

ADULT BOOK STORE AND ADULT THEATERS LAW

A Local Law entitled: Adult Bookstores and Adult Theaters

Adopted July 8, 1991; Public Hearing held in August, 1991

Filed with the NYS Department of State: September 18, 1991

SECTION 1: PURPOSE

- 1.) It is recognized that there are some land uses which, due to their very nature, have serious objectionable characteristics. The objectionable characteristics of these uses are further heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or land uses.
- 2.) It is further declared that the location of these uses in regard to areas where our youth may regularly assemble and the general atmosphere encompassing their operation is of great concern to the Town of Wells.
- 3.) These special regulations are itemized in the Section to accomplish the primary purposes of preventing a concentration of these uses in any one area and restricting their accessibility to minors.
- 4.) To the extent that Town Law Section 136 does not authorize the licensing and regulation of Adult Bookstores and Adult Theaters as defined in this Local Law, pursuant to Municipal Home Rule Law Section 10(1) (ii) (a) (12) and Section 10(1) (ii) (d) (3) this Local Law is intended to amend and or supercede Town Law Section 136 so as to authorize the licensing and regulation of such uses for the protection, order, conduct, safety, health and welfare of the residents and property of the Town.

SECTION 2: DEFINITIONS

As used in this Local Law, the following terms shall have the meanings indicated:

- A) ADULT BOOKSTORE: A business, whether retail or wholesale, having as a substantial or significant portion of its stock in trade recordings, books, magazines, periodicals, films, video tapes/cassettes or other viewing materials for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or specified anatomical areas.
- B) ADULT THEATER: An enclosed or unenclosed building, structure or portion thereof used for presenting motion pictures, films, video tapes or slide shows distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual activities or specified anatomical areas for observation by patrons.
- C) BUSINESS: Any person, firm, association, partnership, corporation or other entity for profit.
- D) PERSON: An individual, firm, partnership, corporation, voluntary association, incorporated association and any principal, agent or employee thereof.
- E) SEXUAL ACTIVITIES: Any act of masturbation, fellation, sadomasochism, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area or, if such a person be female, breast.
- F) SPECIFIED ANATOMICAL AREAS: Human male or female genitals, or pubic area with less than a full opaque covering, or female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or covered male genitals in a discernibly turgid state.

SECTION 3: **LICENSE REQUIRED**

No person shall engage in, own or operate an Adult Bookstore or an Adult Theatre unless he or she shall first have obtained a license ("license") to do so from the Town Clerk no later than ten (10) business days before the first date of business. The Annual Fee for a license shall be One-Hundred Dollars (\$100.00). The license shall be prominently displayed in the Adult Bookstore or Adult Theatre.

SECTION 4: **APPLICATION FOR LICENSE**

An application for a license shall be accompanied by a non-refundable One-Hundred Dollar (\$100.00) application fee and shall provide the following information:

- A. Name, age and address of applicant's place of residence.
- B. The firm or firms he or she represents, together with copies of documents establishing the firm's residence and address, form of organization, ownership and qualifications to do business in the State of New York.
- C. A brief description of the nature of the business
- D. The place where the applicant proposes to conduct such business.
- E. Prior criminal convictions of the applicant, other than minor traffic violations.
- F. Physical description of applicant.
- G. Whether or not a license issued to the applicant under this Local Law has ever been revoked.
- H. Such other information as may be required by the Town Clerk to promote the purposes of this Local Law.

SECTION 5: **PROCEDURE FOR REVIEW OF APPLICATION**

A). Within ten (10) days of receipt thereof, the Town Clerk must forward the application to the Town Board for review.

B). Any application forwarded by the Town Clerk to the Town Board shall be reviewed by the Town Board at its next regular monthly meeting. The Town Board may either approve the application and direct the Town Clerk to issue the license or reject the application.

C). When the application is forwarded by the Town Clerk to the Town Board for action, the Town Board at the time of its review of the application may in its discretion schedule a Public Hearing to be held upon it. In this event, the Town Board shall have an additional thirty (30) days within which to hold the Public Hearing and to either approve the application and direct the Town Clerk to issue a license with or without conditions, or reject the application. Notice of the Public Hearing shall be published at least once no less than fifteen (15) days before the date of hearing, in a newspaper of general circulation within Hamilton County. The notice shall state the name of the application, the name of the proposed business, the type of the proposed business, the general location of the proposed business and the date, time and place of hearing.

