



DEPARTMENT OF BUILDINGS

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**OPERATIONS
POLICY AND PROCEDURE NOTICES # 6/96**

TO: Distribution

FROM: Richard C. Visconti, R.A. *RV*

DATE: October 25, 1996

SUBJECT: Adult Establishments -- Applications and Complaint Procedure

Reference: Zoning Resolution Sections 11-113, 11-30, 12-10, 32-00, 42-00, 42-55, 51-00, 52-00, and 72-00, et seq.

Purpose: To clarify procedures for enforcement of the provisions of the Zoning Resolution relating to adult establishments.

Effective: October 26, 1996

Specifics: This PPN supersedes PPN # 17/95.

♦ **FILING PROCESS**

• **Applicant**

Directive 14 of 1975 and the Professional Certification of Application and Plans Process (PPN #2/95) may not be used for any filing related to adult establishments.

In Section 16 (comments) of the PWI, the applicant shall indicate whether the filing he/she is making is to create, enlarge or extend an adult establishment or to erect a business sign accessory to such an establishment.

The application shall also include a separate area diagram detailing all existing uses and block and lot numbers within 500 feet of the center line of the door(s) of the principal entrance of the adult establishment or of the center line of the ground floor door(s) giving the most direct street access to the adult establishment.

- **Plan Examiner**

An objection shall be raised if there exists another adult establishment within 500 feet of the proposed use or on the same zoning lot or if the establishment is in the wrong zoning district. Examiners should be guided by the Provision of the Zoning Resolution Relating to Adult Establishments, a copy of which is attached hereto as Appendix A.

- **Permit Clerk**

Prior to issuing a work permit for an adult establishment, the clerk shall refer the applicant to the Borough Commissioner (or his/her designee) who shall verify from a batch report of all applications filed on or after October 25, 1995 to create, enlarge or extend an adult establishment made available weekly by MIS, that the new establishment meets the criteria established under the Zoning Resolution.

- ◆ **ENFORCEMENT PROCESS**

- Borough Complaint Clerk:**

- **For All Boroughs Except Manhattan**

Any complaint received about an adult establishment shall be data entered into BIS using complaint category code 75. The complaint will automatically be assigned a "B" priority. The jurisdiction must state "refer to Operations", category 98

The disposition of the complaint by the Night Squad shall be data entered upon being returned to the Borough office and a written response letter generated to the complainant.

- **For Manhattan Only**

Any complaint received about an adult establishment shall be data entered onto BIS using complaint category code 75. The complaint will automatically be assigned a "B" priority. The jurisdiction must state "refer to Office of Midtown Enforcement" category G7.

A written response letter will be generated and mailed to the complainant indicating the complaint was referred to the Office of Midtown Enforcement, 330 West 42nd Street, 15th Floor, New York, New York 10036.

On a weekly basis, the Borough Office shall batch these complaint letters to that Office for investigation.

- **Executive Chief Inspector's Office**

The Executive Chief shall secure a city-wide BIS printout of all category code 75 complaints on a weekly basis, print out the required work orders and route the Night Squad inspectors.

The Executive Chief's Office shall request the respective borough office to provide the following information with respect to each premises to be inspected.

- * Certificate of Occupancy,
- * Sign permits,
- * Any other documentation which may establish the existing legal use,
- * Zoning or Sanborn map showing premises location.

- **Night Emergency Squad**

Any Department of Buildings notice of violation written for violating Zoning Resolution Section 11-113 must identify specific type of adult establishment defined in the Zoning Resolution Section 12-10 as the following:

- * An Adult Bookstore, or
- * An Adult Eating or Drinking Establishment, or
- * An Adult Theater, or
- * Other commercial establishment, or
- * Any combination of the above.

To the extent possible, the Night Squad log should include, but not be limited to, the following:

- * a brief layout of any premises inspected, including the size of the space, location and number of entrances, and description and location of signs,
- * the extent of the adult establishment,
- * a description of the activities taking place inside the premises,
- * the name(s) of the person(s) in charge (if possible), and
- * proximity to any places of worship/churches, schools or other adult establishments,
- * the size of the area devoted to the adult establishment and/or adult materials in relation to the total floor area and cellar space accessible to the customer, and
- * the quantity of stock/inventory devoted to adult material in relation to the entire stock/inventory

Back-up documentation and the results of the inspection written on the work order shall be submitted to the Executive Chief who shall review the materials. If a determination is made that a violation

should be issued, it shall be returned to the respective Borough Office for data entry.

Inspectors should refer to Appendix A for further guidance.

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**PROVISIONS OF THE ZONING RESOLUTION RELATING
TO ADULT ESTABLISHMENTS**

DEFINITION OF AN ADULT ESTABLISHMENT

ZR §12-10 defines an adult establishment as any commercial establishment which features the depiction, description or display of "specified anatomical areas" or "specified sexual activities" to the degree specified in the text. Adult establishments include:

- adult bookstores,
- adult eating or drinking establishments
- adult theaters,
- other adult commercial establishments,
- or any combination of the above.

