

## **Chapter 2B**

### **ADULT USE AND ENTERTAINMENT ESTABLISHMENTS**

**2B-1. Purpose.**

**2B-2. Definitions.**

**2B-3. Regulations.**

**2B-4 Special use permits and terms.**

**2B-5. Denial, suspension or revocation of permit.**

**2B.6. Appeals.**

**2B-7. Special use permit renewal.**

**2B-8. Penalties for offenses.**

**2B-9. Savings clause.**

**( HISTORY: Adopted by the Board of Trustees of the Village of Attica 5-6-2002 by L.L. No. 1-2002. Amendments noted where applicable.**

#### **GENERAL REFERENCES**

Fences - See Ch. 20.

Noise - See Ch 34.

Zoning - See Ch. 62.

**2B-1. Purpose.**

The purpose of this chapter is to promote health, safety, and general welfare of the residents of the Village of Attica to provide standards for the safe provision of adult businesses; and to minimize any potential adverse effects which may result from adult businesses by requiring careful restrictions and siting of such businesses by the use of special use permits.

**2B-2. Definitions.**

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

**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 motion-picture machines, projectors or other image-producing devices regularly used to show films, motion pictures, videocassettes, slides other photographic reproductions, 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 depicting or describing specified sexual activities or specified anatomical areas.

**ADULT BOOKSTORE or ADULT VIDEO STORE:**

A. A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business advertising to the sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter: or photographs, films, motion-pictures, videocassettes or video reproductions, slides, compact discs, computer software, or other visual representations, which depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices or paraphernalia designed for use or marketed primarily for the stimulation of human genital organs or for sadomasochistic use or abuse of oneself or others

B. 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 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. For purposes of this definition "principal business purpose" shall mean 25% or more of any of the following:

- (1) The number of different titles or kinds of such merchandise;
- (2) The number of copies or pieces of such merchandise;
- (3) The amount of floor space devoted to the sale and/or display of such merchandise; or
- (4) The amount of advertising which is devoted to such merchandise, either in print or broadcast media.

**ADULT CABARET-** A nightclub, bar, nonalcoholic or "juice" bar, restaurant, or similar commercial establishment which regularly features:

- A. Persons who appear nude or in a state of semi-nudity; or
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

- C. Films, motion pictures, videocassettes, slides or other photographic reproductions characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT DRIVE-IN THEATER-** A drive-in theater where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT MOTEL-** A hotel, motel or similar commercial establishment which offers:

- A. Accommodations to the public for any form of consideration: and provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions characterized by the depiction or description of specified anatomical areas; and which advertises the availability of adult-oriented type of material by means of off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- B. Sleeping rooms for rent on a regular basis for a period of time less than eight hours or allows a tenant or occupant of a room to sub rent the room for a period of time less than eight hours.

**ADULT MOTION-PICTURE THEATER-** A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT THEATER -** A theater, concert hall, auditorium or similar commercial establishment which for any form of consideration, regularly features persons who appear in a state of nudity or live performances characterized by the exposure of specified anatomical areas or by specified sexual activities.

**ADULT USE AND ENTERTAINMENT ESTABLISHMENT-** A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both, adult arcades, adult bookstores or adult video stores; adult cabarets; adult motels; peep shows; adult motion-picture theaters; adult theaters; adult drive-in theaters; escort agencies; nude model studios and sexual encounter centers. An adult use and entertainment establishment shall also include any establishment which customarily excludes minors by reason of age.

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

ESCORT - A person who, for a fee, tip or other consideration, agrees or offers to:

- A. Act as a date for another person for consideration; or
- B. Privately model lingerie for another person; or
- C. To privately perform a striptease for another person.

MASSAGE PARLOR - Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of or in connection with specified sexual activities or where any person providing such treatment, manipulation or service related thereto exposes his or her specified anatomical areas. The definition of massage parlor shall not include the licensed physician, surgeon, chiropractor or osteopath, not by any person or technician working under the supervision of a licensed physician, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

MASSAGE TECHNICIAN - Any individual who administers a massage to another individual at a massage parlor. This definition shall not include any health care practitioner duly licensed by the State of New York.

MINOR - A person less than 18 years of age.

NUDE MODEL STUDIO - Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or any form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.

