

# ADULT USE ESTABLISHMENTS

## Chapter 1 Local Law #5 1995

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(HISTORY: Adopted, Hilton Village Board: 9-11-95 as Local Law No. 5, 1995)

Be in enacted by the Village Board of the Village of Hilton, New York, as follows:

### 1-1 Purpose and intent

It is the purpose of this local law to regulate sexually oriented businesses, to promote the health, safety, morals and general welfare of the citizens of the Village of Hilton and to establish reasonable and uniform regulations to monitor the location and concentration of sexually oriented businesses within the Village of Hilton. The provisions of this local law have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative material, including sexually oriented materials. Similarly it is not the intent or effect of this local law to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their market.

### 1-2 Definitions

As used in this local law, the following terms shall have the meanings indicated:

**ADULT ARCADE** - Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time and where the images so displayed are distinguished or characterized by depicting or describing of "specified sexual activities" or "specified anatomical areas", as defined herein.

**ADULT BOOKSTORE OR ADULT VIDEO STORE** - A commercial establishment which, as one (1) of its business purposes, offers one (1) or more of the following:

- (1) Books, magazines, periodicals or other printed matter or photographs, film motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe, as defined herein, Specified Sexual Activities or Specified Anatomical Areas, as defined herein; or
- (2) Instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities, as defined herein.

**1-2 Definitions**

**ADULT CABARET** - A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- A. Persons who appear in a State of Nudity, as defined herein, or
- B. Live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities, as defined herein, or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, as defined herein.

**ADULT MOTEL**- A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, as defined herein, or has a sign visible from the public right-of-way which advertises the availability of such adult type of photographic reproductions; or
- B. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

**ADULT MOTION-PICTURE THEATER** - A commercial establishment where films, motion pictures, videos, cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction of Specified Sexual Activities or Specified Anatomical Areas, as defined herein.

**ADULT THEATER** - A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a State of Nudity, as defined herein, or live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities, as defined herein.

**ADULT USES** - Any use set forth herein as defining a Sexual Oriented Business or Businesses.

**ESCORT** - A person who, for consideration, agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY** - A commercial establishment which furnishes, offers to furnish or advertises to furnish escorts as one (1) of its business purposes.

**1-2 Definitions**

**ESTABLISHMENT-** When used as a verb, includes any of the following:

- A. The opening or commencement of any Sexually Oriented Business as a new business, as defined herein.
- B. The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business, as defined herein.
- C. The additions of any Sexually Oriented Business, as defined herein.
- D. The relocation of any Sexually Oriented Business, as defined herein.

**NUDITY or A STATE OF NUDITY -** The appearance of bare human buttocks, anus, male genitals, female genitals or full female breasts.

**PERMITTEE and/or LICENSEE -** Any person in whose name a permit and/or license to operate a Sexually Oriented Business, as defined herein, has been issued, as well as any individual listed as an applicant on any application for such a permit and/or license.

**PERSON -** Any individual, proprietorship, partnership, corporation, association or other legal entity.

**SEMI-NUDE -** A state of dress in which clothing covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by straps or other devices used to cover said areas.

**SEXUAL ENCOUNTER CENTER -** A business or commercial enterprise that, as one (1) of its business purposes, provides or facilitates:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex, or
- B. Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a State of Nudity or Seminudity, as defined herein.

**SEXUALLY ORIENTED BUSINESS -** An Adult Arcade, Adult Bookstore or Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion-Picture Theater, Escort Agency, or Sexual Encounter Center, as defined herein.

**SPECIFIED ANATOMICAL AREAS -** The male genitals and/or the vulva or any parts of the female genitals, or full female breasts.

**1-2 Definitions**

**SPECIFIED SEXUAL ACTIVITIES** - Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts.
- B. Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation or sodomy.
- C. Masturbation, actual or simulated.
- D. Elimination functions as part of, or in connection with, any of the activities set forth in subsections A through C above.

**SUBSTANTIAL ENLARGEMENT** - Of a Sexually Oriented Business, as defined herein, means any increase in floor areas as the floor areas exist on the date of enactment.

**TRANSFER OF OWNERSHIP OR CONTROL** - Of a Sexually Oriented Business, as defined herein, means and includes any of the following:

- A. The sale, lease or sublease of the Sexually Oriented Business, as defined herein.
- B. The transfer of securities which constitute a controlling interest in the Sexually Oriented Business, as defined herein, whether by sale, exchange or similar means.
- C. The establishment of a trust, gift or similar legal device which transfers the ownership or control of the Sexually Oriented Business, as defined herein.

**1-3 Uses permitted - Restrictions**

Adult uses, as defined herein, shall be permitted in any Light Industrial District only, provided that a conditional use permit is obtained from the Zoning Board of Appeals and the following:

- A. An Adult Use, as defined herein, may not be operated within one thousand (1,000) feet of:
  - (1) A church, synagogue or regular place of worship.
  - (2) A public or private elementary or secondary school.
  - (3) A boundary line of any property zoned as a residential district or any property used for residential purposes as a permitted use.
  - (4) A public use park adjacent to any residential district or any property used for residential purposes as a permitted use.
  - (5) Day Care facilities.
- B. An Adult Use, as defined herein, may not be operated within one thousand (1,000) feet of another adult use, as defined herein, on the same lot or parcel of land.

