

BOROUGH OF AVALON
ORDINANCE NO 1229

AN ORDINANCE OF THE BOROUGH OF AVALON, ALLEGHENY COUNTY, PENNSYLVANIA, AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF AVALON, ORDINANCE NO. 1123, AS AMENDED, BY ADDING TO ARTICLE VII, SECTION 716, SPECIAL EXCEPTIONS FOR SEXUALLY ORIENTED BUSINESSES, TO BE KNOWN AS THE BOROUGH SEXUALLY ORIENTED BUSINESS ORDINANCE, PROVIDING FURTHER FOR THE REGULATION OF THE TIME, MANNER AND PLACE OF SEXUALLY ORIENTED BUSINESS OPERATIONS PERMITTED THEREUNDER, PROVIDING DEFINITIONS FOR THE SAME, REQUIRING APPLICATIONS FOR SPECIAL EXCEPTIONS AND PERMITS, REGULATING THE ISSUANCE OF SUCH PERMITS, PROVIDING FEES FOR ISSUANCE OF THE SAME, AUTHORIZING INSPECTION OF SUCH PREMISES, AND PROVIDING FOR THE SUSPENSION AND REVOCATION OF SUCH PERMITS, AND PROVIDING OTHER REMEDIES FOR VIOLATION OF THE ORDINANCE.

The following are the findings of Borough Council of the Borough of Avalon:

WHEREAS, Council of the Borough of Avalon finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the Borough of Avalon which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, permitting and/or licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or

solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to neighborhood blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Borough of Avalon desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime, preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of neighborhood blight; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of Council of the Borough of Avalon to condone or legitimize the distribution of obscene material; and

WHEREAS, Council of the Borough of Avalon has determined

that the amendment of the Zoning Ordinance is the appropriate Ordinance of the Borough of Avalon to require compliance with the provisions of the following Ordinance; and

WHEREAS, a public hearing and proper advertisement of the same have been duly made.

NOW, THEREFORE, pursuant to the authority granted by the Constitution and General Assembly of the Commonwealth of Pennsylvania, BE IT ORDAINED AND ENACTED by Council of the Borough of Avalon and it is hereby ordained and enacted with the authority of the same and Article VII of the Borough Zoning Ordinance, Ordinance No. 1123, as amended, is amended to include a new Section 716, Special Exceptions for Sexually Oriented Businesses, and known as the Borough's Sexually Oriented Business Ordinance, as follows:

Section 1: Purpose and Intent.

It is the purpose and intent of this Ordinance to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Borough of Avalon, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the Borough. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the

First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Nether is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

Section 2: Definitions.

A. **ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

B. **ADULT BOOKSTORE or ADULT VIDEO STORE** means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

- i. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or
- ii. Instruments, devices, or paraphernalia which

are designed for use in connection with
"specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as **ADULT BOOKSTORE** or **ADULT VIDEO STORE**. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an **ADULT BOOKSTORE** or **ADULT VIDEO STORE** so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or specified anatomical areas."

C. **ADULT CABARET** means a nightclub, or bar, or similar commercial establishment which regularly features:

- i. Person who appear in the state of nudity;
or
- ii. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- iii. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

D. **ADULT MOTEL** means a hotel, motel or similar

performances which are characterized by the exposure of "specified features persons who appear in a state of nudity or live auditorium, or similar commercial establishment which regularly F. ADULT THEATER means a theater, concert hall, "specified anatomical areas."

depiction or description of "specified sexual activities" or reproductions are regularly shown which are characterized by the pictures, video cassettes, slides, or similar photographic establishment where, for any form of consideration, films, motion E. ADULT MOTION PICTURE THEATER means a commercial period.

or more calendar days in any continuous 30-day more times in one calendar day during five (5) ii. Offers sleeping rooms for rent four (4) or adult type of photographic reproductions; or which advertises the availability of this sign visible from the public right of way or "specified anatomical areas"; and has a description of "specified sexual activities" which are characterized by the depiction or slides, or other photographic reproductions, films, motion pictures, video cassettes, closed-circuit television transmissions, form of consideration; provides patrons with 1. Offers accommodations to the public for any

commercial establishment which:

anatomical areas" or "specified sexual activities."

