

## DEFINITIONS

**ADULT BOOKSTORE** : An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject premise's gross floor area, or 200 sf, whichever is greater.

**ADULT MOTION PICTURE THEATRE** : An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

**ADULT PARAPHERNALIA STORE** : An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject's premise's gross floor area, or 200 sf, whichever is greater.

**ADULT LIVE NUDDITY ESTABLISHMENTS** : Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in sections 31 of chapter 272 of the Massachusetts General Laws.

**ADULT USE** : For the purposes of this by-law, Adult Use shall be defined as any of the following: Adult Bookstore, Adult Motion Picture Theater, Adult Paraphemalia Store, Adult Video Store, and Live Nudity Establishment or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition an adult use is any use or combination of uses which either have greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject premise's gross floor area, or 200 sf, whichever is greater devoted to materials for sale or rent distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws.

**ADULT VIDEO STORE** : An Establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in section 31 of chapter 272 of the Massachusetts General Laws. For the purposes of this definition "substantial or significant portion of stock" shall mean greater than twenty-five percent (25%) of the subject establishment's inventory stock; or twenty-five percent (25%) of the subject premise's gross floor area, or 200 sf, whichever is greater.

## 5-5 ADULT ENTERTAINMENT ESTABLISHMENTS

1. All Adult Entertainment Establishments as defined in Section II of this Zoning Bylaw are allowed in the Industrial District (I) upon the granting of a special permit by the Zoning Board of Appeals. All Adult Entertainment uses shall comply with the following requirements:

A. No adult entertainment establishment shall be located within the following designated areas:

1) within 500 feet from the nearest boundary line of any residential zoning district or from the nearest property line of any residential use;

2) within 500 from the nearest property line of any public or private school, or municipal building open to the general public;

3) within 500 feet from the nearest property line of any church or other religious facility;

4) within 500 feet from the nearest property line of any public park or recreation area and any principal or accessory private recreational facility use;

5) within 500 feet from the nearest property line of any group day care center, family day care center, nursing home and hospital;

6) within 1000 feet from the nearest property line of any other entertainment establishment.

7) within 500 feet from any establishment licensed under the provisions of section twelve of Massachusetts General Laws chapter one hundred thirty-eight.

The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the adult entertainment is to be located to the nearest boundary line of a residential zoning district, or to the nearest property line of any residential use, public or private school, church or other religious facility, public park or recreational area, group day care center, family day care center, nursing home, hospital or any other adult entertainment use, as the case may be.

8) within 50 feet of a public or private way or 50 feet from all other property lines.

B. Additional Siting Requirements:

1) The maximum lot coverage, including building, parking and driveways shall be 50 percent of the upland lot area. 2) A 50 foot vegetated buffer containing adequate screening appropriate to the character of the area and the intensity of the use shall be provided between an adult entertainment establishment and other abutting commercial uses.

3) An adult entertainment use shall not be allowed within a building containing other retail,

consumer or residential uses, or within a shopping center, shopping plaza, or mall.

4) The appearance of buildings for adult uses shall be consistent with the appearance of buildings in similar (but not specifically 'adult') use, and not employ unusual color or building design which would attract attention to the premises.

5) There shall be screening of windows and doors to prevent the public's view of the interior from any public or private right of way or abutting property.

### C. Sign Requirements

1. Sign content shall identify the name of the establishment only and shall contain no advertisement in addition to the identification of the use. Only one identification sign to be mounted on the building wall face shall be allowed for an adult use. All other signs whether on the exterior of the building or visible from the exterior of the building are prohibited.

2. No adult entertainment establishment may have any flashing lights visible from outside the establishment. Furthermore, no sign shall rotate, or contain reflective or fluorescent elements.

3. No pictures, publications, videotapes, movies, covers or other advertising items that fall within the definition of an adult bookstore, adult cabaret, adult motion picture theater, adult paraphernalia store or adult video store shall be displayed in the windows of, or on the building of, any adult entertainment establishment.

### D. Special Permit Submission and Approval

1. A site plan shall be submitted by the applicant in order that the Special Permit Granting Authority may determine that the above standards have been met. The site plan shall be prepared and submitted in accordance with Section 12-3 Site Plan Review of this by-law. The site plan shall also show when appropriate the distances between the proposed adult entertainment establishment and any residential zoning district, public or private school, church or other religious facility, public park or recreation area, group day care center, family day care center, nursing home and hospital, municipal building, and any other adult entertainment establishment(s).

