

**ADULT ENTERTAINMENT USES LAW OF THE TOWN OF ASHFORD
ARTICLE 1**

GENERAL PROVISIONS

PART 1. SHORT TITLE; HOW CITED; SEVERABILITY; APPLICATION

Section 1-1.1 Short Title; How Cited. This local law shall be known as the Adult Entertainment Uses Law of the Town of Ashford and may be cited as the Adult Entertainment Uses Law. A section of this Law may be cited by Article, Part and Sections Number, to wit, Adult Entertainment Uses Law 1-1.1, which refers to Article 1, Part 1, Section 1, without being preceded by the word Article, Part of Section or the symbol for section.

Section 1-1.2 Purpose and Intent. Adverse effects upon a community caused by sexually oriented entertainment businesses, such as increased crime rates, depreciation of property values and a deterioration of community's business districts, its character and quality of life make it desirable to regulate the location and conduct of such businesses so as to minimize adverse effects. The provisions of this local law are deemed minimally necessary to reduce or prevent harmful effects upon children and adults by restricting the accessibility of such business and activities to minors, placing them away from residential areas and promoting their location in areas which will minimize the degradation of the community's residential areas and business areas, and reduce the decline in property values and overall quality of neighborhoods which may result from the establishment of such uses in the town.

Section 1-1.3 References. Unless otherwise stated, all references in this Local Law to Article, Part, or Section Number refers to the Articles, Parts or Section Numbers of this Local Law, and all references in any section of the Local Law to a lettered or numbered paragraph or subparagraph refers to the paragraph or subparagraph so lettered or numbered in such section.

Section 1-1.4 Rules governing Use of Certain Words. In this chapter, unless the context otherwise requires:

- A. Words in singular number include the plural, and in the plural include the singular.
- B. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.
- C. The work "writing" includes typewritten, computer generated, or printed matter.

Section 1-1.5 Severability. The provisions of this article shall be severable, and if any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 1-1.6 Application.

A. Unless otherwise stated therein, the provisions of this Local Law apply to Adult Entertainment Uses within the Town of Ashford, Cattaraugus County, New York.

B. No Adult Entertainment Use shall hereafter be established or maintained with the Town except in conformity with the provisions of this local law.

PART 2. DEFINITIONS

In the Local Law, unless the context otherwise requires or a different meaning is expressly provided, the words and phrases set forth in this part shall be given their indicated meaning.

Section 1-2.1 Adult Bookstore. An establishment or business, whether retail or wholesale, having as a substantial or significant portion of its stock-in-trade, books, magazines and other periodicals, films, computer viewed media, and viewing materials for sale or viewing on premises, by use of motion picture devices or coin operated means, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment or business containing a segment or section devoted to the sale or display of such material, and sell (or rents) or offers for sale (or rental) such material, and the gross sale and/or rental value of which represents more than twenty-five percent (25%) of the gross sales (and/or rentals) of the place, or that comprises more than twenty-five percent (25%) of the individual items displayed on the premises as stock-in-trade.

Section 1-2.2 Adult Entertainment Cabaret. A public or private establishment that permits or allows performers, dancers or other entertainer to display or expose specified anatomical areas or specified sexual activity.

Section 1-2.3 Adult Entertainment Establishment. An adult bookstore, an adult entertainment cabaret, an adult motion picture or video theater, an adult motel, a massage establishment, a peep show or other business establishment or private club or association presenting entertainment or products for its patrons or members that are characterized by an emphasis on or having as a primary or dominant or significantly prominent theme the display, sale, rental or exhibition of adult material or the presentation of specified sexual activity or specified anatomical areas for entertainment purposes.

Section 1-2.4 Adult Material. Any one or more of the following:

A. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, computer generated materials, slides or other visual representations or recordings, novelties and devices that have as their primary or dominant theme matter depicting, illustrating or describing specified sexual activity or specified anatomical areas.

B. Instrument, devices or paraphernalia designed for use in connection with specified sexual activity.

Section 1-2.5 Adult Motel. A motel which is not open to the public generally but excludes minors by reason of age or which makes available to its patrons in their rooms, films slide shows or videotapes, which if presented in a public movie theater would not be open to the public generally but would exclude any minor by reason of age.

