

TOWN COUNCIL MEETING MINUTES FROM 3-1-2023 AND SUPPORTING DOCUMENTS

F2. Robert Botelho, 5 Paull Street, requesting to amend legal definition for "Adult Entertainment" in town ordinance

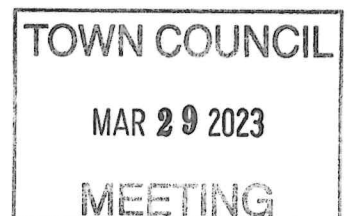
a. Town Ordinance Article I Sec. 28-1 definition for Adult Entertainment

Sweeney/ Teixeira- Voted to refer the matter to the solicitor's office for a written opinion. Voting in favor were Calouro, Parella, Sweeney, Teixeira. Voting against Ley.

Prior to the vote being taken, Clerk Cordeiro noted that a letter was received from Steven Brown, Executive director of the ACLU and a copy was distributed to the council at the meeting.

Mr. Robert Botelho, 5 Paull Street, addressed the council for consideration to update the definition of adult entertainment to align with neighboring municipalities that have more stringent regulator definitions. He stated that the current definition is focused on nudity and is not comprehensive. He claimed that the lack of updated regulations could attract adult-only businesses to Bristol, which could negatively impact taxpayers, property values, and safety. He explained that the catalyst for the petition was the growth of adult entertainment businesses in suburban communities due to the COVID-19 pandemic. Mr. Botelho suggested that adult entertainment encompasses the following "adult entertainment is the act of entertaining, nude or clothed with or without music, by dancing, moving, or behaving in a consistent manner, mimicking sexual action with or without physical contact of others, with the intended purpose to please, sexually stimulate or provide sexual gratification for viewing pleasures of legal consenting adults within or outside of the establishment to include both live exposure and film video or any type of reproduction of such sexual activity."

Councilman Ley asked if the proposed definition would include drag shows. Mr. Botelho responded that it would be up to the municipality.



Councilman Sweeney stated there was no just cause to make such changes that seemed to be very strict and stringent and asked if the language would strict any type of shows or dancing.

Assistant Solicitor Goins noted that the town can and currently regulates adult entertainment through zoning. However, due to first amendment concerns the town would have to be very specific about what is and is not prohibited. She further explained that the council, if so chooses, could refer the matter to the solicitor's office for a written opinion. In the meantime, her verbal opinion on the matter was that the current definition does not need to be amended and that the proposed definition would be unconstitutionally vague.

Councilman Sweeney motioned that the matter is tabled indefinitely due to the "chilling effect" it would have on the first amendment.

Chairman Calouro asked that the motion include a written opinion from the solicitor's office. The motion was amended by Councilman Sweeney to refer to the solicitor's office for a written opinion.

Councilman Ley addressed the audience and the petitioner. He argued that the petition was about a ban on drag shows and that it was unfortunate that some members of the audience or people watching TV have had to repeatedly defend themselves against similar proposals. He expressed concern that proposals like this are being brought forward in the wake of violence against drag performers and the recent mass shootings in Colorado. He asserted that everyone should feel free to express themselves in our town and walk into any kind of nightclub without fear. Councilman Ley stated that he did not support the proposal and would like to reject the petition all together and could not agree to a motion outside of anything other. He explained that the solicitor's feedback was not necessary.

Councilman Teixeira agreed with Councilman Ley's views however he felt it would be in the best interest of the town to pursue the solicitor's opinion.

Vice Chairwoman Parella expressed that she was not aware the proposed amendment to the adult entertainment definition was geared around drag shows. Nor did she consider a drag show as adult entertainment. She explained that she was approached by conservative individuals that raised concerns. She referred to

the ACLU letter that suggested that such moves are common in dance clubs and should not be considered inappropriate; and questioned if the proposed language would even touch upon cheerleaders. She stated that she would be in favor of rejecting the petition and feels that the solicitor's written opinion would have the council's actions taken based on legal standing.

Mr. Botelho addresses several rebuttals, including one from the solicitor, regarding the definition of adult entertainment in Bristol. He then responds to comments from Vice Chairwoman Parella and Councilman Ley denying that the proposal was meant to restrict Roger William Students on the dance floor or to control trans drag shows in Bristol. The proposal was specifically for the viewing pleasure of patrons and grouping these together was not an accurate reflection of what was being proposed. Mr. Botelho asked why Councilman Ley assumed the definition was geared toward drag shows.

Councilman Ley responded that due to the presence of the audience, many others thought the same; and the change in the definition would affect any sort of drag show entertainment. Also, that it was not lost on him the petition comes to the council after a recent drag show event.

