

## Chapter 28.81

### ADULT ENTERTAINMENT FACILITIES

#### Sections:

<b>28.81.010 Purpose.</b>	<b>28.81.050 Legally Existing Non-Conforming Uses.</b>
<b>28.81.020 Definitions.</b>	<b>28.81.060 Severance Clause.</b>
<b>28.81.030 Location of Adult Entertainment Businesses.</b>	
<b>28.81.040 Design and Performance Standards.</b>	

#### 28.81.010 Purpose.

It is the purpose of this Chapter to regulate adult entertainment businesses to promote the health, safety and welfare of the citizens of the City of Santa Barbara and to establish reasonable and uniform regulations to prevent the concentration of adult entertainment businesses within the City. In adopting this Chapter, it is recognized that certain types of adult entertainment businesses possess certain characteristics which when concentrated can have a deleterious effect upon adjacent areas. It is also recognized that locating the adult entertainment businesses covered by this chapter in the vicinity of facilities frequented by minors will cause the exposure of minors to adult material which, because of their immaturity, may adversely affect them. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood and to an adverse effect on minors. The uses subject to these regulations are as follows:

Adult bookstore, adult novelty store, or adult video store;  
Adult live entertainment theater;  
Adult motion picture or video arcade; and  
Adult motion picture theater.

The purpose of this ordinance is not to limit or restrict the content of any communicative materials, including sexually oriented materials, to restrict or deny access by adults to sexually oriented materials protected by the United States or California Constitutions, or to deny access by distributors and exhibitors of sexually oriented materials and entertainment to their intended market. (Ord. 4867, 1994; Ord. 3870, 1976.)

#### 28.81.020 Definitions.

For purposes of this Chapter the following terms shall be defined as follows:

A. **Adult Entertainment Business** shall mean those businesses defined as follows:

1. **Adult Bookstore, Adult Novelty Store, or Adult Video Store** is an establishment with a majority of: a) its floor area devoted to; or b) stock-in-trade consisting of; or c) gross revenues derived from, and offering for sale for any form of consideration, any one or more of the following:

a. Books, magazines, periodicals or other printed matter, photographs, drawings, motion pictures, slides, films, tapes, video cassettes, records, or other visual or audio representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

b. Instruments, devices or paraphernalia which are designed to be used in connection with "specified sexual activities;" or

c. Goods which are replicas of, or which simulate "specified anatomical areas," or goods which are designed to be placed on or in "specified anatomical areas," or to be used in conjunction with "specified sexual activities."

2. **Adult Live Entertainment Theater** means any place, building, enclosure or structure, partially or entirely used for "live adult entertainment" performances or presentations characterized by an emphasis on depicting, exposing, displaying, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

"Live adult entertainment" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming, in which the performer or performers expose to public view without opaque covering "specified anatomical areas" for entertainment value for any form of consideration.

3. **Adult Motion Picture or Video Arcade** means any business wherein coin, paper note or token operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to four or fewer persons per machine, at any one time, and where the predominant character or theme of the images so displayed is distinguished or characterized by its emphasis on matter depicting, or relating to "specified sexual activities" or "specified anatomical areas."

4. **Adult Motion Picture Theater** means any business, other than a hotel or motel, with the capacity of five or more persons where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions in which the predominant character and theme is distinguished or characterized by its emphasis on matter depicting, or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section. This includes, without limitation, showing any such slides, motion pictures or videos by means of any video tape system which has a display, viewer, screen, or a television set.

5. **Exception to Adult Entertainment Business.** An "Adult entertainment business" shall not include:

- a. Bona fide medical establishments operated by properly licensed and registered medical and psychological personnel with appropriate medical or professional credentials for the treatment of patients.
- b. Persons depicting "specified anatomical areas" in a modeling class operated:
  - (1) By a college, junior college, or university supported entirely or partly by public revenue; or
  - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by public revenue; or
  - (3) In a structure operated either as a profit or not-for-profit facility:
    - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    - (b) Where, in order to participate in a class a student must enroll at least three days in advance of the class.
- c. The practice of massage in compliance with Chapter 5.76 of this Code.

