

# LOCAL LAW NO. 1 of 2000

## SECTION I: PURPOSE:

It is recognized that buildings and establishments operated as adult-oriented businesses have serious objectionable characteristics. In order to promote the health, safety and general welfare of the family-oriented community in the Town of Genoa, it is necessary to establish reasonable and uniform regulations for adult-oriented businesses, to monitor the location and concentration of such businesses, within the Town of Genoa.

Based upon an examination of the present adult-oriented businesses in Cayuga County and neighboring Tompkins County, as well as the other studies conducted around the country, it appears clear that an adult-oriented business which is located in a separate area away from residences, schools, churches, highly-populated areas and parks generates far fewer negative secondary impacts. Therefore, this ordinance for the Town of Genoa provides for reasonable distance requirements between adult-oriented businesses and residences, schools, churches and highly-populated areas and is in keeping with the general trend in the United States for the regulation of adult-oriented businesses.

This regulation of adult-oriented businesses has been developed to prevent the deterioration and degradation to the vitality of the Town of Genoa before a problem develops, rather than in a response to an existing problem. It is the purpose of this Law to regulate the creation, opening, and operation of adult-oriented businesses, as herein defined, in order to achieve the following:

- (1) To preserve the character and quality of life in the Town of Genoa's neighborhoods.
- (2) To control such documented harmful and adverse secondary effects of adult-oriented businesses on the surrounding areas as: decreased property values, attraction of transients; parking and traffic problems, increased crime, loss of business for surrounding non-adult businesses and deterioration of neighborhoods.
- (3) To restrict minors' access to adult-oriented businesses, the age limit being no one under the age of 18 years of age.
- (4) To maintain the general welfare and safety for the Town of Genoa's residents.
- (5) To avoid the adverse impact to the general health, safety and economic well-being of the entire community, and in particular, the children of the community.
- (6) To restrict the location of such uses in areas where children reside or may regularly assemble.

It is neither the purpose nor the intent of this local law to restrict or deny access by adults to adult-oriented materials protected by the First Amendment to the Constitution of the United States, or to deny access by distributors and exhibitors of adult-oriented entertainment to their intended market, nor is it the purpose or intent of this local law to condone or legitimize the distribution of obscene materials.

## SECTION II: DEFINITIONS:

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

- (1) **ADULT-ORIENTED BUSINESS:** A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or services: topless or bottomless dancers, strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or g-string or both; Adult arcades; Adult bookstores; Adult video stores; Adult cabarets; Adult motels; Peep shows; Adult motion picture theaters; Adult theaters; Adult drive-in theaters; Escort agencies; Nude model studios; and Sexual encounter centers. An Adult use and entertainment establishment shall also include any establishment which customarily excludes minors by reason of age.

- (2) **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 which are regularly used to show films, motion pictures, video cassettes, slides or other photographic reproductions, are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing “specified sexual activities” or “specified anatomical areas”.
- (3) **ADULT BOOKSTORE OR ADULT VIDEO STORE:** A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business advertising to the sale or rental for any form of consideration any one or more of the following:
- A. books, magazines, periodicals or other printed matter; or photographs, films, motion pictures, video cassettes or video reproductions, slides, compact disks, computer software, or other visual representations which depict or describe “specified sexual activities” or “specified anatomical areas” or
  - B. instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation or human genital organs or for sadomasochistic use or abuse of oneself or others
  - C. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as Adult bookstore or Adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas”. For purposes of this definition “principal business purpose” shall mean 25% or more of any of the following:
    - i- the number of different titles or kinds of such merchandise
    - ii- the number of copies or pieces of such merchandise
    - iii- the amount of floor space devoted to the sale and/or display of such merchandise or
    - iv- the amount of advertising which is devoted to such merchandise, either in print or broadcast media
- (4) **ADULT CABARET:** A nightclub, bar, non-alcoholic or “Juice” bar, restaurant or similar commercial establishment which regularly features:
- A. persons who appear nude or in a state of semi-nudity or
  - B. live performances which are characterized by the exposure of “specified anatomical area” or by “specified sexual activities” 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”.
- (5) **ADULT MOTEL:** a hotel, motel or similar commercial establishment which:
- A. offers accommodations to the public for any form of consideration; and provides patrons with closed-circuit television transmissions, 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”; and which advertise the availability of adult-oriented type of material by means of sign visible from a public right-of-way, or by means of off-premises advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; or
  - B. offers sleeping rooms for rent on a regular basis for a period of time that is less than 8 hours or allows a tenant or occupant of a room to sub-rent the room for a period of time that is less than 8 hours.
- (6) **ADULT DRIVE-IN-THEATER:** A drive-in theater where, for any form of consideration, films,

motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”