G. **BOROUGH** means the Borough of Avalon.

H. **CHILD-ORIENTED BUSINESS** means a commercial establishment which, as one of its principal business purposes, serves, sells and/or caters food, apparels, goods, services, play and/or entertainment to children and their families.

I. **ESCORT** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

J. **ESCORT AGENCY** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

K. **PERMITTEE and/or LICENSEE** means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

L. **NUDE MODEL STUDIO** means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

M. **NUDITY or a STATE OF NUDITY** means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

N. **PERSON** means an individual proprietorship, partnership, corporation, association, or other legal entity.

O. **RESTAURANT** means a place where the principal and substantial activity is the sale of food and the incidental sale of non-intoxicating beverages or intoxicating beverages if licensed by the Pennsylvania Liquor Control Board.

P. **SEMI-NUDE** means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Q. **SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- i. Physical contact in the form of wrestling or tumbling between persons of the opposite sex;
or
- ii. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

R. **SEXUALLY ORIENTED BUSINESS** means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

S. **SPECIFIED ANATOMICAL AREAS** means the male genitals in a state of sexual arousal and/or the vulva or more intimate

parts of the female genitals.

T. SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- i. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- ii. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- iii. Masturbation, actual or simulated; or
- iv. Excretory functions as part of or in connection with any of the activities set forth in "i" through "iii" above.

U. SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on date of enactment of this Ordinance.

V. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

- i. The sale, lease, or sublease of the business;
- ii. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- iii. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of

law upon the death of the person possessing the ownership or control.

Section 3: Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

Section 4: Permit Required.

A. Any person who operates a sexually oriented business without a valid permit issued by the Zoning Hearing Board granting such use as a special exception is guilty of a violation of the Zoning Ordinance of the Borough.

B. An application for a permit to operate a sexually oriented business must be made on a form provided by the Zoning Officer / Building Inspector of the Borough. The application must be accompanied by a sketch or diagram showing the floor plan and plot plan configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or

diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6"). Parking facilities must be specifically identified and shall meet all zoning ordinance requirements. Nonconforming structures and those structures not having the required parking sites shall not be issued permits unless the sexually oriented business was in existence as a lawful use prior to the date of this Ordinance.

C. The applicant must be qualified according to the provisions of this Ordinance and the premises must be inspected and found to be in compliance with the law by the Zoning Officer / Building Inspector and the Fire Marshall.

D. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of ten percent (10%) or greater in the corporation must sign the application for a permit as applicant.

E. The fact that a person possesses other types of Borough permits does not exempt the person from the requirement of obtaining a sexually oriented business permit.

Section 5: Special Exception and Issuance of Permit.

A. The Zoning Hearing Board of the Borough of Avalon shall hear and decide requests for a special exception to operate a sexually oriented business and shall approve the issuance of a permit to an applicant within thirty (30) days after receipt of an application and permit fee, unless it finds one or more of the following to be true:

- i. An applicant is under eighteen (18) years of age.
- ii. An applicant or an applicant's spouse is overdue in his payment to the Borough of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
- iii. An applicant has failed to provide information reasonably necessary for issuance of the special exception and permit or has falsely answered a question or request for information on the application form.
- iv. An applicant is residing with a person who has been denied a permit by the Borough to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

- v. The premises to be used for the sexually oriented business have been reviewed and have been disapproved by either the Zoning Officer / Building Inspector or the Fire Marshall as not being in compliance with applicable laws and ordinances and the Zoning Hearing Board affirms such determination.
- vi. The permit fee required by this Ordinance has not been paid.
- vii. An applicant of the proposed establishment is in violation of, or is not in compliance with, any of the provisions of this Ordinance.
- viii. An individual applicant, or any individual holding a direct or indirect interest of more than ten percent (10%) of a corporate applicant, or any of the officers and directors of a corporate applicant, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, or the manager or other person in charge of the operation of the applicant's business, has, or have been convicted of an offense involving sexual misconduct within the Commonwealth of Pennsylvania, including, but not limited to, prostitution, obscenity and possession of

child pornography, or convicted of any offense in any jurisdiction other than the Commonwealth of Pennsylvania that would have constituted an offense involving sexual misconduct if committed within the Commonwealth of Pennsylvania. In order for approval to be denied pursuant to this subsection, the person or persons' conviction or release in connection with the sexual misconduct offense must have occurred within two (2) years of the date of application in the event of a misdemeanor and within five (5) years of the date of application in the event of a felony.