NUDITY or A STATE OF NUDITY – The appearance of:

- A. The appearance of human bare buttocks, anus, male genitals, female genitals, pubic region of areola or nipple of the female breast: or
- B. A state of dress which fails to opaquely and fully cover human bare buttocks, anus, male genitals, female genitals, pubic region or areola or nipple of the female breast.

SEXUAL ENCOUNTER CENTER – A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or exposure of specified anatomical areas or 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 seminude. The definition of “sexual encounter center” shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

PEEP SHOWS – A theater which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and characterized by exposure of specified sexual activities or specified anatomical areas.

PERSONS – An individual, proprietorship, partnership, corporation, association, or other legal entity.

PROMOTE – To manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to do the same.

SADOMASOCHISTIC ABUSE – Actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained.

SEXUAL CONDUCT – Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, lap dancing or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such be female, breast.

SEXUAL EXCITEMENT – The condition of human male or female genitals when in a state of sexual stimulation or arousal.

SPECIFIED ANATOMICAL AREAS:

- A. Unless completely and opaquely covered human genitals, pubic region, buttocks, or breasts below a point immediately above the top of the areola; and
- B. Even if completely and opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES – Include any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts;
- B. Sex acts, normal or perverted, actual or simulated, physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast; including intercourse, oral copulation or sodomy;
- C. Masturbation, actual or simulated; or
- D. Excretory functions.

### **S 2B-3. Regulations.**

No adult-oriented business shall be established until it has been issued a special use permit by the Board of Trustees of the Village of Attica pursuant to S 2B-4 of this chapter, and shall be subject to the following additional regulations for approval:

- A. An adult-oriented business shall be a permitted use in the Village of Attica only within an industrial zone and subject to the other placement and use regulations set forth in this chapter.
- B. No adult-oriented business shall be permitted in a building or any part of which is used for residential purposes, including nonconforming residential uses.
- C. No more than one adult-oriented business shall be permitted in any building or on any lot.
- D. No minor shall be permitted onto the premises of any adult-oriented business.
- E. The exterior of any adult-oriented business shall be consistent with the character of surrounding structures and shall not detract from the appearance of the neighborhood. No building shall be painted in garish colors or other fashion as will effectuate the same purpose as a sign, without the Planning Board's approval.
- F. No building in which an adult-oriented business is operated shall be within 650 linear feet of any building used:
  - (1) For residential purposes;
  - (2) As a group care facility, or child-care center;
  - (3) As a church, synagogue or regular place of worship;
  - (4) As a public or private school;
  - (5) As a public or semi public building;
  - (6) As a psychiatric treatment facility
  - (7) As a community center;
  - (8) As another adult-oriented business.
- G. No adult-oriented business shall be located within 600 linear feet of a school bus stop.
- H. An adult-oriented business shall not be operated with property lines within 600 linear feet of the property line of any land used as a public park, recreational facility or health facility.
- I. An adult-oriented business shall not be operated with property lines within 1,000 linear feet from a building of any establishment that sells or serves alcoholic beverages; and once an adult-oriented business has been authorized at a location, no establishment that sells or serves alcoholic beverages shall be allowed to operate with property lines within 1,000 linear feet of the adult-oriented business.
- J. Once an adult-oriented business has been established in a location, and it lawfully remains in continuous operation at that location, the subsequent placement of any use or business set forth in Subsections E and F above within the distances set forth in these subsections shall not operate to impair, restrict or terminate the adult-oriented business special use permit or any renewals thereof.
- K. Sound and noise shall be kept at a level so that it cannot be discerned by the public from any public areas, and adheres to all sections of Chapter 34, the noise ordinance of the Village of Attica.