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### 1-3 Uses permitted - Restrictions

- C. An Adult Use, as defined herein, may not be operated in the same building, structure or portion thereof containing another Adult Use.
- D. For the purpose of this Article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line where an Adult Use, as defined herein, is conducted, to the nearest property line of the premises of a church, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or residential lot.
- E. For purposes of Subsection D of this section, the distance between any two (2) Adult Uses, as defined herein, shall be measured in a straight line, without regard to intervening structures or objects, from the property line in which each business is located.
- F. All Adult Uses, as defined herein, shall be conducted in an enclosed building. No Specified Anatomical Area or any Specified Sexual Activity, as defined herein, or any display, decoration, sign, or similar depiction of Specific Anatomical Areas or Specified Sexual Activities, as defined herein, shall be visible from the exterior of any building containing an Adult Use, as defined herein, regardless of location or distance.

### 1-4 Location in Light Industrial District ; suspension of business

- A. A Sexually Oriented Business, as defined herein, may be operated only within a Light Industrial District in the Village of Hilton and only in accordance with the provisions of this Article.
- B. Prior to the commencement of any Sexually Oriented Business, as defined herein, or upon any transfer of ownership or control of any Sexually Oriented Business, or upon commencing any Adult Use, as defined herein, the premises housing such business or use must be inspected and found to be in compliance with all laws, rules and regulations of the Health Department, Fire Department, Village Building and Zoning Enforcement Officer, Fire Marshall and other code enforcement officials.
- C. The Health Department, Fire Department, Village Building and Zoning Enforcement Officer, Fire Marshall and other code enforcement officials shall complete their certification that the premise is in compliance or not in compliance within twenty (20) days of the inspection of the premise by such officials. Such certification shall be promptly presented to the Village Building and Zoning Enforcement Officer.
- D. An applicant, permittee and/or licensee shall permit representatives of the Village Administration, or other Village Departments or Agencies to inspect the premises of a Sexually Oriented Business, as defined herein, for the purpose of ensuring compliance with the law at any time it is occupied or open for business, or at such other times as may be reasonable or appropriate.

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### 1-4 Location in Light Industrial District ; Suspension of Business

- E.** The Village Building and Zoning Enforcement Officer shall suspend the right to conduct any Adult Use, as defined herein, for a period not to exceed thirty (30) days if it is determined that the owner and/or operator or an employee of the owner and/or operator of the Sexually Oriented Business, as defined herein, has:
- (1) Violated or is not in compliance with any section of this Article.
  - (2) Engaged in use of alcoholic beverages while on the Sexually Oriented Business, as defined herein, premises.
  - (3) Refused to allow an inspection of the Sexually Oriented Business, as defined herein, premises as authorized by this Article.
  - (4) Knowingly permitted gambling by any person on the Sexually Oriented Business, as defined herein, premises.
  - (5) Knowingly allowed possession, use or sale of controlled substances on the Sexually Oriented Business, as defined herein, premises.
  - (6) Knowingly allowed prostitution on the Sexually Oriented Business, as defined herein, premises.
  - (7) Knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted and/or licensed premises.
  - (8) Any other act prohibited by law.
- F.** Prior to any suspension, the Village Building and Zoning Enforcement Officer shall provide the owner and/or operator of a Sexually Oriented Business, as defined herein, with a written notice stating the grounds for suspension. The owner and/or operator has the right to submit a response to this notice to the Village Building and Zoning Enforcement Officer within ten (10) days of receipt of said notice. Such response shall be made in writing.
- G.** The Village Building and Zoning Enforcement Officer may not suspend the right to conduct such an Adult Use, as defined herein, until fifteen (15) days after the notice is given to the owner and/or operator, or until after receiving the owner's and/or operator's response, whichever is sooner.

**1-5 Nonconforming Use**

- A. Any Adult Use, as defined herein, by a Sexually Oriented Business, as defined herein, that is lawfully operating on the effective date of this Article, yet is in violation of the location or structural configuration requirements of this Article, shall be deemed a nonconforming use. Such nonconforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated or voluntarily discontinued for any reason for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.
  
- B. Any Adult Use, as defined herein, of a Sexually Oriented Business, as defined herein, lawfully operating as a conforming use, is not rendered a nonconforming use by the subsequent location of a church, public or private elementary or secondary school, public park, day care, residential district or a residential lot within 1,000 thousand (1,000) feet of the Adult Use, as defined herein, or Sexually Oriented Business, as defined herein.

**1-6 Enforcement; Penalties for offenses; Severability**

- A. A person who knowingly owns, manages, operates, conducts or maintains any Adult Use, as defined herein, in any way which is contrary to this local law, shall be subject to prosecution under this local law and shall also be subject to injunction.
  
- B. The continuation of a violation of the provisions of this local law shall constitute a separate and distinct offense hereunder for each day the violation is continued.
  
- C. Any person found in violation of this local law shall be guilty of a violation, punishable by a fine not to exceed \$50.00 and imprisonment for not more than thirty (30) days or both. Each day on which the violation continues shall constitute a separate offense.
  
- D. If any part or provision of this local law and/or the application thereof to any persons or circumstances shall be judged invalid, such judgement shall be confined to the part of the application adjudged to be invalid. Such decision shall not affect the validity of this local law as a whole or any part thereof, other than the part so decided to be invalid.