

ORDINANCE NO. 32, 2005

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON ADDING A NEW ARTICLE XVIII  
"SEXUALLY ORIENTATED BUSINESSES" TO CHAPTER 170 "LAND USE" OF THE  
CODE OF THE TOWNSHIP OF LIVINGSTON

WHEREAS, it is the responsibility of local government to adopt regulations designed to promote the public health, safety and general welfare. Such power has been delegated to municipalities from the legislature of the State of New Jersey;

WHEREAS, pursuant to N.J.S.A. 2C:34-2b, the legislature of the State of New Jersey has determined that it is a fourth degree crime to sell, distribute, rent or exhibit material which is obscene. Consequently, the State of New Jersey has preempted the Township of Livingston from prohibiting the sale of materials which the Township believes to be obscene. However, in order to promote the public health, safety and general welfare of the citizens, the Township of Livingston may promulgate reasonable time, place and manner regulations with respect to the sale, distribution, rental or exhibition of various items by sexually orientated businesses.

WHEREAS, the Township of Livingston has determined that sexually oriented business have a deleterious affect on both the existing businesses adjacent to such establishment as well as the surrounding residential areas; causing increased crime, especially prostitution; adversely affecting property values, creating an atmosphere which is inimical to the values of the significant segment of the Township's population, and encourage residents and businesses to move elsewhere, and that said sexually oriented businesses, when located in close proximity to each other, contributes to urban blight and downgrade the quality of life in the adjacent areas.

WHEREAS, the purposes and objectives of the ordinance are to regulate sexually oriented businesses so as to minimize and control the adverse affects recognized in the proceeding section and to promote the public health, safety and general welfare of the citizens of the Township of Livingston. The Township Council of the Township of Livingston finds that secondary effects of adult entertainment establishments has established through the reports and studies of other cities and municipalities is deleterious and inimical to health, safety and general welfare to residents to the municipality. It is not the purpose of this Chapter to restrict or deny access by adults to sexually oriented material detected by the first amendment nor will this Chapter have the affect of restricting or denying such access.

**THEREFORE, BE IT ORDAINED**, by the Township Council, Township of Livingston, in the County of Essex and the State of New Jersey, as follows:

Section 1. The following new Article, entitled "Sexually Orientated Business" XVIII is added to Chapter 170- Land Use of the Code of the Township of Livingston:

§170-143 Definitions.

For the purposes of this Article, the terms used for the new Article shall be defined as follows:

**Adult Arcade** – Any place to which the public is permitted or invited wherein coin –operated or slug-operated or electronically, electrically or mechanically controlled still or image-producing devises are maintained to show images to one person per machine at any one time and where the

images displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

**Adult Bookstore or Adult Video Store.** A commercial establishment which has as its principal business, conspicuously offers for sale or for rental for any form of consideration any one or more of the following:

A. Books, magazines, periodicals or other printed material or photographs, films, motion pictures and videocassette or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

B. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

**Adult Cabaret.** A nightclub, bar, restaurant or other commercial establishment, whether or not same is licensed to sell alcoholic beverages for on-premises consumption, which regularly features:

A. Persons who appear in A State of Nudity; or  
B. Live performances which are characterized by the exposure of specified anatomical areas or by sexual conduct or by specified sexual activities; or

C. Films, motion pictures, videocassettes, compact disks, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities, sexual conduct or specified anatomical areas.

**Adult Motel.** A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration and which:

A. Provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographs reproductions which are characterized by the depiction or description of specified sexual activities or specific anatomical areas and has a sign visible from a public right of way which advertises availability of this type of photographic reproduction;

B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or

C. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

**Adult Motion Picture Theater.** A commercial establishment where, for any form of consideration, films, motion pictures, videocassette, slides or similar photographic reproductions are regularly shown characterized by the depiction or description which specified sexual activities or specified anatomical areas. Adult motion pictures theaters shall meet the seating requirements established for adult theaters.

**Adult Theater.** A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities. Seating shall be provided in a design consistent with traditional movie theaters. All sitting areas shall be visible and unobstructed.

**Commercial Display.** The exhibition to the senses of another person for valuable consideration, whether the valuable consideration is paid by the recipient of the exhibition or by

another and whether the exhibition occurs at the exhibitor's place of business or elsewhere.