- L. All adult-oriented businesses shall be conducted within enclosed buildings. No specific anatomical area or any specified sexual activity, nor any display, decoration, sign or similar depiction of specified sexual activities or specified anatomical areas, shall be visible from the outside of any building containing an adult-oriented business.
- M. Hours of operation shall be from 9:00 p.m. until 2:00 a.m. only.
- N. Outside advertising for an adult-oriented business shall be limited to one advertising sign, no larger than 16 square feet. Said sign shall only include the business name and/or hours of operation. No sign shall have any photographic or artistic representation whatsoever thereon. Signs illuminated in neon or which contain flashing lights are prohibited. Exterior signs, displays or other advertisements, which contain nude, semi-nude, or provocative pictures, are prohibited. No portion of any sign shall be more than 20 feet above ground level. There will be no searchlights.
- O. No lighting on the premises of an adult-oriented business shall be erected in excess of 50 feet above the ground and placed so that direct light or glare is cast upon adjacent properties, or extend beyond the boundaries of said lot.
- P. Solid fencing or walls shall be provided along all side and rear lot lines to minimize visual conflicts with adjacent land uses, and shall adhere to all sections of Chapter 20, the fences ordinance of the Village of Attica.
- Q. Adult-oriented businesses shall provide a minimum of one parking space for each 100 square feet of gross floor area, and one parking space for each employee. A parking space shall not be less than 10 feet by 20 feet. An adequate turn around shall be provided such that vehicles will not have to back out onto public thoroughfares. Lighting in parking lots shall be adequate and in accordance with regularly accepted safety and insurance guidelines and subject to any Village, county, state and federal requirements. Parking of registered vehicles on the site is permitted only during hours of operation. Parking for more than 50 vehicles shall delineate fire lanes.
- R. Driveways, accessways, parking lots, and walkways shall be paved with asphalt or concrete and shall be curbed; driveways, accessways and walkways shall be constructed so as to be drained into the parking lot; and the parking lot must have sufficient surface drains to handle the runoff and be tied underground to the Village of Attica storm drain system.
- S. No driveway of an adult-oriented business shall be located less than 50 feet from an intersection, less than 20 feet from a property line, and less than 20 feet in width.
- T. Strict crowd control shall be provided by the owners and/or operators.
- U. No adult-oriented business shall exceed 5,000 square feet in total floor area, and cellar space shall not be used for enclosed storage of mechanical equipment.
- V. Adult-oriented businesses shall provide commercial refuse containers placed on a concrete slab which is screened from view and is located so as to permit safe and easy removal of refuse by hand or truck.
- W. Whenever there is a change of the person hired to the position of manager of the adult-oriented business, the owner and operator shall so advise the

Planning Board within two weeks prior to that individual's commencement in the management position, and shall provide the Planning Board with the information required by S 2B-4C(2)(j) so that the Board can conduct a background check.

- X. The Code Enforcement Officer and Fire Department officials of the Village of Attica, as well as any other enforcement officials, shall have the right to inspect the premises of adult-oriented businesses for the purpose of insuring compliance with any section of this chapter or any other applicable law, rule or regulation at any time said business is open for business, or at such other times as may be reasonable. The Village Code Enforcement Officer shall inspect the premises at least once a year with a full report presented to the Planning Board within 30 days after the inspection. Said report shall be made part of the file kept by the Village Clerk.
- Y. Adult-oriented businesses shall comply with all other building and safety codes of the Village of Attica, as well as all applicable county, state and federal laws and regulations.

#### **A 2B-4. Special use permits and terms.**

- A. No adult-oriented business shall be started or continued until a special use permit as defined in this section has been issued and is in full force and effect.
- B. Special use permits granted to adult-oriented businesses shall be nontransferable, and shall be subject to renewal by the Planning Board.
- C. Application process and requirements.
  - (1) An application for an adult-oriented business special use permit shall be made to the Village Clerk of the Village of Attica and shall be accompanied by a nonrefundable fee of \$2,000. Seven copies of all application papers and terms are required. The application materials shall then be submitted to the Planning Board not less than 10 days prior to its next regularly scheduled meeting.
  - (2) The application shall include, at the applicant's expense, copies of the following.
    - (a) All appropriate building permits and plot plans, filled out completely and according to all local county and state laws.
    - (b) A clear and concise description of the proposed use.
    - (c) The street address and mailing address (if different) of the proposed adult business.
    - (d) The street address and mailing address (if different) of the proposed adult business.
    - (e) All other residences of the applicant for the three-year period immediately preceding the date of application.
    - (f) The business, occupation, or employment of the applicant for the three-year period immediately preceding the date of the application.



