

Local Law Filing

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Text of law should be given as amended. Do not include matter being eliminated and do not use underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED
MAY 17 2004

MISCELLANEOUS
& STATE RECORDS

██████████
██████ of Westville
Town
██████

Local Law No. #1 of the year 20 04

A local law Adult Orientated Businesses in the Town of Westville
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

██████
██████ of Westville as follows:

" SEE ATTACHED SCHEDULE 'A' "

(If additional space is needed, attach pages the same size as this sheet, and number each.)

LOCAL LAW #1 - 2004

WHEREAS the Town of Westville, New York retained Mackay and Associates, Inc. To conduct a study to determine whether the operation of adult entertainment uses in the Town of Westville could cause or contribute to adverse impacts on the surrounding and adjacent properties and neighborhoods;

WHEREAS the study prepared by MacKay and Associates, Inc., entitled "Potential Secondary Impacts of Adult-Oriented Businesses in the Town of Westville" (hereinafter the "Secondary Impacts Study") indicates that negative secondary effects, such as increased crime, increase in sex-related crimes, reduced desirability of residential areas, decreased property values could flow from the unregulated location and operation of an adult entertainment use/or business within the Town of Westville.

WHEREAS, the Town Board has reviewed and accepted the findings of the Secondary Impacts Study prepared by MacKay & Associates, Inc.;

WHEREAS, the Town Board has reviewed and accepted the findings of the Secondary Impacts Study, and accepted the recommendation of the Planning Board;

WHEREAS, the Town of Westville has a substantial governmental interest in preventing crime, preventing the increase of sex-related crimes, maintaining property values, protecting minors and preserving the quality of the neighborhoods, and the quality of life, protection of health, safety and welfare of its citizens;

WHEREAS, regulation of adult entertainment uses should be developed to prevent negative secondary effects and the deterioration and degradation of the vitality of the Town of Westville before a problem develops, rather than in response to an existing problem;

WHEREAS, various options for the regulation of adult entertainment uses were considered and the following local law contains provisions that are the least restrictive alternative that will prevent or reduce the harmful secondary effects of adult entertainment uses discussed in the Secondary Impacts Report and will promote public health, welfare, and safety, as well as the economic and social well being of the Town;

WHEREAS, the Town Board of the Town of Westville desires to enact an Adult Oriented Businesses law to protect the public health, safety and welfare of its citizens, safeguard the economic and social well being of the Town of Westville and prevent the negative secondary effects associated with Adult Oriented Businesses/Establishments.

NOW, THEREFORE, BE IT ENACTED by the Town Board of the Town of Westville as follows:

Section I:

Section [20] of the Code of the Town of Westville, is hereby created to read as follows:

Section [20] Adult Uses

Adult Oriented Businesses, as defined in [20], shall be allowable only in the C-G General Commercial District and only as a special exception issued by the Board of Variances and Appeals after public hearing.

A. Purposes and considerations.

- (1) In the execution of this law it is recognized that there are some 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 Westville.
- (3) These special regulations are itemized in this section to accomplish the primary purposes of preventing a concentration of these uses in any one area and restricting their accessibility to minors.

B. An "adult-oriented business" is a commercial establishment where a "substantial portion" of the business includes an adult bookstore, adult eating or drinking establishment, adult theater, unlicensed massage establishment, or other adult commercial business, or any combination thereof, as defined below:

- (A) An adult bookstore is a bookstore that has a "substantial portion" of its stock-in-trade any one or more of the following:
 1. Books, magazines, periodicals, or other printed matter that are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" or,
 2. Photographs, films, motion pictures, video cassettes, slides or other visual representations that are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

(B) An adult eating or drinking establishment is one that regularly features any or one or more of the following:

1. Live performances that are characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” or,
2. Films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas” or,
3. Employees who, as part of their employment, regularly expose to patrons “specified anatomical areas” and such establishment is not customarily open to the general public during such features because it excludes minors by reason of age.

(C) An adult theater is one that regularly feature one or more of the following:

1. Films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas” or,
2. Live performances characterized by an emphasis on “specified anatomical areas” or “specified sexual activities” and that such establishment is not customarily open to the general public during such features because it excludes minors by reason of age, or
3. Any adult theater shall include commercial establishments where the materials or performances listed above are viewed from individual enclosures.

(D) Unlicensed Massage Establishment - Any establishment having a fixed place of business where massages, or any other treatment or manipulation of the human body, are administered for any form of consideration or gratuity, as part of or in connection with Specified Sexual Activities or where any person providing such treatment or service related thereto exposes Specified Anatomical Areas. This definition shall not be construed to include a hospital, nursing home or medical clinic, or the office of the physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service by a person duly licensed to provide such service. If an unlicensed massage establishment is illegal under the laws of the State of New York, it shall not

be a permitted Adult Oriented Business.

- (E) Other adult commercial establishments may be a facility - - other than an adult bookstore, adult eating and drinking establishment, adult theater, commercial studio, or business or trade school - - which features employees who, as part of their employment, regularly expose to patrons “specified anatomical areas” and which is not customarily open to the general public during such features because it excludes minors by reason of age.

“Specified sexual activities” are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse or sodomy; or (iii) fondling or other erotic touching of human genitals, public region, buttock, anus or female breast.

“Specified anatomical areas” are: (i) less than completely and opaquely concealed; (a) human genitals, pubic region, (b) human buttock, anus, or (c) female breast below a point immediately above the top of the areola, or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

To determine whether a “substantial portion” of a business includes an adult bookstore, adult eating or drinking business, adult theater or other adult commercial establishment or combination thereof, the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses, and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses compared with the total floor area and cellar space accessible to customers in the establishment.