- (7) **ADULT MOTION PICTURE THEATER:** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”
- (8) **ADULT THEATER:** A theater, concert hall, auditorium or similar commercial establishment which for any form of consideration regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified sexual activities” or “specified anatomical areas”
- (9) **PEEP SHOWS:** A theater which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and which are characterized by exposure of “specified sexual activities” or specified anatomical areas”
- (10) **ESCORT AGENCY:** A person or business association which furnishes, or offers to furnish, or advertises to furnish, escorts as one of its primary business purposes for a fee, tip or other consideration.
- (11) **ESCORT:** A person who, for a fee, tip or other consideration, agrees or offers to: (1) act as a date for another person for consideration; or (2) to privately model lingerie for another person; or (3) to privately perform a striptease for another person.
- (12) **MASSAGE PARLOR:** Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentation’s, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as part of or in connection with “specified sexual activities” or specified anatomical areas”. The definition of MASSAGE PARLOR shall not include the practice of massage in any licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any person or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program.
- (13) **MASSAGE TECHNICIAN:** Any individual who administers a massage to another individual at a massage parlor. This definition shall not include any health-care practitioner duly licensed by the State of New York.
- (14) **NUDE MODEL STUDIO:** Any place where a person who appears in a state of nudity or displays “specified anatomical areas” is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.
- (15) **SEXUAL ENCOUNTER CENTER:** A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of “specified sexual activities” or exposure “specified anatomical areas” or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity. The definition of SEXUAL ENCOUNTER CENTER shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.
- (16) **MINOR:** A person less than eighteen (18) years of age.
- (17) **NUDITY OR A STATE OF NUDITY:** The appearance of:
  - A. the appearance of human bare buttocks, anus, male genitals, female genitals, or areola or nipple of the female breast
  - B. a state of dress which fails to opaquely and fully cover human bare buttocks, anus, male genitals, female genitals, pubic region, or areola or nipple of the female breast.
- (18) **PERSONS:** An individual, proprietorship, partnership, corporation, association, or other legal entity.
- (19) **PROMOTE:** To manufacture, issue, sell, give, provide, lend, mail, deliver, transmute, publish,

- distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to do the same.
- (20) **SADO-MASOCHISTIC ABUSE:** Actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained.
  - (21) **SEXUAL CONDUCT:** Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse, lap dancing or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed, genitals, pubic area, buttocks or if such be female breast.
  - (22) **SEXUAL EXCITEMENT:** The condition of human male or female genitals when in a state of sexual stimulation or arousal.
  - (23) **SPECIFIED ANATOMICAL AREAS:**
    - A. unless completely and opaquely covered human genitals, pubic region, buttocks, or breasts below a point immediately above the top of the areola; and
    - B. even if completely and opaquely covered, male genitals in a discernibly turgid state.
  - (24) **SPECIFIED SEXUAL ACTIVITIES:** Include any of the following:
    - A. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts;
    - B. sex acts, normal or perverted, actual or simulated; physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is female, breast; including intercourse, oral copulation or sodomy;
    - C. masturbation, actual or simulated; or
    - D. excretory functions.

### **SECTION III: SPECIAL USE PERMITS:**

- (1) No adult-oriented business shall be started or continued until a Special Use Permit as defined in this section has been issued and is in full force and effect.
- (2) Special use permits granted to adult-oriented businesses shall be non-transferable, and shall be subject to renewal by the Town Board.
- (3) **Application Process and Requirements:**
  - A. An application for an adult-oriented business Special Use Permit shall be made to the Town Clerk of the Town of Genoa and shall be accompanied by a non-refundable fee of \$2000.00. Seven copies of all application papers and terms are required. The application materials shall then be submitted to the Town Board not less than 10 days prior to their next regularly scheduled meeting.
  - B. The application shall include, at the applicant's expense, copies of the following:
    - (1) All appropriate building permits and plat plans, fill out completely and according to all local, county and state laws.
    - (2) A clear and concise description of proposed use.
    - (3) Proof of advertisement in one of the Town's official newspapers, not less than 10 days prior to the scheduled meeting of the Town Board, stating that an application to open an adult-oriented business has been filed with the Town Clerk of the Town of Genoa.
    - (4) Proof of notification of the application to all property owners within 1500 feet of the property lines of the proposed adult entertainment establishment. This notification shall state the date, time and location of the scheduled meeting of the Town of Genoa Town Board at which the application will be received.
    - (5) Criminal Record Check: The applicant shall provide a list of owners, operators and managers including names, addresses and social security numbers to the Town Board which shall cause an investigation to be made as to the character of the applicant and of the officers of the club, society or corporation and of the person who is to have general management of the business. If found to have been convicted of violation of any criminal statute of this State, except traffic offenses, or of any ordinance regulating, controlling or in any way related to the construction, use or operation of any establishments included in this section which evidence a flagrant disregard for the safety or welfare of either patrons, employees or persons residing or doing business nearby, the Town Board of the Town of

Genoa may refuse to issue a permit. Any expense incurred in making this criminal background check shall be paid by the applicants.