When determining whether a **substantial portion of an establishment** is devoted to an adult establishment(s), the following factors are to be considered:

- (1) the amount of floor area and cellar space accessible to the customer and allocated to such an establishment, and
- (2) the percentage of total floor area and cellar space accessible to the customer and allocated to such establishment -- ($["\text{adult"} \text{ FA accessible to the customer} + "\text{adult"} \text{ cellar space accessible to the customer}] / [\text{total FA accessible to the customer}]$).

When determining whether a **substantial portion of an establishment's stock in trade** is devoted to specified materials, the following factors are to be considered:

- (1) the percentage of total stock accessible to the customer that such materials represent -- ($["\text{adult"} \text{ stock accessible to the customers}] / [\text{total stock accessible to the customer}]$), and
- (2) the amount of floor area and cellar space accessible to the customer containing such materials, and
- (3) the percentage of total floor area and cellar space accessible to the customer containing such materials -- ($["\text{adult"} \text{ FA accessible to the customer} + "\text{adult"} \text{ cellar space accessible to the customer}] / [\text{total FA accessible to the customer}]$).

See definition under ZR §12-10 for further guidance.

APPENDIX A

**PROVISIONS OF THE ZONING RESOLUTION RELATING
TO ADULT ESTABLISHMENTS**

PROHIBITED LOCATIONS

Adult establishments are not permitted in the following districts or locations:

- on the same zoning lot as another adult establishment.
- Residence districts
- C1, C2, C3, C4, C5, C6-1, C6-2, or C6-3 zoning districts.
- C6-4, C6-5, C6-6, C6-7, C6-8, C6-9, C7, or C8 zoning districts within 500' of:
 - a church
 - a school
 - a residence districts
 - a C1, C2, C3, C4, C5-1, C6-1, C6-2, or C6-3 zoning district,
 - a manufacturing district, other than M1-6M district, in which new residence, new joint living-work quarters for artists, or new loft dwellings are allowed, under the provisions of the zoning resolution, as-of-right or by special permit or authorization, or
 - another adult establishment.

EXCEPTION: An adult establishment will not become non-conforming if a church or school locates within 500 feet of an existing adult establishment after April 10, 1995 (ZR 32-01 and 42-10).

- Manufacturing districts in which residences, joint living-work quarters for artists, or loft dwellings are, under the provisions of the Zoning Resolution, allowed as-of-right or by special permit or authorization.
- In all other manufacturing districts within 500' of:
 - a church
 - a school
 - a residence district,
 - a C1, C2, C3, C4, C5-1, C6-1, C6-2, or C6-3 zoning district,
 - a manufacturing district, other than M1-6M district, in which new residence, new joint living-work quarters for artists, or new loft dwellings are allowed, under the provisions of the Zoning Resolution, as-of-right by special permit or authorization, or

**PROVISIONS OF THE ZONING RESOLUTION RELATING
TO ADULT ESTABLISHMENTS**

- another adult establishment

EXCEPTION: An adult establishment will not become non-conforming if a church or school locates within 500 feet of an existing adult establishment after April 10, 1995 (ZR 32-01 and 42-10).

SIZE LIMITATIONS

- Under no circumstances may an adult establishment exceed in total 10,000 square feet of floor area or cellar space not used for enclosed storage or mechanical equipment.

SIGN LIMITATIONS

- Accessory business signs for adult establishments are permitted but are subject to the sign regulations otherwise applicable in C1 zoning districts except that the provisions of ZR §32-64 shall not apply.
- The maximum surface area of accessory business signs for adult establishments shall not exceed, in the aggregate, three times the street frontage of the zoning lot, but in no event more than 150 square feet per establishment, of which no more than 50 square feet may be illuminated, non-flashing signs
- In manufacturing districts, accessory business signs for adult establishments are not permitted on the roof of any building and are not permitted to extend above curb level at height of greater than 25 feet

TERMINATION OF EXISTING ADULT ESTABLISHMENTS (ZR §52-77)

General rule: In all districts, non-conforming adult establishments, including any business signs accessory thereto, shall terminate within one year from October 25, 1995, or from such later date that the adult establishment or sign becomes non-conforming.

Exceptions: Any adult establishment which existed on October 25, 1995, and which conforms to provisions of the Zoning Resolution relating to adult establishments other than the provisions of all or any combination of paragraphs (c), (d), and (e) of ZR §32-01 or paragraphs (c), (d), and (e) of ZR §42-01 shall not be subject to ZR §52-77 (Amortization provision).

The Board of Standards and Appeals may, pursuant to ZR §72-40 and ZR §52-734, extend the time period for amortization of an adult establishment or business sign accessory thereto under specified circumstances.

NON-CONFORMING USES (ZR §52-38)

- A legal non-conforming use may not be changed to an adult establishment, except as provided in Section 32-01 or Section 42-01.