To determine whether a bookstore has a “substantial portion” of its stock in adult materials, the following factors shall be considered: (1) the amount of such stock accessible to customers compared with the total stock accessible to customers in the business, and (2) the amount of floor area and cellar space accessible to customers containing such stock, and (3) the amount of floor area and cellar space accessible to customers containing such stock compared with the total floor area and cellar space accessible to customers in the establishment.

- C. Adult Oriented Businesses are to be restricted as to location in the following manner:

- (1) Adult Oriented Businesses shall not be located within a one thousand-foot radius of any residence. Measurement of the distance shall be measured parallel to the intervening road frontage, going from the shortest distance between the boundary of the residential use zone and the property line of the proposed Adult Oriented Business.

- (2) Adult Oriented Businesses shall not be located within a one thousand-foot radius of another such use. Measurement of the distance shall be from the property lines of the uses.
- (3) Adult Oriented Businesses shall not be located within a one thousand-foot radius of any school, church, temple, mosque or other place of religious worship, park, playground, or playing field, day-care facility, cemetery, governmental building or post office. Measurement of distances shall be from the property lines of the uses.
- (4) Adult Oriented Businesses shall not be located within a one thousand-foot radius from any property classified by the State's Office of Real Property Service as residential that is located within the C-G General Commercial District. Measurement of distance shall be measured parallel to the intervening road frontage, going from the shortest distance between the boundary of the residential use zone and the property line of the proposed Adult Oriented Business.
- (5) The minimum set back for all parking areas and all structures of all Adult Oriented Businesses shall be one hundred fifty (150) feet.

D. Adult Oriented Businesses must comply with the following additional requirements to control the secondary effects of such uses on the surrounding community:

- (1) In any Adult Oriented Business where there is provided the performance of live dancers, said dancers shall perform only on a stage or platform which is at least eighteen (18) inches above the immediate floor level and which is removed at least six (6) feet from the nearest patron.
- (2) In any Adult Oriented Businesses where there is provided the performance of live dancers, no entertainer or dancer shall touch any guest or the clothing of a guest.
- (3) There shall be no outdoor display or advertising of any kind, other than one business identification sign complying with all signage requirements set forth in the Town Code.
- (4) All Adult Oriented Businesses shall take place within an enclosed building. All building openings, entries, windows and doors of the Adult Oriented Business shall be located, covered or screened in such a manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property.
- (5) All off-street parking areas and premises entries of the Adult Oriented Business shall be illuminated from dusk to closing hours of operations with

a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the business of personal safety of patrons and employees, and to reduce the incidents of vandalism and criminal conduct.

- (6) No Adult Oriented Business may remain open at any time between the hours of twelve midnight (12:00) a.m. and ten o'clock (10:00) a.m. on weekdays and Saturdays. No Adult Oriented Business may remain open at any time on Sundays.
- (7) No one under the age of eighteen (18) shall be permitted into or on the premises of the Adult Oriented Business.

E. The restrictions enumerated in Subsection C and D above may be waived by the Board of Variances and Appeals if the applicant shows and the Board finds that the following conditions have been met in addition to the general conditions:

- (1) That the proposed Adult Oriented Business will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this law will be observed;
- (2) That the establishment of an additional Adult Oriented Business of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or non-residential; and
- (3) That fifty-one percent (51%) or more of the property owners within the restricted area as defined in Subsection C(1) of this section have signed a petition stating that they have no objection to the establishment of one of the uses defined above.

F. Any person or entity seeking to conduct an Adult Oriented Business shall submit the following information, accompanied by the following documents:

- (1) If the applicant is:
 - (a) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;
 - (b) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

- (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process;
 - (d) A company including by not limited to limited liability companies, the company shall state its complete name, its owners, members and managers.
- (2) If the applicant intends to operate the Adult Oriented Business under a name other than that of the applicant; he or she must identify the Adult Oriented Business' fictitious name.
 - (3) The applicant's mailing address and residential address.
 - (4) Whether the applicant has been convicted of a crime, and if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
 - (5) The location of the proposed Adult Oriented Business, including a legal description of the property, street address, and telephone number(s), if any, and the exact nature of the Adult Oriented Business to be provided.
 - (6) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
 - (7) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing Adult Oriented Businesses within one thousand (1000) feet of the proposed location of the new Adult Oriented Business, as well as any schools, churches, temples, mosques or other places of religious worship, park, playgrounds and playing fields, day-care facilities, cemeteries, governmental buildings or post offices within one thousand (1000) feet of the proposed location of the new Adult Oriented Business, the boundary of any area zoned for residential use that is within 1000 feet of the proposed location of the Adult Oriented Business; and finally, the boundary of any residential property located within the C-G General Commercial District.
 - (8) Property owner's written consent to the proposed Adult Oriented Business.

- G. An owner or operator of an Adult Oriented Business shall permit the Town Code Officer to inspect the premises of such Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- H. No more than one (1) of the Adult Oriented Businesses as defined in Subsection B above shall be located on any tax map parcel.

Section II:

If any provision, sentence, clause, section or part of this local law is for any reason found to be unconstitutional, illegal or invalid, such finding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this local law. It is hereby declared to be the intent of the Town Board of the Town of Westville that this local law would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part not been included herein.

Section III:

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. #1 of 20 04 of the ~~(County)(City)(Town)(Village)~~ of Westville was duly passed by the Town Board on May 3, 20 04, in accordance with the applicable provisions of law.

2. ~~(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20 _____, in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.~~

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.~~

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.

Linda M. Jackson

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: May 4, 2004

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF FRANKLIN

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Richard Edwards

Signature Richard Edwards

Westville Town Attorney

Title

~~County~~

~~City~~ of WESTVILLE

Town

~~Village~~

Date: 5/11/2004