

**ORDINANCE 2016-13 OF THE TOWNSHIP OF BERLIN, COUNTY OF CAMDEN,
AND STATE OF NEW JERSEY, AMENDING THE HOURS OF OPERATION
RESTRICTION FOR SEXUALLY ORIENTED BUSINESSES SET FORTH IN
ORDINANCE 2015-10**

WHEREAS, sexually oriented businesses are regulated by Chapter 268 of the Code of the Township of Berlin (“Township”); and

WHEREAS, on December 14, 2015, the Township adopted Ordinance 2015-10, which repealed Chapter 268 as it then existed and replaced it with a new Chapter 268; and

WHEREAS, on or about January 28, 2016, the owners of the Red Barn Bookstore and Berlin News Agency, both of which qualify as sexually oriented businesses under Chapter 268, filed suit in the Superior Court of New Jersey challenging the constitutionality of the hours of operation restriction set forth in Section 268-8(D) on First Amendment grounds (“the Litigation”), notwithstanding the fact that (1) municipalities are specifically authorized pursuant to N.J.S.A. 2C:33-12.2(c) to restrict the hours of operation of sexually oriented businesses; and (2) similar regulations have been upheld as valid time, place and manner restrictions by numerous courts throughout the country, including the District Court of New Jersey and Third Circuit Court of Appeals; and

WHEREAS, due to the uncertainties and costs and expenses associated with litigation, the Governing Body has determined that it is in the best interests of the residents and taxpayers to resolve the Litigation by amending the hours of operation restriction; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, the Governing Body is authorized to enact and amend ordinances as deemed necessary for the preservation of the public health, safety and welfare and as may be necessary to carry into effect the powers and duties conferred and imposed upon the Township by law;

NOW THEREFORE BE IT ORDAINED, by the Mayor and the Township Council of the Township of Berlin, as follows:

SECTION 1: Ordinance 2015-10 is hereby amended and revised to provide as follows:

CHAPTER 268 – SEXUALLY ORIENTED BUSINESSES

Article I - General Provisions

§ 268-1. Purpose; findings. [NO CHANGE]

§ 268-2. Definitions. [NO CHANGE]

Article II – Application/License

§ 268-3. Approval or disapproval of application. [NO CHANGE]

§ 268-4. Licensing requirements. [NO CHANGE]

§ 268-5. License term; transferability; renewal. [NO CHANGE]

§ 268-6. Revocation of license. [NO CHANGE]

§ 268-7. Fees. [NO CHANGE]

Article III – Regulations

§ 268-8. Regulations.

Every licensee of an adult use as defined in this chapter shall comply with the following regulations as applicable:

A. [NO CHANGE]

B. [NO CHANGE]

C. [NO CHANGE]

D. The hours of operation for any sexually oriented business or adult use as defined in this Chapter shall not be earlier than 9:00 a.m. nor later than 12:00 midnight, prevailing time, on weekdays and Saturdays, and no earlier than 12:00 noon nor later than 12:00 midnight, prevailing time, on Sundays.

E. [NO CHANGE]

F. [NO CHANGE]

G. [NO CHANGE]

H. [NO CHANGE]

§ 268-9. Location restrictions. [NO CHANGE]

Article IV – Enforcement

§ 268-10. Violations and penalties. [NO CHANGE]

SECTION 2: Except as set forth in Sections 1 above, the balance of Ordinance 2015-10 shall not be affected by this Ordinance.

SECTION 3: This Ordinance, which does not alter or amend any regulation, restriction and/or licensing requirement of any previous version of this Chapter, shall apply retroactively to any currently existing person and/or business who has heretofore operated pursuant to any previous version of this Chapter and/or in accordance with any license issued thereunder.

SECTION 4: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5: If the provisions of any section, subsection, paragraph, subdivision, or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this Ordinance.

SECTION 6: This Ordinance shall take effect twenty (20) days after final adoption and publication as required by law.

Notice is hereby given that the foregoing Ordinance was introduced and passed upon first reading at a meeting of the Mayor and Council of the Township of Berlin, Camden County, New Jersey on June 13, 2016 and the same was ordered published pursuant to statute. Said ordinance will be further considered for final adoption at a meeting of the Mayor and Council of the Township of Berlin on July 11, 2016 at 5:30 p.m. at the Berlin Township Municipal Hall, 135 Route 73 South, West Berlin, NJ.

Catherine Underwood
Township Clerk