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TOWN CLERK'S OFFICE
BRISTOL, RHODE ISLAND

PETITION TO THE TOWN COUNCIL

To the Honorable Town Council of the Town of Bristol:
The undersigned hereby respectfully requested of your
Honorable Body that:

1. Consideration of the amendment of the Legal definition
For "ADULT ENTERTAINMENT" LOCATED IN Code of Ordinances/
Chapter 28-Zoning/Article I/General.
2. Proposed Language attached.

PLEASE NOTE:

Petition must be returned by 4:00 PM, two (2)
Wednesdays prior to the Town Council meeting
to appear on the docket of the

meeting for review and possible action. It is
Council policy that action may not be taken on
petitions unless recommendations, if necessary,
from appropriate departments are received prior
the Council meeting.

DATE REC'D:

SIGNATURE: *Robert Botelho*

NAME: ROBERT BOTELO

ADDRESS: _____

TOWN: BRISTOL RI

BUSINESS TEL. NO. _____

RESIDENCE TEL. NO. _____

TOWN COUNCIL

MAR 01 2023

MEETING

Current Definition of Adult Entertainment:

Adult entertainment means any commercial establishment or business where any individual, employee, operator, or owner exposes genitals, pubic regions, buttocks, anus, anal cleft or cleavage, or female breasts at or below the areola, or employs any device or covering which is intended to give the appearance of or simulate genitals, pubic regions, buttocks, anus, anal cleft or cleavage or female breasts at or below the areola for viewing by patrons.

Source: https://library.municode.com/ri/bristol/codes/code_of_ordinances?nodeId=PTIVCO_CH28ZO_ARTIINGE

Proposed Definition of Adult Entertainment:

Adult entertainment means any commercial establishment or business where any individual, employee, operator, or owner exposes genitals, pubic regions, buttocks, anus, anal cleft or cleavage, or breasts at or below the areola, or employs any device or covering which is intended to give the appearance of or simulate or attract attention to genitals, pubic regions, buttocks, anus, anal cleft or cleavage or breasts at or below the areola **and/or engages in the act of entertaining with or without music by dancing moving or behaving in a manner consistent with mimicking sexual action or seduction with or without physical contact of others with the intent to amuse, please, sexually stimulate or provide sexual gratification for viewing pleasures of legal adults within or outside of the establishment.**

Analysis

The current adult entertainment definition is mostly aligned to the RI legal definition merely for “*indecent exposure*” and has been adopted as a framework for the Bristol adult entertainment definition. However, such absence of the current key word definitions for both “*adult*” and “*entertainment*” lack the organic intent of such activity in which the town is attempting to regulate in Code of Ordinances Chapter 28 – Zoning, Article I. General. Including both of these key word definitions with the existing definition language envelops a greater legal framework to manage the adult entertainment industry.

Appendix

Adult Definition:

1. Fully developed and mature :
2. Relating to, intended for, or befitting adults
3. Dealing in or with explicitly sexual material especially a human being after an age (such as 21) specified by law

Entertainment Definition:

1. The act of entertaining.
2. The art or field of entertaining.
3. Something that amuses, pleases, or diverts, especially a performance or show.

Indecent Exposure Definition:

The exposing of one's private body parts (as the genitals) either recklessly or intentionally and under circumstances likely to cause offense or affront

Source: www.merriam-webster.com

§ 11-45-2. Indecent exposure

(a) A person commits indecent exposure/disorderly conduct when for the purpose of *sexual arousal, gratification or stimulation*, such person *intentionally, knowingly, or recklessly*: (1) Exposes his or her genitals to the view of another under circumstances in which his or her conduct is likely to cause affront, distress, or alarm to that person; (b) Any person may be a complainant for the purposes of instituting action for any violation of this section. This act shall not apply to any conduct between consenting adults where the complainant is an unintended witness; (c) Any person found guilty of, or who pleads nolo contendere to the crime of indecent exposure/disorderly conduct, shall be imprisoned for a term of not more than one year, or fined not more than one thousand dollars (\$1,000), or both. Any subsequent offense shall be punished by imprisonment for a term of up to three (3) years;

Source: <http://webserver.rilin.state.ri.us/Statutes/TITLE11/11-45/11-45-2.HTM>

ARTICLE I. - IN GENERAL

F2A

Sec. 28-1. - Definitions.

Words used in the present tense include the future, the singular includes the plural and the plural, the singular. Terms not defined in this chapter shall have the meaning customarily assigned to them. The following terms, unless a contrary meaning is specifically prescribed, shall have the following meanings:

Abandonment means to cease or discontinue a use or activity without intent to resume (See subsection 28-218(9)).

