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I MINA' TRENTA NA LIHESLATURAN GUAM

2010 (Second) Regular Session

Bill No. 314-30 (C.R.)

Introduced by: BJ Cruz 

**AN ACT AMENDING TITLE 21 GCA CHAPTER 61,
THE ZONING LAW OF THE TERRITORY OF GUAM,
PERTAINING TO ADULT ENTERTAINMENT BUSINESSES AND
ESTABLISHMENTS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2
3 **Section 1. Purpose.** In adopting this law, *I Liheslatura* recognizes that certain types of
4 adult entertainment facilities possess certain objectionable operational characteristics which, if
5 such uses are allowed to concentrate, will have adverse effects upon the character of the affected
6 area and adjacent neighborhoods. *I Liheslatura* further recognizes that locating adult
7 entertainment facilities in close proximity to facilities frequented by minors will cause the
8 exposure of minors to adult material which may adversely affect such minors due to their
9 immaturity. Additionally, it is recognized by *I Liheslatura* that while certain adult entertainment
10 enjoys limited protection under the First Amendment to the United States Constitution,
11 substantial numbers of the citizens of Guam are offended by the public display of sexually
12 oriented material. Special and limited regulation of adult entertainment uses, consistent with the
13 First Amendment rights of such uses, is therefore necessary to insure that these adverse effects of
14 adult entertainment uses will not contribute to the blighting or downgrading of zones in which
15 they are permitted, the downgrading of surrounding neighborhoods, will not adversely affect

1 minors, and will not offend those citizens of Guam who do not wish to be exposed to sexually
2 oriented material.

3 **Section 2. Applicability:** Adult Entertainment Businesses or Establishments, as defined
4 herein, established prior to the enactment of this legislation shall be permitted and regulated as
5 nonconforming uses for a period of five (5) years commencing from the date that this legislation
6 is enacted into law, after which time such Adult Entertainment Businesses or Establishments
7 shall become unlawful, unless sooner terminated for any reason or voluntarily discontinued for a
8 period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged,
9 extended or altered except that the use may be changed to a conforming use.

10 **Section 3.** Section 61103. Definitions. of Article 61, Zoning Law, of Title 21 GCA Real
11 Property, is hereby amended by adding the following definitions to said section:

12 (a) ADULT BOOKSTORE, ADULT VIDEO STORE or NOVELTY STORE: A
13 building or portion of a building used for the barter, rental or sale of items consisting of
14 printed matter, books, magazines, periodicals, pictures, slides, records, audiotape,
15 videotape, video reproductions, or motion picture film if a substantial or significant
16 portion of such items are distinguished or characterized by an emphasis on the depiction
17 or description of Specified Sexual Activities or the barter, rental or sale of instruments,
18 devices, or paraphernalia that are designed for use in connection with specified sexual
19 activities, “substantial or significant portion of items,” for purposes of this ordinance,
20 shall mean more than fifteen (15%) percent of usable floor area.

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1 (b) ADULT ENTERTAINMENT BUSINESS OR ESTABLISHMENT: Any of
2 the establishments, businesses, buildings, structures or facilities which fit within the
3 definition of adult bookstore, adult video store or novelty store, adult entertainment
4 facility, steam room/bathhouse, and/or modeling studio as defined in this section.

5 (c) ADULT ENTERTAINMENT FACILITY: Any building, structure or facility
6 which contains or is used entirely or partially for commercial entertainment, including
7 theaters used for presenting live presentations, video tapes, DVDs or films predominantly
8 distinguished or characterized by their principal emphasis on matters depicting,
9 describing, or relating to specified sexual activities, and exotic dance facilities (regardless
10 of whether the theater or facility provides a live presentation, video tape, DVD, or film
11 presentation), where the patrons either: (1) engage in personal contact with, or allow
12 personal contact by employees, devices or equipment, or by personnel provided by the
13 establishment which appeals to the prurient interest of the patrons; or (2) observe any live
14 presentation, video tape, DVD or film presentation of persons wholly or partially nude,
15 unless otherwise prohibited by act, with their genitals or pubic region exposed or covered
16 only with transparent or opaque covering, or in the case of female persons with the areola
17 and nipple of the breast exposed or covered only with transparent or opaque covering or
18 to observe Specified Sexual Activities.

19 (d) ADULT STEAM ROOM/BATH HOUSE FACILITY. A building or portion of a
20 building used for providing a steam bath or heat bathing room used for the purpose of
21 pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing
22 or reducing agent, if such building or portion of a building restricts minors by reason of

1 age or if the service provided by the steam room/bath house facility is distinguished or
2 characterized by an emphasis on Specified Sexual Activities.

3 (e) MODELING STUDIO: An establishment or business which provides for a
4 fee or compensation the services of modeling on premises for the purpose of reproducing
5 the human body wholly or partially in the nude by means of photography, painting,
6 sketching, drawing or otherwise. This does not apply to public or private schools in
7 which persons are enrolled in a class.