D). In approving or rejecting an application, the Town Board shall consider the following criteria but shall in no way be limited thereby:

- 1. The character of the neighborhood in which the applicant proposes to carry on the Adult Bookstore or Adult Theatre.

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- 2. The changes that the business would bring to the neighborhood and whether these changes would be to the benefit or detriment of the public good, welfare health, safety or morals.
- 3. The nuisance, refuse, litter, noise and adverse health conditions that the business might or will create.
- 4. The requirements of police protection and traffic control.
- 5. The criminal record of the person(s) applying for the license.

- E.) Notwithstanding the foregoing, no license shall be issued for any Adult Bookstore or Adult Theater which is:
- 1. Within One-Thousand (1,000) Feet of any school, church or other place of worship, park, playground or playing field; or
 - 2. Within One-Thousand (1,000) Feet of another Adult Bookstore or Adult Theater.

F.) A license issued pursuant to this Local Law shall expire on December 31st in the year in which it is issued.

SECTION 6: **REVOCATION OF LICENSE**

The Town Board, upon complaint of violation of this Local Law or other Ordinance or any Law by the licensee, and upon a hearing upon five (5) days prior notice to the licensee, may revoke any license for good cause including, without limitation:

- A. Fraud, misrepresentation or false statement contained in the application for the license.
- B. Fraud, misrepresentation or false statement made in the course of operating the Adult Bookstore or Adult Theater.
- C. Conviction of any crime, misdemeanor or violation of any Local Law or Ordinance.
- D. Operating the Adult Bookstore or Adult Theater in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to the health, safety or general welfare of the public.

SECTION 7: **VIOLATIONS**

Any person violating the provisions of this Local Law shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than Two-Hundred Dollars (\$200.00) nor more than One-Thousand Dollars (\$1,000.00) for each offense. Every day or part of a day that a violation of this Local Law shall continue shall constitute a separate and distinct offense. Notwithstanding any other provision of this Local Law, the license shall be automatically revoked upon conviction of a violation of any provision of this Local Law.

SECTION 8: **NON-CONFORMING USES**

- A.) A lawfully existing Adult Bookstore or Adult Theater in existence on the effective date of this Local Law (hereafter referred to as “non-conforming use”) may be continued notwithstanding that it does not conform to Paragraphs D or E of Section 5.

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- Notwithstanding the foregoing, all such non-conforming uses are subject to all other requirements of this Local Law, including licensing requirements, except that a license may not be denied for failure to comply with Paragraphs D or E of Section 5.
- B.) A non-conforming use may not be enlarged or extended. A non-conforming use that is discontinued for a period of sixty (60) days or more shall be deemed abandoned, and any subsequent use must conform to all provisions of this Local Law.
- C.) Notwithstanding any other provision of this Section, the right to maintain a non-conforming use shall be terminated in accordance with the following amortization schedule:

<u>Amount of Capital Investment as of the Effective Date of this Local Law:</u>	
\$0 to \$5,000	\$15,001 to \$22,000
\$5,001 to \$8,000	\$22,001 or more
\$8,001 to \$15,000	

Date Before Which Use Shall Be Terminated:	Three years from effective date of this Local Law.
One year from effective date of this Local Law.	Four years from effective date of this Local Law.
Two years from effective date of this Local Law.	Five years from effective date of this Local Law.

NOTE: The term “Capital Investment”, as used above, is defined to mean the initial outlay by the owner or operator of the use to establish the business as of the date of the enactment of this Local Law, exclusive of the fair market value of the structure in which the use is located.

The application for the license shall include such information as required by the Town Clerk to enable the Town Board to determine by what date such non-conforming use shall terminate pursuant to the above schedule. After such termination, any subsequent use must conform to all provisions of this Local Law.

SECTION 9: **SEVERABILITY**

The invalidity of any clause, sentence paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph or part thereof.

SECTION 10: **REPEALER**

All Local Laws or Ordinances or parts of Local Laws or Ordinances in conflict with any part of this Local Law are hereby repealed.

SECTION 11: **EFFECTIVE DATE**

This Local Law shall take effect upon expiration of the interval required by Section 27(4) of the Municipal Home Rule Law and filing in the Office of the New York Secretary of State.

Mary E. Simons, Town Clerk