

**I. Overview of Adult Oriented Businesses and Zoning Regulations/Municipal Ordinances**

**A. First Amendment Considerations**

Adult Bookstores, movie theaters and other sexually oriented business are afforded First Amendment protections because those activities have been deemed protected speech by the Supreme Court and thus, it is unconstitutional to completely ban those types of businesses. See Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976).

However, it has been held that the First Amendment requires only that municipalities refrain from effectively denying adult businesses a reasonable opportunity to operate an adult business within the town/city. Id. See also Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007).

Accordingly, zoning regulations (and other town ordinances) have become one of the only effective ways to restrict the operation, location and dispersment of adult oriented businesses.

For reference, the Connecticut General Statutes include a public indecency provision. Conn. Gen. Stat. § 53a-186 (2010).

**B. Zoning of Adult Establishments in Connecticut**

Zoning restrictions on adult oriented businesses “cannot regulate the content of the films or literature, ban the viewing of them or require a license or permit before they can be shown or displayed, but a regulation will be upheld if it is not aimed at the message or content of the material.” 9 Conn. Prac., Land Use Law & Prac. §22-22 (3d. ed.)(2010); citing Grunberg v. Town of East Hartford, 736 F. Supp. 430 (D. Conn. 1989), aff’d per curiam, Singer v. Town of East Hartford, 901 F.2d 297 (2d Cir. 1990)(upheld regulation prohibiting video booths showing adult films from being closed or obscured

from view from common areas in the store). Connecticut is among the unbroken string of states with court cases upholding similar provisions for adult book stores.

Generally, content neutral zoning regulations that restrict the time, manner and place of adult oriented businesses within a municipality are constitutional as long as they “(1) serve a substantial government interest, and (2) do not limit unreasonably other alternative avenues of communication.” Crown Street Enterprises, Inc. v. City of New Haven et al., 989 F. Supp. 420, 423 (D. Conn. June 9, 1997); see also Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1981); Encore Videos, Inc. v. City of San Antonio, 352 F.3d 938 (5th Cir. 2003); D.H.L. Associates, Inc. v. O’Gorman, 199 F.3d 50 (1st Cir. 1999)(adult ordinance upheld as time, place and manner restriction).

### **1. Practical Tips for Regulating Adult Oriented Establishments**

A municipality should consider the above factors when drafting new regulations or amending existing regulations since the Supreme Court has articulated a balance between freedom of expression and governmental interests. This balancing of interests has been followed by Connecticut courts in both upholding and striking down zoning ordinances restricting adult oriented businesses. See e.g. Grunberg v. Town of East Hartford, 736 F. Supp. 430 (D. Conn. 1989), aff’d per curiam, Singer v. Town of East Hartford, 901 F.2d 297 (2d Cir. 1990)(regulation upheld); but see 754 Orange Ave., Inc. v. City of West Haven, 761 F.2d 105 (2d Cir. 1985)(regulation held void because there was no evidence that restriction would further government interest or that it left alternate areas in the City where owner could operate adult oriented business).

For examples of zoning regulations of adult oriented businesses enacted by Connecticut municipalities, see Section 622 of the Hamden Zoning Regulations and

Section 383-144-148.1 of the Town of Orange Municipal Code (Zoning of Adult Use Establishments), both of which are available for viewing online. Both Hamden and Orange have location restrictions, limiting adult oriented businesses from operating within a specified distance from a school, day-care center, recreational facility for children or place of worship. See Town of Orange Municipal Code § 383—160-1 through 13; Town of Hamden Zoning Regulations Section 622. In addition, both Hamden and Orange zoning regulations provide instructions with regard to a uniform way of measuring the location restrictions articulated in their respective regulations. Id.

Other commonly articulated zoning regulations restricting the operation of adult oriented businesses include:

- no adult oriented establishment within specified distance from another adult oriented establishment See e.g. Town of Orange Municipal Code Zoning Regulations § 383-146B(1).
- no adult oriented establishment within specified distance from residential zone. See e.g. Town of Orange Municipal Code Zoning Regulations § 383-146B(2).
- Special permits and/or special exceptions required. See e.g. Town of Hamden Zoning Regulations Section 622; see also Crown Street Enterprises, Inc. v. City of New Haven et al., 989 F. Supp. 420, 423 (D. Conn. June 9, 1997) (special exception required for adult cabarets that serve food and drinks permissible).
- Annual registration with Zoning Enforcement Officer required. See e.g. Town of Hamden Zoning Regulations Section 622.

***(a) \*Nonconforming Use\* Caveat***

It should be noted that pursuant to Connecticut General Statutes Section 8-2, a non-conforming use that existed prior to a zoning regulation would be permitted to continue operating as a non-conforming use. Therefore, new or amended regulations (i.e. as to location) would be unlikely to affect existing adult oriented businesses (subject to evaluation of whether the use has changed *rather than* the same business intensified or conducted with new instrumentalities). However, if an adult establishment is not yet in “actual use,” a municipality may be able to adopt effective regulations restricting the location, time and manner of operation of the adult establishment at issue.

In 2007, raised bill No. 6993 (An Act Concerning the Zoning regulation of Adult Establishments) would have effectively voided the non-conforming use exception for new purchasers of existing adult establishments. That bill was never acted upon by the General Assembly and to date, there has been no additional legislation that addresses this issue.

**II. A Few Recent Connecticut Decisions**

**(1) Accessory Use**

In a zone where neighborhood stores were a permitted use, video preview booths constituted an accessory use for an adult book and video store. Loring v. Planning and Zoning Com’n of Town of North Haven, 287 Conn. 746 (2008).; See also § 6.1.11 of the North Haven Zoning Regulations (which allows “Basic neighborhood stores: book and stationery, cigar, drug, dry goods and notions, florist, food, including retail bakery, haberdashery, hardware[,]” in the district where the subject property is located.” )

## **(2) Town Ordinance Can Regulate Zoning Issues by Virtue of Inherent Police Power**

In VIP of Berlin v. Town of Berlin, the plaintiff, VIP of Berlin, sought injunctive relief and a declaratory judgment that a Town ordinance, which included a restriction that prohibited adult establishments from operating within 250 feet of a residential district, arguing that the Town ordinance was ultra vires. 50 Conn. Supp. 542 (2008), aff'd, 287 Conn. 142 (2008). The plaintiff reasoned that the ordinance represented an unauthorized exercise of zoning authority. 50 Conn. Supp. at 560. The court rejected the plaintiff's argument and held that the ordinance was a valid exercise of police power conferred upon the Town by statute. Id. at 561, citing Conn. Gen. Stat. § 7-148.

Specifically, the court held that statutory power of town planning and zoning commission to regulate land uses was not exclusive, and thus, town council, pursuant to the town's statutory, regulatory and police powers with respect to buildings in town, could enact an ordinance imposing locational restrictions for sexually-oriented businesses in residential zones in town.

Similarly, in Gold Diggers v. LLC v. Berlin, 499 F. Supp.2d 43 (D. Conn. 2007), the same ordinance was challenged with a similar result. Id. at 66.