8 (g) SPECIFIED SEXUAL ACTIVITIES: Sexual conduct, being actual or
9 simulated, acts of human masturbation; sexual intercourse or sodomy; or fondling or
10 other erotic touching or sex stimulation physical contact, in an act of apparent sexual
11 stimulation, arousal or gratification, with a person's clothed or unclothed genitals, pubic
12 area, buttocks, or the breast of a female; or any sadomasochistic abuse or sexual acts
13 including animals or any latent objects in an act of apparent sexual stimulation or
14 gratification.

15 **Section 4.** Subsection (b), Conditional Use, of Section 61309, M1 Light Industrial Zone,
16 of Article 3, Use Regulations of Chapter 61 of Title 21 GCA, is amended by adding a new
17 paragraph (4) to read as follows:

18 (4) Adult Entertainment Business or Establishment.

19 **Section 5.** Subsection (b), Conditional Use, of Section 61310, M2 Heavy Industrial
20 Zone, of Article 3, Use Regulations of Chapter 61 of Title 21 GCA, is amended by adding a new
21 paragraph (3) to read as follows:

22 (3) Adult Entertainment Business or Establishment.

1 **Section 6.** A new Section 61312, Adult Entertainment Business or Establishment, is
2 hereby added to Article 3. Use Regulations of Chapter 61 of Title 21 GCA, to read as follows:

3 **§61312. Adult Entertainment Business or Establishment.** In addition to all other
4 pertinent and applicable regulations, the following special conditions shall apply to any
5 Adult Entertainment Business or Establishment:

6 A. Location. Notwithstanding proper zoning approvals, no persons, whether as principal,
7 agent, employee or independent contractor, either for himself or for any other person, or
8 as an officer of any corporation or member of any partnership, or otherwise, shall place,
9 maintain, own, or operate any Adult Entertainment Businesses or Establishment in any
10 location on Guam except in areas zoned as M1 Light Industrial and M2 Heavy Industrial
11 Zones, subject to full compliance of the following requirements:

12 (1) No adult use shall be located within **Fifteen Hundred (1,500)** feet of:

13 (a) Any areas zoned as R1 One Family Dwelling Zone, and R2
14 Multiple Dwelling Zone.

15 (b) Any school, as defined in 10 G. C. A. §121301.

16 (c) Any church, as defined in 9 G. C. A. §64.70.

17 (d) Any licensed daycare facility, or any residential or nonresidential
18 program.

19 (e) Any hotel or motel.

20 (f) Any public park.

21 (2) Such distance shall be measured in a straight line without regard to
22 intervening properties from the closest exterior structural wall of the establishment to the

1 closest point on any property line of the religious institution, school, or public park, or the
2 property zoned for residential use.

3 (B). Location Restricted. Adult Entertainment Businesses or Establishments shall
4 not be established or maintained as a permitted, conditional or accessory use, in
5 any area other than those described in Paragraph (A) herein-above.

6 (C). Access. All access to and from an Adult Entertainment Business or
7 Establishment shall be provided from a street classified as a public right-of-way.

8 (D). Frontage. The property on which an Adult Entertainment Business or
9 Establishment is located shall have a minimum of 100 feet of frontage on a public
10 or private right-of-way.

11 (E). Set Back. Building set-backs and off-street parking shall be provided
12 pursuant to the Guam Building Code.

13 (F). Landscaping. All landscaping and screening requirements otherwise required
14 by the Guam Building Code shall be observed.

15 (G). Public Exposure. Adult Entertainment Businesses or Establishments shall not
16 display or exhibit any material depicting genitalia, pubic areas, buttocks, or the
17 nipples of the female breast or Specified Sexual Activities in a manner which
18 exposes said material to the view of persons outside the building in which said
19 facility is located. The facility in which an Adult Entertainment Business or
20 Establishment is located shall be designed in such a fashion that all openings,
21 entries and windows prevent view into such facilities from any pedestrian,

1 sidewalk, walkway, street or other public area. No Specified Sexual Activity shall
2 take place partially or totally outside the facility.

3 **Section 7. Codification.** The Chapter, Article, Division and/or Section assignments
4 designated in this Act may be revised and altered by the Office of the Attorney General upon
5 supplementation of such code if, in the discretion of the editor, an alternative designation would
6 be more reasonable. In adjusting such designations the editor may also change other designations
7 and numerical assignment of code sections to accommodate such changes.

8 **Section 8. Severability.** It is hereby declared to be the intention of *I Liheslatura* that each
9 and every part, section and subsection of this Act shall be separate and severable from each and
10 every other part, section and subsection hereof and that *I Liheslatura* intends to adopt each said
11 part, section and subsection separately and independently of any other part, section and
12 subsection. In the event that any part of this Act shall be determined to be or to have been
13 unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in
14 full force and effect.