Section 1-2.6 Adult Motion Picture Theater. Premises used for presenting films, motion pictures, computer generated images and materials, and/or videos, whether viewed in private booths or public assembly areas, which films, motion pictures, computer generated images and materials, and/or videos are characterized by an emphasis on matter depicting or describing or related to specified sexual activity or specified anatomical areas for observation by patrons therein for entertainment purposes.

Section 1-2.7 “Board of Appeals” means the Board of Appeals appointed by the Town Board of Ashford.

Section 1-2.8 “Code Enforcement Officer” means the Code Enforcement Officer appointed by the Town Board of the Town of Ashford.

Section 1-2.9 Massage Establishment. Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a New York State licensed massage therapist, a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition also shall exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

Section 1-2.10 Peep Show. A theater which presents adult material in the form of live shows, films or videotapes, or computer generated images and materials, viewed from an individual enclosure, for which a fee or other payment is or is not assessed or charged and which is not open to the public generally but excludes any minor by reason of age.

Section 1-2.11 School. A public or private facility that provides a curriculum of basic, elementary or secondary academic instruction, including a preschool facility, a special education facility, a kindergarten, elementary school, junior high school, middle school and high school.

Section 1-2.12 Specified Anatomical Areas.

- A. Less than completely and opaquely covered human genitals, pubic region, buttock or breast below a point immediately above the top of the areola.
- B. Human genitals in a discernible turgid state, even if completely and opaquely covered.

Section 1-2.13 Specified Sexual Activity

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Any act of human masturbation, sexual intercourse or sodomy.
- C. Fondling or other erotic touching of the human genitals, pubic region, buttocks or breasts, or anus.
- D. Any act or actual or apparent human sexual activity, sexual stimulation, sadomasochistic abuse or sexual gratification.

Section 1-2.14 Substantial Connection

- A. In a sole proprietorship, an individual who owns, operates, controls, or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.
- B. In a partnership, limited or general, an individual who shares in any potential profits or losses of the business or who shares in the ownership of any of the assets of the partnership business.
- C. In a corporation, an individual who is an officer, director or a holder, either directly, indirectly, or beneficially, of more than twenty percent (20%) of any class of stock.

D. Any person who furnishes more than twenty percent (20%) of the capital financing or assets of such business, whether in cash, goods, or services.

E. In a limited liability company any individual who manages same or has an ownership interest therein.

Section 1-2.15 "Town Board" means the Town Board of the Town of Ashford.

Section 1-2.16 "Town" means the Town of Ashford, Cattaraugus County, New York.

ARTICLE 2

REGULATED ADULT ENTERTAINMENT ESTABLISHMENTS AND USES

PART 1 Establishments and Uses

Section 2-1.1 Regulated Adult Entertainment Establishments. Regulated uses include all adult entertainment establishments or uses, which include, but are not limited to, the following:

- A. Adult bookstore
- B. Adult entertainment cabaret
- C. Adult motel
- D. Adult motion picture theater
- E. Massage establishment
- F. Peep show
- G. Tattoo parlor

Section 2-1.2 Restrictions Affecting Adult Uses. In addition to the other requirements to this local law, adult uses shall be permitted in the Town of Ashford subject to the following restrictions:

- A. No adult use shall be allowed within one thousand five hundred (1500) feet of another existing adult use.
- B. No adult use shall be located within one thousand five hundred (1500) feet of a residence or the boundaries of any district, which now, or hereafter, may be zoned for residential use.

- C. No adult use shall be located within one thousand five hundred (1500) feet of a preexisting school or place of worship.
- D. No adult entertainment establishment shall be located within one thousand five hundred (1500) feet of a school, public library, civic center, municipal building, youth-oriented or child day-care center, park, playground, motion picture theater or other area where children under the age of 17 normally congregate for the purpose of entertainment, education, medical or custodial care or a place of religious worship, such as a church, synagogue or temple, or a monastery, rectory or convent or a hospital or medical center.
- E. No more than one adult entertainment establishment shall be located on any lot.
- F. If the measurement in Subsections A, B, C or D crosses a public or private road, street, highway or right-of way, the diagonal distance across the full width of such road, street, highway or right-of-way shall not be counted in determining the minimum distance between uses.
- G. Exterior Display Prohibited. No adult entertainment establishment shall be conducted in any manner that allows the observation of any adult material or performance or any material depicting or describing specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult entertainment establishment. This provision shall apply to any display, decoration, sign, show window or other opening.
- H. Exterior Audio Broadcasting Prohibited. No loudspeakers or audio attractants shall be projected so as to be heard outside of the adult entertainment establishment.