- (g) Written proof that the applicant is 18 years of age or older.
  - (h) A complete set of the applicant's fingerprints.
  - (i) The history of the applicant in the operation of similar establishments or businesses, including, but not limited to, whether or not the person, in previously operating in this state or another city or state under license, has had such permit revoked or suspended and the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
  - (j) Criminal record check. The applicant shall provide a list of owners, operators and managers, including names, addresses and social security numbers, to the Planning Board, which shall cause an investigation to be made as to the character of the applicant and of the officers of the club, society or corporation and of the person who is to have general management of the business. If found to have been in a violation of any criminal statute of this state, except traffic offenses, or of any ordinance regulating, controlling or in any way related to the construction, use or operation of any establishments included in this section which evidences a flagrant disregard for the safety or welfare of either patrons, employees or persons residing or doing business nearby, the Planning Board of the Village of Attica may refuse certification. Applicant, if refused, shall have the right to a hearing before the Village Board of Trustees, provided a written request is filed with the Village Clerk within 10 days after notice of denial is received. Any expense incurred in making this criminal background check shall be attached to the application.
  - (k) Proof of advertisement in a local paper, not less than 10 days prior to the scheduled meeting of the Planning Board, stating that an application to open an adult-oriented business has been filed with the Village Clerk of the Village of Attica.
  - (l) Prior of notification of the application to all property owners within 750 feet of the property lines of the proposed adult entertainment establishment. This notification shall state the date, time and location of the scheduled meeting of the Village of Attic Planning Board at which the application will be received.
- (3) Prior to the issuance of a special use permit, the premises housing the adult-oriented business shall be inspected and found to be in

compliance with all applicable laws, rules and regulations. No license shall be granted without a certificate of compliance from the Wyoming County Health Department, Village of Attica Fire Chief and the Village Code Enforcement Officer. All pertinent inspections must be requested within 15 days of the filing of the application, and all inspection reports shall be filed with the Planning Board within 30 days thereafter.

D. Special use permit terms.

- (1) The permit year will begin on January 1 of each year, and shall run for two years, terminating at midnight on December 31. Original permits issued for the balance of the permit period will be at full permit fee.
- (2) If any adult-oriented business establishment has closed, for any reason, for a continuous period of six months, then any special use permit issued pursuant to this chapter shall lapse and terminate unless, before the expiration of the six-month period, the owner or operator of that business has applied to the Planning Board and received an extension of the permit for a fixed period beyond the six months. Such extension may be granted only for good cause, which is beyond the reasonable control of the owner or operator.

**S 2B-5. Denial, suspension or revocation of permit.**

- A. Permit denial. A permit application may be denied by the Planning Board where it appears that the applicant has been convicted of any offense involving promoting or permitting prostitution, promotion of obscenity dissemination of indecent materials to minors or public display of offensive material, or has made a false statement on an application for a permit, or has previously owned or operated an adult business which resulted in suspension or revocation of permits or licenses, or has committed an act in violation of this chapter. The Planning Board shall give the applicant a written notice specifying the grounds for permit denial. The applicant may, within 10 days from the date of such denial, file a written request with the Village Board of Attica for a public hearing and/or appeal.
- B. Permit suspension. The Code Enforcement Officer may suspend a permit where it appears that the permit holder has committed an act in violation of this chapter. The Code Enforcement Officer shall give the permit holder a written notice which shall direct the permit holder to immediately cease operation of the business; specify the grounds for suspension, specify the action that the permit holder must undertake to correct the violation, designate a ten-day time period from the date of said notice for all violations to be corrected to the satisfaction of the Code Enforcement Officer; specify that if the violations are not adequately corrected within the ten-day time period, the permit shall be immediately revoked and an appearance ticket issued to the permit holder. The permit holder may, within 10 days from the date of

suspension, file a written request with the Attica Village Board for a public hearing and/or appeal. If the violation(s) are adequately corrected, the Code Enforcement Officer shall immediately reinstate the permit and the adult business shall be allowed to resume operation. If the violation(s) are not adequately corrected, the Code Enforcement Officer shall immediately revoke the permit following the procedures below.

- C. Permit revocation. The Code Enforcement Officer may revoke a permit where it appears that the permit holder has not corrected violations pertaining to a previously issued suspension notice, or has committed an act in violation of this chapter. A permit shall be automatically revoked if the permit holder receives more than three separate suspensions. The Code Enforcement Officer shall give the permit holder a written notice directing the permit holder to immediately terminate operation of the business and shall specify the grounds for revocation. The permit holder may, within 10 days from the date of such revocation, file a written request with the Attica Village Board for a public hearing and/or appeal.