**B. Employee.**

"Employee" of an adult entertainment business shall mean a person who works or performs in and/or for an adult entertainment business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

**C. Establish.**

"Establish" shall mean and include any of the following:

1. The opening or commencement of any adult entertainment business as defined in this Section; or
2. The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business as defined in this Section; or
3. The relocation of any adult entertainment business; or
4. The expansion or enlargement of the premises by 15% or more of the existing floor area as the area legally existed on March 1, 1994.

**D. Operate.**

"Operate" shall mean to own, lease (as lessor or lessee), rent (as landlord or tenant or as agent for the purpose of representing a principal in the management, rental or operation of the property of such principal), manage, conduct, direct, or be employed in an adult entertainment business.

**E. Operator.**

"Operator" shall mean and include the owner, custodian, manager or person in charge of any adult entertainment business.

**F. Person.**

"Person" shall mean an individual, proprietorship, partnership, corporation, association, or other legal entity.

**G. Public Park, Beach or Recreation Area.**

"Public Park, Beach or Recreation Area" shall mean public land which has been designated for park, beach, recreational, or arts activities including but not limited to a park, beach, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the City which is under the control, operation, or management of the City Department of Parks and Recreation. "Recreation area" shall also include the Santa Barbara Zoological Gardens, the Santa Barbara Museum of Art and the Santa Barbara Museum of Natural History.

**H. Religious Institution.**

"Religious Institution" shall mean any church, synagogue, mosque, temple, or building which is used primarily for religious worship, religious education incidental thereto and related religious activities.

**I. Residential Zone.**

"Residential Zone" shall mean property which has a zoning designation of A-1, A-2, E-1, E-2, E-3, R-1, R-2, R-3, R-4 or such other residential zones as may be created by ordinance, or a Mobilehome Park or subdivision or Recreational Vehicle Park as defined in this Code.

**J. School.**

"School" shall mean any public or private educational facility primarily attended by minors, including but not limited to, large family day care homes, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, secondary schools, continuation schools and special education schools. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

**K. Sensitive Uses.**

"Sensitive Uses" shall include public parks, beaches or recreation areas, religious institutions, residential zones and schools.

**L. Specified Anatomical Areas.**

"Specified Anatomical Areas" shall include the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, and/or the female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**M. Specified Sexual Activities.**

"Specified Sexual Activities" shall include the following:

1. Actual or simulated sexual intercourse, oral copulation and intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or
2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
3. Human or animal masturbation, sodomy, oral copulation, coitus, ejaculation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
6. Erotic or lewd touching, lewd fondling or other lewd contact with an animal by a human being; or
7. Human excretion, urination, menstruation, vaginal or anal irrigation. (Ord. 4867, 1994; Ord. 3870, 1976.)

**28.81.030 Location of Adult Entertainment Businesses.**

**A. GENERAL RESTRICTIONS.** No person shall operate or establish an "adult entertainment business," as defined in this Code, in any area of the City of Santa Barbara, except the C-2 zone, C-M zone, or the M-1 zone but excluding the El Pueblo Viejo Landmark District as defined in Section 22.22.100B of the Santa Barbara Municipal Code.

**B. VALID PERMITS.** No building permit or zoning clearance, business license, or other permit or entitlement for use shall be legally valid if issued to any adult entertainment business proposed to operate or be established in any area of the City except allowed portions of the C-2 zone, C-M zone, or the M-1 zone but excluding those areas of the City within the El Pueblo Viejo Landmark District as defined in Section 22.22.100B of the Santa Barbara Municipal Code.

