

## **PART II**

# **GENERAL LEGISLATION**

## Chapter 75

### ADULT USES

§ 75-1. Purpose.

§ 75-2. Definitions.

§ 75-3. Restrictions.

§ 75-4. Effect on existing uses.

§ 75-5. Penalties for offenses.

[HISTORY: Adopted by the Town Board of the Town of Westmoreland 2-23-1998 by L.L. No. 1-1998. Amendments noted where applicable.]

#### GENERAL REFERENCES

Building code administration and enforcement — See  
Ch. 86.

Zoning — See Ch. 180.

#### § 75-1. Purpose.

- A. The promulgation of this chapter was prompted by a concern about the serious objectionable characteristics of adult uses. The Town of Westmoreland has conducted research on the deleterious impacts associated with adult uses and has examined the experiences of other municipalities. It is the conclusion of the Town of Westmoreland that a proliferation of adult uses has a negative effect on property values, commercial activity and quality of life and leads to an increase in the incidence of criminal activity.
- B. It is the purpose of this chapter to regulate adult-oriented businesses and related activities to promote the health, safety, morals and general welfare of the citizens of the Town and to prevent the deleterious location and concentration of adult-oriented businesses within the Town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials.

#### § 75-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT USES — The words "adult use" or "adult-oriented business" apply to the following types of establishments:

- A. ADULT BOOKSTORE — An establishment which has a substantial or significant portion of its stock-in-trade, books, pamphlets, magazines and other periodicals, sculptures, photographs, pictures, slides, videotapes, films or sound recordings distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and which establishment excludes any minor by reason of age.<sup>1</sup>

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1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



- B. ADULT ENTERTAINMENT CABARET — A public or private nightclub, bar, juice bar, restaurant or similar establishment which presents topless or bottomless dancers, go-go dancers, strippers, male or female impersonators, exotic dancers, or other similar entertainment and which establishment excludes any minor by reason of age.
- C. ADULT VIDEO STORE — An establishment having as a substantial or significant portion of its stock-in-trade, videotapes or films for sale or viewing on premises, by use of motion-picture devices, video equipment or other coin-operated means, distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and which establishment excludes any minor by reason of age.<sup>2</sup>
- D. PEEP SHOW — A theater which presents material in the form of live shows, films, or videotapes viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.
- E. MASSAGE ESTABLISHMENT — Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist or duly licensed massage therapist, or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquet ball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.
- F. ADULT MOTEL — A motel which excludes minors by reason of age, or which makes available to its patrons in their rooms films, slide shows, or videotapes, which if presented in a public movie theater would exclude any minor by reason of age.
- G. ADULT THEATER — A theater that customarily presents motion pictures, films, videotapes, or slide shows distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and that excludes any minor by reason of age.<sup>3</sup>
- H. BODY PAINTING STUDIO — Any establishment or business which provides the service of applying paint or other substance, whether transparent or nontransparent, to or on the human body and which excludes any minor by reason of age.
- I. ADULT MODEL STUDIO — Any establishment where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons other than the proprietor, paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution, which meets the requirements

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2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).



established in the New York State Education Law for the issuance of conferring of, and is in fact authorized to issue and confer a diploma.

**§ 75-3. Restrictions.**

In addition to the requirements of Chapter 180, Zoning, of the Code of the Town of Westmoreland, adult uses shall be permitted subject to the following restrictions:

- A. Adult uses shall not be located within a two-thousand-six-hundred-foot radius of any area zoned for residential use. For measurement purposes, the distance between an adult use and any residential zoning district shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the boundary line of such residential district.
- B. Adult uses shall not be located within a two-thousand-six-hundred-foot radius of another adult use. For measurement purposes, the distance between adult uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the closest structural wall of any other adult use.
- C. Adult uses shall not be located within a two-thousand-six-hundred-foot radius of any school, nursery school, day-care center, educational institution, house of worship, park or playground, historic or scenic resource, and civic or cultural facility. For measurement purposes, the distance between the adult use and such other named uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the closest property boundary of such school, nursery school, day-care center, educational institution, house of worship, park or playground, historic or scenic resource, and civic or cultural facility.
- D. Not more than one adult use shall be located in the same building or upon the same lot or parcel of land.
- E. No loudspeakers or sound equipment shall be used for adult uses that can be discerned by the public from public or semipublic areas.
- F. Advertisements, displays or other promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian walkways, or from other areas public or semipublic, and such displays shall be considered signs.
  - (1) No sign or other structure shall be placed, erected, or used on the premises except as provided in this section and/or in Chapter 180, Zoning, of the Code of the Town of Westmoreland.
  - (2) Not more than one business wall sign shall be permitted for an adult use, and said sign shall be permitted only on the front facade.

**§ 75-4. Effect on existing uses.**

- A. Any adult use lawfully in existence on the date on which this chapter became effective shall register such adult use within 30 days of the effective date of this chapter with the Town Building Inspector's office.
- B. Any adult use lawfully in existence on the date on which this chapter becomes effective which fails to register with the designated Building Inspector within the 30 days of the effective date of this chapter shall be discontinued on or before December 31, 1998.

**§ 75-5. Penalties for offenses. <sup>4</sup>**

Any person, corporation, or partnership or entity that establishes, constructs or installs any building, improvement, structure, or conducts or operates any land use in violation of the provisions of this chapter shall be guilty of a violation and, upon conviction, subject to a penalty of up to \$250 or imprisonment for not more than 15 days, or both, for each day that such violation continues to exist. Nothing herein shall be construed to limit the authority of the Town to seek and obtain injunctive relief for any violation of this chapter.

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4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).