or other unlawful means or purposes;
- h. open and gross lewdness, unnatural and lascivious acts, accosting;
- i. pornography, child pornography;
- j. possession or carrying a dangerous weapon;
- k. violation of the firearms or dangerous weapons control laws;
- l. violation of the controlled substances laws;
- m. larceny, fraudulent use of credit cards, or the unlawful taking or receiving of money or other goods or services;
- n. buying, receiving or concealing stolen goods;
- o. arson, burglary;
- p. gambling;
- q. racketeering or extortion;
- r. violation of the alcoholic beverages control laws; or
- s. filing a false police report.

6. No Adult Entertainment Establishment facility shall engage the services of any contractors, contract employees, or outside agencies or services for any activity which is adult in nature as defined by M.G.L. Ch. 40A, Section 9A. All performers, entertainers, hosts, hostesses, serving staff, cashiers, stock supply personal, managers, and/or directors

shall be either full-time or part-time employees of the Adult Entertainment or Use facility.

7. Advertisements: Advertisements, displays or other promotional materials for an adult entertainment establishment depicting or describing matter which is distinguished or characterized by its emphasis depicting or relating to sexual conduct or sexual excitement as defined in M.G.L.A. c. 272 Section 31 shall not be shown or exhibited so as to be visible from other areas open to the general public.

8. Sound Equipment: No loud speakers or sound equipment shall be used by an adult entertainment business for the amplification of sound to a level discernible by the public beyond the walls of the building in which the adult entertainment business is conducted.

7. Any pre-existing Adult Entertainment Establishment facility must comply with Items #1, #2, #3, #4, #5, #6, #7 and #8 above, upon re-issuance of the annual adult entertainment license to operate pursuant to M.G.L. Chapter 140, Section 183A.

**86-88 No Liquor License to be Held Where Adult Entertainment Establishment Facilities are permitted.**

Should an establishment licensed under the provisions of M.G.L. Ch. 40A, Section 9A and defined as an Adult Entertainment Establishment be permitted to operate in the City of Fall River, then the following provisions apply:

1. The City of Fall River shall not grant any license for the sale of alcohol for consumption in accordance with the provisions of M.G.L. Ch. 138 Section 12 to any establishment as defined as an Adult Entertainment Establishment.
2. The City of Fall River shall not grant any special licenses for the sale of alcohol for consumption in accordance with M.G.L. Ch. 138, Section 14 to any establishment defined as an Adult Entertainment Establishment.
3. The City of Fall River shall not allow patrons of Adult Entertainment Establishments to consume alcoholic beverages within any Adult Entertainment Establishment, even if the patrons bring such beverages to the premises.
4. In the event that an establishment already in possession of a license in accordance with M.G.L. Ch. 138, Section 12 or Section 14 receives a license to operate an Adult Entertainment Establishment, such establishment shall immediately have its M.G.L. Ch. 138, Section 12 and/or Section 14 license(s) revoked.

**Sec. 86-89. Severability.**

If any provision of this subdivision shall be determined invalid by a court of competent jurisdiction, such ruling shall not affect the validity of the remainder of this subdivision.