**C. LOCATIONAL RESTRICTIONS.** Any adult entertainment business proposed to be operated or established in allowed portions of the C-2 zone, C-M zone, or the M-1 zone shall be subject to the following restrictions:

1. The establishment or operation of an adult entertainment business shall be subject to the locational criteria setting forth minimum distances from sensitive uses and zones as follows:
  - a. Residential zone: 500 feet,
  - b. Religious institution: 500 feet,
  - c. Public park, public beach, recreation area: 500 feet,
  - d. School: 500 feet,
  - e. Another adult entertainment business: 500 feet.
2. For the purposes of this Chapter, all distances shall be measured in a straight line, without regard for intervening structures, from the nearest exterior wall of the unit or building containing the adult entertainment business to the nearest property line of a sensitive use or zone as listed in this Chapter.
3. For the purposes of this Chapter, the distance between any two adult entertainment businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the unit or structure in which each business is located.
4. An adult entertainment business may not be operated in the same building, structure, or portions thereof containing another adult entertainment business or use as defined in this Chapter. Each business defined in 28.81.020.A.1-4 shall constitute a separate business for purposes of this Chapter. (Ord. 5105, 1999; Ord. 4867, 1994; Ord. 4838, 1993; Ord. 3911, 1977; Ord 3870, 1976.)

**28.81.040 Design and Performance Standards.**

The establishment or operation of an adult entertainment business shall comply with the applicable site development standards, including, but not limited to, parking, design review, the technical codes adopted pursuant to section 22.04.010 of the Santa Barbara Municipal Code, and as may be amended from time to time, and the Uniform Fire Code adopted pursuant to Chapter 8.04 of the Santa Barbara Municipal Code, and as may be amended from time to time. An adult entertainment business shall comply with the applicable City of Santa Barbara permit and inspection procedures. In addition, adult entertainment businesses shall comply with the following design and performance standards:

A. Signs, advertisements, displays, or other promotional materials depicting or describing "specified anatomical areas" or "specified sexual activities" or displaying instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities" shall not be shown or exhibited so as to be discernible by the public beyond the walls of the building or portion thereof in which the adult entertainment business is conducted.

B. Each adult entertainment business shall have a business entrance separate from any other non-adult business located in the same building.

C. All building openings, entries, and windows for an adult entertainment business shall be located, covered or screened in such a manner as to prevent a view into the interior of an adult entertainment business from any area open to the general public.

D. No adult entertainment business shall be operated in any manner that permits the observation by the public of any material depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" from any public way or from any location beyond the walls of the building or portion thereof in which the adult entertainment business is conducted.

E. The building entrance to the adult entertainment business shall be clearly and legibly posted with a notice indicating that minors are precluded from entering the premises.

F. No loudspeakers or sound equipment shall be used by adult entertainment businesses for amplification of sound to a level discernible by the public beyond the walls of the building or portion thereof in which the adult entertainment business is conducted.

G. Each adult entertainment business shall be provided with a manager's station which shall be used for the purpose of supervising activities within the business. A manager shall be on duty on the premises during all times that the adult entertainment business is open to the public.

H. Off-street parking shall be provided for the adult entertainment business as specified in accordance with the parking provisions of Santa Barbara Municipal Code Chapter 28.90.

I. An on-site security program shall be prepared and implemented including the following items:

1. All off-street parking areas and building entries serving the adult entertainment business shall be illuminated during all hours of operation with a lighting system which provides a minimum maintained horizontal illumination of one (1) footcandle of light on the parking surface and/or walkway.

2. All interior portions of the adult entertainment business, except those areas devoted to mini-motion or motion pictures, shall be illuminated during all hours of operation with lighting system which provides a minimum maintained horizontal illumination of not less than two (2) footcandles of light on the floor surface. (Ord. 4867, 1994.)

#### **28.81.050 Legally Existing Non-Conforming Uses.**

Notwithstanding any other provision of this Title, any legally existing adult entertainment business operating on March 1, 1994, not in compliance with the locational requirements in Section 28.81.030 may continue as a non-conforming use. The legally non-conforming status of an adult entertainment business shall terminate if voluntarily discontinued for thirty (30) or more consecutive days. (Ord. 4867, 1994.)

#### **28.81.060 Severance Clause.**

If any section, subsection, paragraph, subparagraph or provision of this Chapter or the application thereof to any person, property or circumstance is held invalid, the remainder of the Chapter and the application of such to other persons, properties or circumstances shall not be affected thereby. (Ord. 4867, 1994.)