**Nudity or A State of Nudity.** The appearance of a human bare buttock, anus, male genitals, female genitals or female breasts.

**Obscene Materials.** The definition of obscene materials set forth in N.J.S.A. 2C:34-2, as the same shall be from time to time amended or supplemented, as well as in accordance with and not more strictly than judicial interpretations thereof pursuant to the Constitutions of the United States and of the State of New Jersey finally concluded in courts of jurisdiction sufficient to render decisions on constitutional questions of general application.

**Person.** An individual, proprietorship, partnership, corporation, association or other legal entity.

**Sexually Oriented Business.** An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater or adult theater.

**Specified Anatomical Areas:**

- A. Less than completely and opaquely covered human genitals, pubic region, buttock or female breasts below the point immediately above the areola; or
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified Sexual Activities.** Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttock or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- C. Masturbation, actual or simulated; or
- D. Excretory functions as part of or in connection with any of the activities set forth in Subsections A through C.

**§170-144 Location of Sexually Oriented Businesses.**

A. Sexually oriented businesses shall only be located within CI Commercial Industrial District in accordance with the provisions set forth within paragraph 170-118 of the Code of the Township of Livingston.

B. It shall be a violation of this chapter if a person operates or causes to operate or allows to be operated a sexually oriented business:

- 1. Within 1,000 feet of a place of worship.
- 2. Within 1,000 feet of a school, whether public or private, or within 1,000 feet of any school bus stop.
- 3. Within 1,000 feet of any sexually oriented business.
- 4. Within 1,000 feet of any residential use or zone
- 5. Within 1,000 feet of any public park or playground.

C. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premise where a sexually oriented business is conducted to the nearest property line of the premises of a place of

worship, a school, a boundary of a residential district, a public park or playground, a lot devoted to residential use or a school bus stop.

D. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the establishment of the sexually oriented business, of a place of worship, school, public area, residential district or residential low within 1,000 feet of the sexually oriented business.

E. Sexually oriented businesses shall conform to design standards and development requirements established through the ordinances of the Township of Livingston.

F. No person under the age of 18 years shall be permitted on the premises of a sexually oriented business for any purpose.

G. No display visible from the exterior of the sexually oriented business shall contain material of a sexually oriented nature.

**§170-145 Perimeter Buffer Requirement.**

Sexually oriented business located in the Township of Livingston shall be surrounded by a perimeter buffer of at least 50 feet in width of plantings, fence, or other physical divider along the outside of the perimeter sufficient to impede the view of the interior of the premises in which the business is located.

**§170-146. Violations and Penalties.**

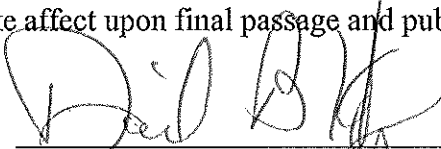
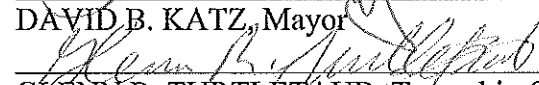
A. Any person violating any provision of this chapter, upon conviction, is punishable by a fine not to exceed \$1,000 or a term of imprisonment not to exceed 90 days or by community service of not more than 90 days, or any combination of fine, imprisonment and community service, as determined at the discretion of the Municipal Court Judge. In no event shall any person violating this chapter, upon conviction, receive a final fine below the amount of \$100.

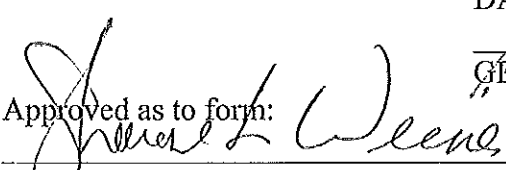
B. Each day a sexually oriented business is in operation, in violation of §170-144 of this chapter, shall constitute a separate offense under this chapter.

C. Each separate film, videocassette or other visual reproduction or each showing of live entertainment which is displayed to another in violation of §170-144 of this chapter is a separate offense under this chapter.

Section 2. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

Section 3. This Ordinance shall take affect upon final passage and publication in accordance with the law.

  
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DAVID B. KATZ, Mayor  
  
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GLENN R. TURTLEAUB, Township Clerk

Approved as to form:  
  
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SHARON L. WEINER, Township Attorney  
Adopted: 11/7/05