B. If the special exception is granted, the permit shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

C. The Zoning Officer / Building Inspector and Fire Marshall shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the application by the Zoning Officer / Building Inspector. The certification shall be promptly presented to the Zoning Hearing Board.

Section 6: Fees.

The annual fee for a sexually oriented occupancy permit is Five Hundred (\$500.00) Dollars.

Section 7: Inspection.

A. An applicant, or permittee, shall permit representatives of the Police Department, Fire Marshall, the Zoning Officer / Building Inspector or other Borough departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time that the sexually oriented business is occupied or open for business.

B. A person who operates a sexually oriented business or his agent or employee violates the Zoning Ordinance of the Borough if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

Section 8: Expiration of Permit.

A. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 5 to the Zoning Hearing Board. Applications for renewal should be made at least thirty (30) days before the expiration date and, when made fewer than thirty (30) days before the expiration date, the pendency of the application will not prevent the expiration of the permit.

B. If the Zoning Hearing Board denies renewal of a

license, the applicant shall not be issued a permit for one year from the date of denial, except that after ninety (90) days have elapsed since the date of denial, the applicant may be granted a permit if the Zoning Hearing Board finds that the basis for the denial of the renewal permit has been corrected or abated.

Section 9: Suspension of Permit.

The Zoning Officer / Building Inspector shall suspend a permit for a period not to exceed thirty (30) days if he determines that a permittee or an employee of a permittee has:

- A. Violated or is not in compliance with any section of this Ordinance;
- B. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance;
- D. Knowingly permitted gambling by any person on the sexually oriented business premises;
- E. Failed to man managers' stations and/or maintain viewing rooms as set forth in Section 13.

Section 10: Revocation of Permit.

A. The Zoning Officer / Building Inspector shall revoke a permit if a cause of suspension set forth in Section 9 occurs and the permit has been suspended within the preceding twelve (12) months.

B. The Zoning Officer / Building Inspector shall revoke a permit if he determines that:

- i. A permittee, or any of the persons specified in Section 5(A)(viii), is or has been convicted of the offenses specified in Section 5(A)(viii);
- ii. A permittee gave false or misleading information in the material submitted to the Borough or the Zoning Hearing Board during the application process;
- iii. A permittee or an employee of a permittee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- iv. A permittee or an employee of a permittee has knowingly allowed prostitution on the premises;
- v. A permittee or an employee of a permittee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended;
- vi. A permittee or an employee of a permittee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other explicit sexual conduct to occur in or on the permitted premises;
- vii. A permittee is delinquent in payment to the

Borough or State of any taxes or fees relating to sexually oriented businesses.

C. When the Zoning Officer / Building Inspector revokes a permit, the revocation shall continue for one (1) year, and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective, except that if the revocation is pursuant to (B)(i) above, the revocation shall be effective for two (2) years in the event of a misdemeanor or five (5) years in the case of a felony.

D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or licensee or permittee shall have the right to appeal said action and to seek prompt judicial review of such administrative action in any court of competent jurisdiction.

Section 11: Transfer of Permit.

A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.

Section 12: Location of Sexually Oriented Businesses.

A. A person is guilty of a violation of the Zoning Ordinance if he operates or causes to be operated a sexually oriented business in any location in which a sexually oriented business is not a permitted use. No sexually oriented businesses

shall be located outside a location in which a sexually oriented business is a permitted use. Sexually oriented businesses as defined herein shall be permitted only as a Special Exception in a "C" Conservation District or in a "C-2" Highway and Neighborhood Commercial District.