ARTICLE 3

SPECIAL USE PERMITS AND APPLICATIONS

PART 1. SPECIAL USE PERMIT

3-1.1 When Permit Required. No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains a regulated adult use, without first obtaining a Special Use Permit.

3-1.2 Annual Duration. The duration of a Special Use Permit is for a period not to exceed one calendar year and in the first year of issuance it is for the remaining period until the end of the calendar year.

3-1.3 Renewal. After it is first issued a Special Use Permit may be renewed on a calendar year basis if all of the terms and conditions of the original grant are met and provided the applicant is not in violation of this local law, and provided the Special Use Permit fee is paid.

3-1.4 Other Required Authorizations. No Special Use Permit shall be issued unless all other required licenses and permits have been issued and all other applicable laws and regulations have been complied with. A Special Use Permit may be approved contingent upon compliance with the foregoing and thereafter issued when satisfactory proof of compliance with the foregoing is provided.

PART 2. APPLICATION FOR A SPECIAL USE PERMIT

3-2.1 Information required. An application for a Special Use Permit under this Local Law shall contain the following information:

- A. The address of the premises.
- B. The name and address of the owner(s) of the premises.
- C. The name of the business or the establishment subject to the provisions of this section.
- E. The name, business and home addresses, business or home phone numbers of all owners of the business or establishment subject to the provisions of this section.
- F. The names, business and home addresses, business or home phone numbers of all those persons having a substantial connection with the business or establishment subject to the provisions of this section.
- G. The date of the proposed initiation of the adult use.
- H. The exact nature of the adult use.
- I. If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease .
- J. A statement as to all other licenses or permits required, applied for and/or issued.

3-2.2 Information Changes. If changes in the information required for the issuance of a Special Use Permit occur subsequent to its issuance, the Town Clerk of the Town of Ashford shall be notified of such change, and a new or amended application shall be filed within 10 days of a change.

3-2.3 Non transferability. No Special Use Permit issued under the provisions of this section shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than stated in the Special Use Permit.

3-2.4 Posting of Permit. The owner, manager or agent operating any adult use shall cause a copy of the Special Use Permit issued under the provisions of this section to be prominently displayed on the premises, building or location for which it is issued.

3-2.5 False Statements. Any knowingly false statement or any statement which the registrant or applicant should reasonably have known to be false, which is provided in the application for the Special Use Permit, or any document or information supplied therewith, shall be grounds for rejection, suspension or revocation of the certificate of registration.

ARTICLE 4

REFERRALS, PLANNING BOARD, BOARD OF APPEALS, APPEALS AND VARIENCES

PART 1. Referrals

4-1.1 Permissive Referral to Planning Board. Before issuing a permit or taking action under this local law, the Code Enforcement Officer may refer the matter to the Planning Board for comment. Within 30 days after receipt of a full statement of such referred matter, the Planning Board shall report its recommendations thereon to the Code Enforcement Officer accompanied by a full statement of the reasons for such recommendations. If the Planning Board fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the Code Enforcement Officer, the Code Enforcement Officer may act without such report.

4-1.2 Board of Appeals: The Board of Appeals shall refer to the Planning Board any matter coming before it arising from or out of this Local Law. Within 30 days after receipt of a full statement of such referred matter, the Planning Board shall report its recommendations thereon to the Board of Appeals accompanied by a full statement of the reasons for such recommendations. If such Planning Board fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the Board of Appeals, the Board of Appeals may act without such report

PART 2. Appeals

4-2.1 Filing of Appeal. An appeal to the Board of Appeals, from any ruling of the Code Enforcement Officer, may be taken by any property owner, or lessor. Appeals to the Board shall be taken by filing with the Code Enforcement Officer from whose action the appeal is taken, and with the Board, a Notice of Appeal specifying the grounds therefor. Any such appeal shall be accompanied by a filing fee of \$50.00.