2. All applications for a Special Permit must include the following information: a. Names and addresses of the legal owner(s) of the Adult Entertainment Establishment.

b. Name and addresses of all persons having a fee, equity and/or security interest in such establishment. In the event a corporation, partnership, trust or other entity is listed, the name and address of every person who has an ownership interest and/or beneficial interest in the entity must be listed in order that the Special Permit Granting Authority will know who are the persons who will actually own and control the establishment. The applicant and/or owner must disclose if they have been convicted of violating the provisions of Massachusetts General Laws section sixty-three of chapter one hundred and nineteen or section twenty-eight of chapter two hundred

and seventy-two.

c. Name and address of the manager.

d. The number of employees, or proposed number of employees, as the case may be.

e. Proposed security precautions.

3. Special Permits shall be granted for adult entertainment establishments only upon determination by the Special Permit Granting Authority that the location and design of the facility are in harmony with its surroundings, and that adequate safeguards exist through licensing or other means to assure on a continuing basis that activities therein will not be patently contrary to prevailing standards of adults in the community and will not involve minors in any way.

4. In approving a Special Permit, the Special Permit Granting Authority may attach such conditions, limitations and safeguards as are deemed necessary to protect the immediate area and the Town, provided however that no such conditions in fact prohibit the use of the property for the use intended. No Special Permit shall take effect until such decision has been recorded in the Registry of Deeds. Conditions of approval may include but are not limited to the following:

a. Street, side or rear setbacks greater than the minimum required by this bylaw.

b. Requirement of screening or parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other means.

c. Modification of the exterior features or appearances of the structure.

d. Limitation of size, number of occupants, method or time of operation, or extent of facilities.

e. Regulation of number, design and location of access drives or other traffic features.

f. Requirement of off-street parking or other special features beyond the minimum required by this or other applicable ordinances.

g. The Special Permit shall be issued to the owner of the establishment and shall not transfer with a change in ownership of the business and/or property.

h. Where the Adult Use is not governed by other State or local Licensing Board, the following conditions shall apply:

1) A manager responsible for the operation of the establishment shall be designated by the owner, if the owner is not the manager. The manager shall register with the Board of Selectmen. No manager shall be designated who has been convicted of violating MGL Ch. 119, Section 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272, Section 28, (Matter harmful to

minors, etc.) or similar laws in other states.

2) The Special Permit Granting Authority may limit the hours of operation.

5. Special permits for Adult Entertainment Establishments shall not be granted to any person or persons convicted of violating the provisions of Massachusetts General Laws Chapter 119, Section 63, nor Massachusetts General Laws Chapter 272, Section 28, similar laws in other states.

#### E. Lapse of Permit.

1) Any special permit granted hereunder for an adult entertainment establishment shall lapse after one year, including such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or if in the case of a permit for construction, if construction has not begun by such date except for good cause, including such time to pursue or await the determination of an appeal referred to in Massachusetts General Laws Chapter 40A, Section 17, from the grant thereof.

2) The Special Permit shall lapse after two years, unless a shorter term is specified by the Special Permit Granting Authority. Upon receipt of a valid application, the Special Permit Granting Authority may grant another Special Permit provided that the Board finds that all conditions of this Section and of approval have been complied with.

3) The Special Permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises, a) unlawful sexual activity; b) gambling; c) drug use; d) violent crimes; e) offenses against children; f) repeated public disturbances requiring intervention by the police; and, g) any other illegal activities.

4) Violation of any of the conditions of approval of the Special Permit shall be grounds for non-renewal of the Special Permit as provided for above.

#### F. Existing Adult Entertainment Establishments

Any Adult Entertainment Establishment that was in existence as of the first date of the publication of the notice of public hearing on this zoning amendment regulating adult uses may continue to operate in the same location, without material change in scale or content of the business but shall apply for such Permit within 90 days following the adoption of this bylaw.

#### G. Prohibited Uses:

Nothing in this Ordinance is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violated any Town Ordinance or Statute of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter, or the exhibition or public display thereof.

## 5-6 WIRELESS COMMUNICATIONS FACILITIES [Added STM 10/ 23/00]

### A. Purpose

This section has been created to protect the general public from hazards associated with wireless communications facilities and to minimize visual impacts from wireless communications facilities on residential districts. This section does not apply to satellite dishes and antennas with a diameter of less than five feet.