B. A person is guilty of a violation of the Zoning Ordinance if he operates or causes to be operated a sexually oriented business within the below listed distances of the following institutions or residences, and a special exception shall not be granted and no permit will be issued for any such sexually oriented business which intends to be located within the below listed distances of such institutions or residences:

- i. A church - 500 feet;
- ii. A public or private pre-elementary, elementary, or secondary school - 1000 feet;
- iii. A public library - 500 feet;
- iv. A child care facility or nursery school - 500 feet;
- v. A public park adjacent to any residential district - 1000 feet;
- vi. A child-oriented business - 500 feet;
- vii. A residence - 150 feet.

C. A person is guilty of a violation of the Zoning Ordinance if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business, and no special exception shall be

granted and no permit shall be issued for any such sexually oriented business intended to be located within seven hundred and fifty feet (750') of another sexually oriented business.

D. A person is guilty of a violation of the Zoning Ordinance if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof; or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

E. For the purpose of this Ordinance, measurement 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 premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private pre-elementary, elementary, or secondary school, public library, child care facility, or nursery school; or to the nearest boundary of an affected public park or residence.

F. For purposes of subsection C of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

G. Any sexually oriented business lawfully operating on date of enactment of this Ordinance that is in violation of subsection A through F of this section shall be deemed a nonconforming use. Such nonconforming uses shall not be increased,

enlarged, extended or altered, except that the use may be changed to a conforming use. In the event that two or more sexually oriented businesses are within seven hundred and fifty feet (750') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

H. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, public or private pre-elementary, elementary, or secondary school, public library, child care facility, nursery school, public park or residence within those distances set forth in Section 12(B) of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a special exception and a permit is submitted after a permit has expired or has been revoked.

Section 13: Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film or video cassette, or other video or other image production or reproduction which

depicts "specified sexually activities" or "specified anatomical areas", shall comply with the following requirements:

- i. The application for a permit to operate a sexually oriented business shall be accompanied by a floor plan and plot plan diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all viewing rooms, partitions and doors and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Zoning

Hearing Board may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- ii. The application shall be sworn to be true and correct by the applicant.
- iii. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Hearing Board.
- iv. It is the duty of the owners and operators of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- v. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction or viewing equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of

the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- vi. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in subsection v. remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection i. of this section.
- vii. No viewing room may be occupied by more than one (1) person at any time. No connections or openings to an adjoining viewing room shall be permitted.
- viii. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot candle as measured at

the floor level.

- ix. It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

B. No sexually oriented business, other than an adult motel, shall open to do business before 10:00 A.M., Monday through Saturday, prevailing time; and no sexually oriented business, other than an adult motel, shall remain open after 10:00 P.M., Monday through Saturday, prevailing time. No sexually oriented business, other than an adult motel, shall be open for business on any Sunday or on a legal holiday as set forth in the Act of May 31, 1893, P.L. 188, § 1, as amended, 44 P.S. § 11.

C. A person having a duty under subsection i. through ix. of subsection A or a duty under subsection B is guilty of a violation of the Zoning Ordinance if he knowingly fails to fulfill that duty.

Section 14: Exemptions.

A. It is a defense to prosecution under Section 5 and Section 12 that a person appearing in a state of nudity did so in a modelling class operated:

- i. By a proprietary school, licensed by the Commonwealth of Pennsylvania, or a college,

junior college, or university supported entirely or partly by taxation;

- ii. 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 taxation; or
- iii. In a structure -
 - (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 (3) days in advance of the class; and
 - (c) where no more than one (1) nude model is on the premises at any one time.

Section 15: Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of this Ordinance is subject to an action in equity or a suit for injunction as well as citations for violations of the Zoning Ordinance.

Section 16: Severability.

The provisions of this Ordinance are severable and, if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of Borough Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 17: Effective Date.

Upon enactment, existing businesses as defined in this Ordinance shall have one year to come into compliance with the regulations contained in this Ordinance excluding location requirements of Section 12 contained herein.

ORDAINED AND ENACTED this 18TH day of June,

1996.

ATTEST:

BOROUGH OF AVALON



JOAN A. WELSH
Secretary



HARRY W. DILMORE
President

Examined and approved by me this 18TH day of
JUNE, 1996.



Daniel K. Bricmont, Mayor