4-2.2 Notice of Appeal. The Notice of Appeal shall be filed within 20 days after the denial of a permit, or after the report of action of the Code Enforcement Officer, to be appealed from. The Code Enforcement Officer shall transmit to the Board of Appeals, all papers constituting the record upon which the action appealed from was taken, or in lieu thereof, certified copies of said papers.

PART 3. Variances

4-3.1 Variances. The Board of Appeals shall have power, upon an appeal from the action of the Code Enforcement Officer, and after public hearing held upon public notice of at least ten days prior to such hearing, to grant a variance from the application of the provisions and regulations established in this local law. Such variance shall be granted subject to conditions and safeguards applicable to the special case.

A. Every variance granted by the Board of Appeals shall be based upon and accompanied by a specific finding or findings, supported by evidence produced at a public hearing, to the effect that the unique circumstances of the particular case are such as to constitute practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this local law.

B. Every variance granted by the Board of Appeals shall be designed by the Board to safeguard the public health, safety and general welfare, and shall be in harmony with the general purpose and intent of this local law, so that the spirit of this local law shall be observed, public safety insured, and substantial justice done.

C. Such variance may be issued upon such terms and conditions as the Board of Appeals shall specify, but in any event said variance shall terminate upon the change of ownership of the premises governed by this Local Law.

ARTICLE 5

NOTICES AND COMPLAINTS

5-1.1 Notification of Violation by Code Enforcement Officer. In the event of a violation of this Local Law, the Code Enforcement Officer shall give written or personal notice thereof, specifying the violation, to the owner of the Adult Entertainment Establishment or to the operator

thereof, or to the record owner of the land upon which the establishment is located. The owner, operator or the owner of the land on which the establishment is located shall cause the establishment to be brought into conformance with this Local Law within thirty (30) days from the date of notice. If the establishment is not made to conform with the provisions of this local law within thirty (30) days after the serving of the notice, the Special Use Permit Code may be revoked. Upon revocation of the Special Use Permit, Adult Entertainment uses on the premises must cease.

5-1.2 Complaints from the public. Whenever a violation of the Local Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer who shall properly record such complaint and immediately investigate and determine if a violation has occurred or is in progress. If a violation has occurred or exists he shall serve such notice as is appropriate pursuant to 5-1.1 hereof.

ARTICLE 6

VIOLATIONS AND PENALTIES

6-1.1 Violation. Any person, firm, corporation, LLC or other entity who shall establish or operate an Adult Entertainment Establishment as defined without having applied for and having been validly issued a Special Use Permit, or who operates an Adult Entertainment Establishment contrary to the restrictions contained in this local law, is guilty of a violation.

6-1.2 Penalties.

A. After the specified number of days from the date of notice of a violation, if the violation has not been corrected, and if no appeals are pending, the Code Enforcement Officer, or any other proper person, authority or official, may commence an action to enforce this Local Law.

B. Fines. The penalty per violation of this Local Law shall be \$50 for the first violation and the penalty for a second violation shall be \$200 and for each violation thereafter, \$200.

C. Imprisonment. In addition to the above penalties the violator may be imprisoned not more than 15 days for each violation.

D. The provisions of this Article and Local Law shall not limit the available procedures for enforcement and remedies provided for under the Town Law of the State of New York or any other law.

ARTICLE 7

FEEES

7-1.1 Application Fee. The fee payable upon the filing of an Application for a Special Use Permit is \$250.00. This fee includes the permit fee for the remainder of the calendar year in which the Special Use Permit is issued.

7-1.2 Annual Special Use Permit Fee, Renewal. The annual (calendar year) renewal fee if \$250.00.

7-1.3 Changes in the fee schedule be effected by the Town Board either by the amendment of this Local Law or by the inclusion of the fee in the Town's Fee Law Schedule as amended from time to time.

ARTICLE 8

ADOPTION AND EFFECTIVE DATE

8-1.1 Adoption. This Local Law was adopted by the Town Board of the Town of Ashford at its regular meeting on the 26th day of August, 2008, as Local Law Number 1 of the year 2008.

8-1.2 Effective Date. This Local Law shall take effect immediately upon its filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.