#### **S 2B-6. Appeals.**

- A. Any appeal from a decision of the Planning Board or the Code Enforcement Officer with respect to the issuance of, denial of or the imposition of conditions upon, approval of a special use permit, or the suspension of, or the revocation of, or the renewal of a special use permit shall be made to the full Village Board of Trustees. The appeal shall be in writing and shall specify, in separately numbered paragraphs, each point that the appellant wishes the Village Board to consider, together with a brief statement or argument in support of the appellant's position.
- B. Any appeal must be filed by delivery to the office of the Village Clerk of the written appeal set forth in Subsection A above within 30 days after the date of the decision appealed from.
- C. The Village Board will hear and consider that appeal within 60 days of the date when the appeal is delivered to the Village Clerk unless all parties agree in writing to an extension of time in that regard. The Village Board will decide the issues raised on the appeal within 30 days after hearing the appeal.
- D. If the Village Board of Attica finds that:
  - (1) A permit was unduly denied, the Code Enforcement Officer shall be directed to issue a permit within 30 days of the date of the written finding. A copy of the permit shall be filed in the Office of the Village Clerk
  - (2) A permit was properly suspended, the adult business shall continue not to operate, and the permit holder shall have 10 days from the date of receipt of the written finding to correct the violation(s) to the satisfaction of the Code Enforcement Officer; if not the permit shall be revoked.

- (3) A permit was unduly revoked, the permit shall be reinstated and the adult business use shall be allowed to resume operation.
- (4) A permit was properly revoked, the adult business shall immediately and permanently cease to operate.

#### **S 2B-7. Special use permit renewal.**

Any person or entity that owns or operates an adult-oriented business pursuant to a special permit issued under this chapter may make application for renewal of that special permit by application to the Planning Board.

- A. An application for renewal of a special permit shall be made no more than six months, but no less than three months, before the expiration of the existing special permit.
- B. An application for renewal of a special permit shall not be approved unless the Planning Board finds that the adult-oriented business is in compliance with all pertinent laws, ordinances and regulations.
- C. An application for renewal of a special permit can be made upon the applicant's original application for approval, with notations as to which aspects of those application materials remain unchanged, and which aspects of those application materials have changed. All changes in the application for renewal information shall be highlighted and detailed by the applicant.
- D. All inspections required by S 2B-4C(3) of this chapter shall be completed prior to submission of the application and attached thereto. Current background checks shall also be attached to the renewal application.
- E. The application for renewal of a special permit must be accompanied by a nonrefundable filing/permit fee of \$1,500.

#### **S 2B-8. Penalties for offenses.**

- A. It shall be a violation of this chapter to:
  - (1) Use, or knowingly allow the use of, alcoholic beverages by anyone on the adult-oriented business premises.
  - (2) Refuse to allow an inspection of the adult-oriented business premises as authorized by this chapter.
  - (3) Gamble, or knowingly permit gambling by any person, on the adult-oriented business premises.
  - (4) Possess, use, sell or knowingly allow possession, use or sale of, controlled substances or marijuana by any person on the adult-oriented business premises.
  - (5) Knowingly allow prostitution, acts of sexual intercourse, sodomy, oral copulation, masturbation, or other illegal activity in the premises of an adult-oriented business.

- (6) Knowingly allow disorderly conduct, or to permit the adult-oriented business to become and be a place of resort of thieves, prostitutes or disorderly persons.
- (7) Admit or to knowingly allow admittance of anyone under the age of 18.
- (8) Possess, or to knowingly allow the possession of, any unlicensed firearm on the premises.
- (9) Fail to be in compliance with any section of this chapter.

B. Penalties for violations of this chapter area as follows:

- (1) Any person, firm, corporation or entity who or which shall violate any portion of this chapter shall be guilty of a violation and, upon conviction thereof for a first offense, shall be fined an amount not to exceed \$1,000 for each violation.
  - i. Conviction for a second offense, after conviction of a prior offense, shall be punishable by a fine of not more than \$1,500.