### B. General Requirements

- 1) Free-standing monopoles, with associated antenna and/or panels are the only wireless communications facilities allowed. Lattice style towers and similar facilities requiring three or more legs and/or guy wires for support are not allowed.
- 2) To the extent feasible, all service providers shall co-locate on a single facility. Wireless communications facilities shall be designed to accommodate the maximum number of users technologically practicable. The intent of this requirement is to reduce the number of facilities which will be required to be located within the community.
- 3) Any proposed extension in the height, addition of cells, antennas or panels, construction or alteration of a facility, shall be subject to an application for an amendment to an existing Special Permit.
- 4) New facilities shall be permitted by the Special Permit Granting Authority only upon a finding by the Board that existing or approved facilities cannot accommodate the wireless communications equipment planned for the proposed facility.
- 5) In no event shall any facility be located closer than one (1) mile to any other such facility.
- 6) No facility or attached accessory antenna shall exceed one hundred (100) feet in height as measured from ground level at the base of the facility. All facilities shall be designed to be constructed at the minimum height necessary to accommodate the anticipated and future use. Greater heights shall require a variance from the Zoning Board of Appeals in accordance with Section 12-8 of this Zoning Bylaw.
- 7) A facility shall not be erected nearer to any property line than a distance equal to the vertical height of the facility (inclusive of any appurtenant devices), measured at the mean finished grade of the facility base. Provided however that a facility shall not be erected nearer to a lot line for residential use than 500 feet.
- 8) Siting of the facility shall be such that the view of the facility from adjacent abutters, residential neighbors and other areas of Town shall be as limited as possible. All facilities shall be painted or otherwise colored so they will blend in with the landscape or the structure on which they are located. A different coloring scheme shall be used to blend the facility with the

landscape below and above the tree or building line.

9) Wireless communications facilities shall be suitably screened from abutters and residential neighborhoods. Existing on-site vegetation shall be preserved to the maximum extent practicable.

10) Fencing shall be provided to control access to wireless communications facilities and shall be compatible with the adjacent land uses.

11) There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall comply with Section IX of this Bylaw.

12) Night lighting of the facilities shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA.

13) There shall be a minimum of one (1) parking space and one (1) off-street loading space for each facility, to be used in connection with the maintenance of the facility and the site, and not to be used for the permanent storage of vehicles.

14) To the extent technologically feasible, all network interconnections from the facility shall be via land lines.

15) Satellite dishes and/or antenna may be located on structures or may be free-standing. Satellite dishes and/or antenna shall be situated on a structure in such a manner that they are screened, preferably not being visible from abutting streets. Free standing dishes or antenna shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences and to limit the need to remove existing vegetation. All equipment shall be colored, molded and or installed to blend into the structure and/or the landscape.

16) Antennas or dishes located on a structure shall not exceed ten (10) feet in height above the level of its attachment to the structure.

17) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission, Federal Aviation Administration and the American National Standards Institute and required maintenance shall be filed with the Building Inspector by the Special Permit holder.

18) All unused facilities or parts thereof, or accessory facilities and structures, which have not been used for two (2) years shall be dismantled and removed at the owner's expense. The Town shall require a surety bond at the time of application for the dismantling and removal of the facility.

C. Procedure for a Special Permit a) All applications for wireless communications facilities, antennas or satellite dishes shall be made and filed on the applicable application forms for a

special permit in compliance with the Abington Zoning Board of Appeals. In addition, Site Plan Review by the Planning Board under Section 12-3 of this By-law shall be required. The following additional information shall be included in the application for a Special Permit.

1) A locus plan at a scale of 1" = 200' which shall show all property lines, the exact location of the proposed structure(s), streets, landscape features, residential dwellings and neighborhoods and all buildings within five-hundred (500) feet of the facility.

2) The following information must be prepared by a Registered Professional Engineer.

(a) A description of the facility and the technical, economic and other reasons for the proposed location, height and design.

(b) Confirmation that the facility complies with all applicable Federal and State standards.

(c) A description of the capacity of the facility including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.

(d) If applicable, a written statement that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health.

3) Applicants proposing to erect facilities on municipally owned land or structures shall provide evidence of contractual authorization from the Town of Abington to conduct wireless communications services on municipally owned property.

#### D. Exemptions

(a) The following types of wireless communication facilities are exempt from the requirements of this Section.

1) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commissions, provided that the tower is not used or licensed for any commercial purpose.

2) Facilities used for the purposes set forth in M.G.L. c. 40A, Sec. 3.

3) Wireless Communications facilities which are ground mounted with a height of no more than six feet (6'), provided the Building Inspector determines that the facility is designed to blend in with its surroundings or is adequately screened from adjacent areas.