

NYC Adult Entertainment Zoning Law Fails to Survive Constitutional Challenge

by Victor Kinon on September 10, 2012

Keeping adult entertainment businesses out of local neighborhoods continues to be a challenge for New York and New Jersey communities. New York City recently saw its latest zoning law struck down by Manhattan Supreme Court Justice Louis York.

The challenged New York City zoning ordinance, which was enacted back in 2001, sought to close a loophole in the prior law that defined “adult establishment” as any business where more than 40 percent of its material was sexually oriented in nature. New York City had argued that the so-called 60/40 rule was prone to abuse by businesses that kept a small stock of non-explicit materials to avoid the zoning restrictions.

The 2001 amendment would have narrowed the definition and subsequently forced many of these “mixed use” businesses away from areas near schools, places of worship, homes and other adult establishments. However, Judge York found the new law violated free speech protections under the First Amendment.

He also concluded the tighter zoning restrictions were largely unnecessary. “These entities no longer operate in an atmosphere placing more dominance of sexual matters over non-sexual ones,” he wrote in the opinion. Judge York further noted that studies presented to the court showed that the adult establishments did not lead to higher crime rates or lower property values in surrounding communities.

Robin Binder, deputy chief of the administrative law division of the City Law Department, has stated her agency would appeal the decision, according to Reuters.