Abutter means one whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land. For purposes of notice, abutter also includes any property that is across a street from the subject property.

Accessory dwelling unit means either an accessory dwelling unit that has been restricted by deed for the sole use as an affordable housing rental unit that meets the requirements of the Low and Moderate Income Housing Act or an accessory dwelling unit for the sole use of one or more members of the family or caretaker of the occupant or occupants of the principal residence, but neither type needing to have a separate means of ingress and egress. (See section 28-151.)

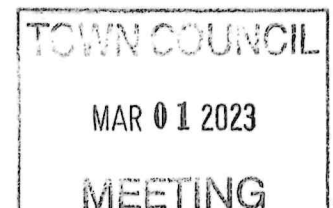
Accessory structure means a subordinate structure detached from but located on the same lot or parcel as the principal structure, the use of which is incidental and accessory to that of the principal structure. A structure is detached when there is no physical connection with and a minimum distance of six feet from the principal structure. (See also definition of garage and subsection 28-142(d) for dimensional requirements.)

Accessory use means a use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use shall be restricted to the same lot or parcel as the principal use. An accessory use shall not be permitted without the principal use to which it is related.

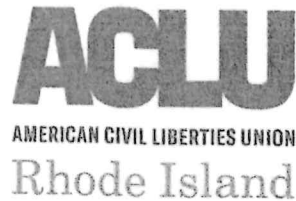
Accessory use solar energy system. A solar photovoltaic energy system that is incidental and subordinate to the principal use(s) of the parcel or development, and that generates no more energy than the average electrical consumption (as defined herein) necessary to support the principal use(s) of the parcel. Solar energy systems serving multiple parcels within a subdivision or land development project shall be considered accessory if they produce no more than the average electrical consumption necessary to support the development as a whole.

Administrative officer. The director of community development or designee means the administrative officer is charged with administering the land development and subdivision regulations and coordinating with local boards and commissions, and other municipal staff and state agencies.

Adult entertainment means any commercial establishment or business where any individual, employee, operator, or owner exposes genitals, pubic regions, buttocks, anus, anal cleft or cleavage, or female breasts at or below the areola, or employs any device or covering which is intended to give the appearance of or simulate genitals, pubic regions, buttocks, anus, anal cleft or cleavage or female breasts at or below the areola for viewing by patrons.



received at meeting FZ



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March 1, 2023

Dear Bristol Town Council Members:

A proposed petition before the Bristol Town Council tonight requests the Council to amend the definition of "adult entertainment" to include "the act of entertaining with or without music by dancing moving or behaving in a manner consistent with mimicking sexual action or seduction with or without physical contact of others with the intent to amuse, please, sexually stimulate or provide sexual gratification for viewing pleasures of legal adults within or outside of the establishment." The ACLU of Rhode Island strongly opposes this amendment and urges its rejection. It would undermine central First Amendment principles, is inappropriately aimed at LGBTQ+ individuals who are currently facing nationwide attempts to censor forms of expression that are core to their community, and is so open-ended as to ban a wide range of clearly constitutionally protected expressive activity.

It is no exaggeration to say that the language of this proposed provision is broad enough to have the *Footloose*-ian effect of subjecting to strict regulation just about any kind of dancing or other form of entertainment in the town of Bristol. There are very few plays, films, dances or musical performances for the "viewing pleasures of legal adults" with the "intent to amuse" that do not include any behavior "consistent with mimicking ... seduction with or without physical contact." That describes just about every love story ever performed, written or danced to. A vast array of classical and contemporaneous arts performances would suddenly be deemed "adult entertainment" on par with nude dancing in a bar.

This proposal is additionally problematic because a municipality's lawful ability to regulate "adult entertainment" in ways that other entertainment cannot be regulated is based specifically on the carefully and very narrowly defined nature of what constitutes "adult entertainment" – something this proposal completely undermines. The artistic expression as defined by this proposal is a central component of most people's lives and well beyond the authority of town regulation.

But it is additionally impossible to separate this proposal from campaigns across the country which specifically aim to bar or impede the free speech activity of drag performances. It is clear that proposals like this one seek to target, however crudely, particular forms of creative expression – including dance, music and storytelling – that are inextricably linked to the LGBTQ+ community. Designating such performances "adult entertainment" is a desperate attempt to censor legitimate forms of speech based on discriminatory motivations.

Bristol already had one unfortunate experience in cancelling a "drag queen story hour." We urge the Town Council not to go down a similar path, and to instead summarily reject this unsubtle attack on freedom of expression. Thank you in advance for your time and consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Steven Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven Brown
Executive Director

cc: Steven Contente, Town Administrator
Michael Ursillo, Town Solicitor