

TOWN OF HOPKINTON
ZONING BYLAW

ARTICLE XV

Adult Uses

[Added 5-6-1996 ATM, Art. 45, amended 5-7-2007, Art. 25]

~ 210-89. Preamble and purpose.

- A. Whereas, there is documented experience in many other cities including Boston, Massachusetts; Seattle, Washington; Tacoma, Washington; Detroit, Michigan; Minneapolis, Minnesota; and St. Paul, Minnesota among other cities, showing that adult uses are distinguishable from other business uses and that the location of adult uses may degrade or adversely affect the quality of life in the areas of a community where they are located, often with impacts, including but not limited to increased levels of crime, blight, depreciation of property values and late hours of operation resulting in noise and traffic late into the night; and
- B. Whereas, it is the intention of the Town of Hopkinton to rely upon and reference the findings of the above municipalities and various detailed studies they have conducted that empirically document the adverse influences and effects of adult uses on surrounding properties; and
- C. Whereas, the Town of Hopkinton is predominantly residential in its character and development pattern and, although primarily residential, is composed of a mixture of residential, business, commercial, religious, school, park and open space uses, and such areas of use are, in many instances, located in close proximity to one another with the resulting conflicts in land use; and
- D. Whereas, the Town of Hopkinton desires to protect its residential lands from encroachment by commercial adult uses and to ensure and promote the town's image as a safe, pleasant and attractive place of residence for families with children, and to preserve and promote the peace and quiet enjoyment of these areas for all persons; and
- E. Whereas, it is a desire of the Town of Hopkinton to preserve and protect the safety of children and young people in the vicinity of schools and public parks where they may be expected to walk, congregate and play, and furthermore that children and young people not be subjected to confrontation with the existence of adult uses in the vicinity of schools and parks, or in commercial areas where there is significant patronage and presence of children and young people; and
- F. Whereas, the commercial areas of the Town of Hopkinton reflect greatly on its image in the region, and it is the desire of the Town of Hopkinton to promote a positive business community image, retain and promote safe and attractive business areas, and retain its rural character, free of crime and nuisance; and
- G. Whereas, the Town of Hopkinton as an aid to mitigating the above impacts of adult uses desires to physically separate commercial adult uses from residential, religious, school, park and open space uses, so that residents not be subjected to confrontation with the existence of adult uses in the vicinity of their residences, schools, parks and playgrounds and churches and chosen places of worship; and

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- H. Whereas, adult uses engaging in the sale, rental or display of sexually explicit materials, including books, magazines, periodicals, pictures, photographs, slides, movies and videos, may legitimately be controlled by a municipality, either through concentrating in certain locations or separating from other uses which will be inordinately impacted by the sale, rental or display of sexually explicit materials, and furthermore MGL c. 40A, ~ 9A, specifically provides for municipal regulation of adult uses through special permits and standards related to location and separation of such uses; and
- I. Whereas, the Town of Hopkinton does not desire to suppress any speech activities protected by the First Amendment, but rather to enact a content-neutral ordinance concerned with the secondary effects of adult uses on the surrounding community, especially crime and effects upon children and family life, and therefore desires reasonable regulation of the location of adult uses in order to provide for the protection of the image of the community, its property values, and to protect the residents of the community from any adverse effects of such adult land uses, while providing to those who desire to patronize adult uses such an opportunity in areas within the Town which are appropriate for location of such uses; and
- J. Whereas, it is the intention of the Town of Hopkinton by the adoption of this Chapter to rely upon the decisions of the Supreme Court of the United States and the Supreme Judicial Court of the Commonwealth of Massachusetts pertaining to this subject matter, to regulate and limit the location of adult uses and to promote the Town of Hopkinton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts and the quality of life through effective land use planning;

Now, therefore, pursuant to MGL c. 40A, ~ 9A, and MGL c. 272, ~ 31, the following is hereby established as the Adult Uses Bylaw of the Town of Hopkinton.

~ 210-90. Definitions.

As used in this article, the following words shall, unless the context requires otherwise, have the following meanings:

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 MGL c. 272, ~ 31.

ADULT MOTION-PICTURE THEATER -- 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 MGL c. 272, ~ 31.

ADULT PARAPHERNALIA STORE -- An establishment having as a substantial or significant portion of its stock-in-trade 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 MGL c. 272, ~ 31.

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ADULT VIDEO STORE -- An establishment having as a substantial or significant portion of its stock-in-trade videos, movies or other film material which is distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL c. 272, ~ 31.

~ 210-91. Uses allowed by special permit.

- A. Pursuant to the procedures of MGL c. 40A, ~ 9A, the following uses shall be allowed only upon the grant of a special permit by the Zoning Board of Appeals:
- (1) Adult bookstores.
 - (2) Adult motion-picture theaters.
 - (3) Adult paraphernalia stores.
 - (4) Adult video stores.
- B. Requests may be made for permits for more than one of the above uses in one location.