- (6) Prior to the issuance of a Special Use Permit, the premises housing the adult-oriented business shall be inspected and found to be in compliance with all applicable laws, rules and regulations. No license shall be granted without certificates of compliance of the Cayuga County Health Department, Fire Chief, and Town Code Enforcement Officer. All pertinent inspections must be requested within 15 days of filing of the application, and all inspection reports shall be filed with the Town Board within 30 days thereafter.

(4) **Special Use Permit Terms:**

- A. Special Use Permit terms: The permit year will begin on January 1 of each year, and shall run for two years, terminating at midnight on December 31. Original permits issued for the balance of the permit will be at full permit fee.
- B. If any adult-oriented business establishment has closed – for any reason – for a continuous period of six months, then any Special Use Permit issued pursuant to this Local Law shall lapse and terminate unless, before the expiration of the six month period, the owner or operator of that business has applied to the Town Board and received an extension of the permit for a fixed period beyond the six months. Such extension may be granted only for good cause which is beyond the reasonable control of the owner or operator.

(5) **Special Use Permit Renewal Renewals:**

- a. Any person or entity who owns or operates an adult-oriented business pursuant to a special permit issued under this local law may make application for renewal of that special permit by application to the Town Board.
- b. An applicant for renewal of a special permit shall be made no more than six months, but no less than three months, before the expiration of the existing special permit.
- c. An application for renewal of a special permit shall not be approved unless the Town Board finds that the adult-oriented business is in compliance with all pertinent laws, ordinances and regulations.
- d. An application for renewal of a special permit can be made upon the applicant's original application for approval, with notations as to which aspects of those application materials remain unchanged, and which aspects of those application materials have changed. All changes in the application for renewal information shall be high-lighted and detailed by the applicant.
- e. All inspections required by Section III(3)(6) of this Law shall be completed prior to submission of the application and attached thereto. Current background checks shall also be attached to the renewal application.
- f. The application for renewal of a special permit must be accompanied by a non-refundable filing/permit fee of \$1500.

**SECTION IV: ADDITIONAL REGULATIONS:**

No adult-oriented business shall be established until it has been issued a special use permit by the Town Board pursuant to Section III of this local law, and shall be subject to the following additional conditions of approval:

- (1) No adult-oriented business shall be permitted in a building any part of which is used for residential purposes, including non-conforming residential use.
- (2) No more than one adult-oriented business shall be permitted in any building, or on any lot.
- (3) No minor shall be permitted onto the premises of any adult-oriented business.
- (4) The exterior of the adult-oriented business shall be consistent with the character of surrounding structures and shall not detract from the appearance of the neighborhood. No building shall be painted in garish colors or other fashion as well effectuate the same purpose as a sign, without the Town Board approval.
- (5) An adult-oriented business shall not be operated with its property lines within 1500 linear feet of any building used:

- A. for residential purposes;
  - B. as a group care facility, or child care center;
  - C. as a church, synagogue or regular place of religious worship;
  - D. as a public or private school;
  - E. as a public or semi public building;
  - F. as a psychiatric treatment facility;
  - G. as a community center;
  - H. as another adult-oriented business
- (6) An adult-oriented business shall not be operated with property lines within 1500 linear feet of the property line of any land used as a public park, recreational facility or health facility.
- (7) An adult-oriented business shall not be operated with property lines within 1500 linear feet from the building of any establishment that sells or serves alcoholic beverages; and once an adult-oriented business has been authorized at a location, no establishment that sells or serves alcoholic beverages shall be allowed to operate with property lines within 1500 feet of the adult-oriented business.
- (8) Once an adult-oriented business has been established in a location, and it lawfully remains in continuous operation at that location, the subsequent placement of any use or business set forth in Paragraphs 5 and 6 above within the distances set forth in these subdivisions, shall not operate to impair, restrict or terminate the adult-oriented business Special Use Permit or any renewals thereof.
- (9) Sound and noise shall be kept at a level so that it cannot be discerned by the public from public areas.
- (10) All adult-oriented businesses shall be conducted within enclosed buildings. No specified anatomical area or any specified sexual activity nor any display, decoration, sign or similar depiction of specified anatomical areas or specified sexual activities, shall be visible from outside of any building containing an adult-oriented business.
- (11) Hours of operation shall be from 9 p.m. until 2 a.m. only
- (12) Outside advertising for all adult-oriented business shall be limited to one advertising sign, no larger than 16 square feet. No sign shall have any photographic or artistic representation whatsoever thereon. Signs which are illuminated in neon or which contain flashing lights are prohibited. Exterior signs, displays or other advertisements which contain nude, semi-nude, or provocative pictures are prohibited. No portion of any sign shall be more than 20 feet above ground level. There will be no search light.
- (13) If an adult-oriented business has a practical visual effect on the environment, the adult-oriented business shall be properly screened, through the use of fences, walls, landscaping or other measures. Screen planting shall be buffers 10' in width and/or a 6' high chain link fence. The plan for screening shall be submitted to the Town Board for approval.
- (14) An adult-oriented business must have parking areas sufficient to accommodate ½ the total amount of occupancy allowed by law and shall provide adequate turn around such that vehicles will not have to back out onto public thoroughfares. Lighting in parking lots shall be adequate and in accordance with regularly accepted safety and insurance guidelines and subject to any Town, County, State and Federal requirements. Parking of registered vehicles on the site is permitted only during the hours of operation.
- (15) Strict crowd control shall be provided by the owners and/or operators.
- (16) No Adult-oriented business shall exceed 5,000 square feet in total floor area and space not used for enclosed storage or mechanical equipment.
- (17) Whenever there is a change of the person hired to the position of manager of the adult-oriented business, the owner and operator shall so advise the Town Board within two weeks of that individuals commitment in the management position, and shall provide the Town Board with the information required by Section III (3) (5) so that the Board can conduct a background check.
- (18) The code enforcement officer and fire department officials of the Town of Genoa, as well as other enforcement officials, shall have the right to inspect the premises of adult-oriented business for the purpose of insuring compliance with any section of this Code or any other applicable law, rule or regulation at any time said business is open for business, or at such other times as may be reasonable. The Town Code Enforcement Officer shall inspect the premises at least once a year with a full report presented to the Town Board within 30 days after the inspection. Said report shall be made

of the file kept by the Town Clerk.

(19) Adult-oriented businesses shall comply with all other building and safety codes of the town of Genoa, as well as applicable County, State and Federal Laws and regulations.

#### **SECTION V: VIOLATIONS AND PENALTIES:**

(1) It shall be a violation of this local law to:

- A. To use, or knowingly allow the use, of alcoholic beverages by anyone on the adult-oriented business premises;
- B. To refuse to allow an inspection of the adult-oriented business premises as authorized by this article.
- C. To gamble, or knowingly permit gambling by any person, on the adult-oriented business premises.
- D. To possess, use, sell or knowingly allow possession, use or sale, of controlled substances or marijuana by any person on the adult-oriented business premises.
- E. To knowingly allow prostitution, acts of sexual intercourse, sodomy, oral copulation, masturbation, or other illegal activity in the premises of an adult-oriented business.
- F. To knowingly allow disorderly conduct, or to permit the adult-oriented business to become and be a place of resort of thieves, prostitutes or disorderly persons.
- G. To admit, or to knowingly allow admittance, of anyone under the age of 18.
- H. To possess, or to knowingly allow the possession of, any unlicensed firearm on the premises.
- I. To fail to be in compliance with any section of this local law.

(2) Penalties for violation of this local law are as follows:

- A. Any person, firm, corporation or entity who shall violate any portion of this local law shall be guilty of a violation and, upon conviction thereof for a first offense shall be fined in an amount not to exceed one thousand dollars for each violation;
- B. Conviction for a second offense, after conviction of a prior offense, shall be punishable by a fine of not more than one thousand five hundred dollars;
- C. Conviction for a third offense, after conviction of two separate prior offenses, shall be punishable by a fine of not more than three thousand dollars;
- D. On a conviction for any violation, penalty may also include revocation by the Town Board of the Special Use Permit issued pursuant to this local law.
- E. The continuation of a violation of the provisions of this law shall constitute, for each day the violation is continued, a separate and distinct violation.

(3) Any person, firm, corporation or entity violating any of the provisions of this local law shall become liable to the Town for any expense or loss or damage occasioned the Town by reason of such violation.

(4) The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this local law, or to restrain or enjoin the use or occupancy of a building, premises or part thereof in violation of this local law.

#### **SECTION VI: VALIDITY:**

Should any word, section, clause, paragraph, sentence, part or provision of this Local Law be declared invalid by a court of competent jurisdiction, such determination shall not affect the validity of any other part of this local law which can be given effect without such invalid part or parts.