~ 210-92. Applicability.

The uses permitted by this article may be allowed only upon the issuance of a special permit by the Zoning Board of Appeals, only within the Business, Downtown Business and the Rural Business zoning districts. Such uses shall be subject to all of the requirements of this article for those districts and shall be in accordance with the additional requirements specified herein. **[5-7-2007 ATM, Art. 25]**

~ 210-93. General requirements.

The uses referred to in this article may be permitted within the above districts, provided that they meet the following requirements:

- A. Such use shall not be conducted within a building in which other uses are located which admit persons under the age of 18.
- B. Such use shall be permitted only when located outside the area circumscribed by a circle which has a radius of 400 feet from the following specified uses or zoning districts:
- (1) Any residence zoning district (RA, RB, RLF or A).
 - (2) Any church or other religious facility or institution.
 - (3) Any public or private school or a public or private child day-care facility.
 - (4) A youth center.
 - (5) An arena or any other building or facility of a similar nature which admits persons under the age of 18.

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- (6) Any library.
- (7) Any public park.
- (8) Any establishment which must obtain a special permit pursuant to this article.
- (9) Any establishment which has received a license under the provisions of MGL c. 138, ~ 12.

The radius distance shall be measured by following a straight line, without regard to intervening buildings or structures, from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property or the land use district boundary line from which the proposed adult use is to be separated.

- C. The premises and all buildings thereon in which such use occurs must comply in all respects with the requirements of the Hopkinton Zoning Bylaw which pertain to the district in which the said premises are located. In addition, the provisions of Article XX, Site Plan Review, as well as any design review requirements, shall apply to the premises.
- D. Signs shall be permitted subject to the provisions of the requirements set forth in Article VI, Business (B) District, ~ 210-18G, of this Chapter, subject to the following condition: No sign may depict or represent any sexual conduct or state of sexual excitement as defined in MGL c. 272, ~ 31, nor shall any such representations or depictions be placed upon or within the windows or walls of the premises so as to be visible to the public from the exterior of the premises. **[5-7-2007 ATM, Art. 25]**

~ 210-94. Application information.

- A. The application for any such special permit in accordance with this article must include the following items:
 - (1) The name, address, business address and telephone numbers of the owner or owners of the business which has made the application for such special permit.
 - (2) The name, address, business address and telephone numbers of all persons having any equity or other interest, including but not limited to security interest, liens, mortgages or other interest in the said business, as well as the name, address, business address and telephone number of all officers, directors, shareholders and trustees of all persons or entities having any interest in the said business.
 - (3) The name, address, business address and telephone numbers of all managers and all other employees that will work in the premises.
 - (4) The name, address, business address and telephone number of the owner of the property upon which the business is situated and the name and address of any and all lessees and sublessees of the said premises.

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- (5) Such actions and precautions concerning the security of the premises as the applicant intends to take with respect to the premises.
 - (6) The site plan referred to in Article XX, Site Plan Review, of this Chapter.
 - (7) A list of any and all merchandise which is to be offered for sale or distribution, either as salable merchandise or as samples or for other distribution at no cost or in any other manner by the business.
- B. Should any change in any of the above items in Subsection A (1) through (7) occur at any time during the period of possession of a special permit hereunder, the permit holder shall forthwith provide the Zoning Board of Appeals with such new information.

~ 210-95. Hours of operation.

The hours of operation of the business upon the premises shall be as determined by the Zoning Board of Appeals in the special permit.

~ 210-96. Special permits.

- A. The Zoning Board of Appeals may, in its discretion, issue a special permit for such use in accordance with the procedures of Article XXII of this Chapter and the conditions, provisions and requirements of said article.
- B. No person who has been convicted of violating the provisions of MGL c. 119, ~ 63, or MGL c. 272, ~ 28, shall be granted a special permit pursuant to this article.
- C. Special permits to be issued hereunder shall only be issued following public hearings which shall be held within 65 days after the filing of an application with the Zoning Board of Appeals, a copy of which shall be given forthwith to the Town Clerk by the applicant at the time of filing with the Zoning Board of Appeals.
- D. Any special permit granted under this article shall lapse within one year from the date of issue, which period shall not include the time required to pursue or await determination of an appeal referred to in MGL c. 40A, ~ 17, if a 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 within such period except for good cause.

~ 210-97. Use violative of other laws prohibited.

Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any other Town bylaw or statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness or obscene or harmful matter, or the exhibition or public display thereof.

~ 210-98. Severability.

If any section, subsection, sentence, clause, phrase or any portion of this article is for any reason held to be invalid, unenforceable or unconstitutional by any reviewing agency or by the decision

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of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. It is the intention of the Town of Hopkinton that it would have adopted this article and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid, unenforceable or unconstitutional.