



STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, NY 12231-0001

ALEXANDER F. TREADWELL
SECRETARY OF STATE

July 16, 1996

EANNACE, PHILLIPS O'BRIEN & DA
ATTORNEYS AT LAW
1411 GENESEE STREET
UTICA, NY 13501

OBSCENITY LAW

RE: Town of Deerfield, Local Law 1, 1996, filed 07/10/96

The above referenced material was received and filed by this office as indicated. Additional local law filing forms will be forwarded upon request.

Sincerely,

A handwritten signature in cursive script that reads "Janice G. Durfee".

Janice G. Durfee
Principal File Clerk
Bureau of State Records
(518) 474-2755

JGD:ml

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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

~~COUNTY~~

~~CITY~~

of Deerfield

Town

~~VILLAGE~~

Local Law No. _____ of the year 19.96.

A local law

(Insert Title)

Be it enacted by the

Town Board

(Name of Legislative Body)

of the

~~COUNTY~~

~~CITY~~

of Deerfield

Town

~~VILLAGE~~

as follows:

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

For the purpose of this chapter, certain terms or words herein shall be interpreted or defined as follows: unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

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 or viewing materials for sale or viewing on premises, 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.

ADULT ENTERTAINMENT CABARET- A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features, topless dancers, strippers, male or female impersonators or similar entertainers.

ADULT MINI-MOTION PICTURE THEATER- An enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT MOTION-PICTURE THEATER- An enclosed or unenclosed building or structure or drive-in theater used for presenting materials having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT USE- Any establishment or business involved in the dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, including but not limited to adult bookstores, adult motion-picture theaters and adult entertainment cabarets.

BUSINESS- Any commercial enterprise, association or arrangement for profit.

DISSEMINATION- The transfer or possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

PERSON- Any person, firm, partnership, corporation, association or legal entity, acting individually or jointly.

SUBSTANTIAL CONNECTION:

- A. In a sole proprietorship, an individual who own, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any business 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 holder, either directly, indirectly or beneficially, or more than twenty percent (20%) of the capital financing or assets of such business, whether in cash, goods or services.
- 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.

SEXUALLY ORIENTED BUSINESS:

- A. A commercial establishment which, as one of its principal business purposes, offers for sale, rental or display any of the following: books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, slides or other visual representations which depict or describe a specified sexual activity or specified anatomical area: or still or motion picture machines, projectors or other image-producing devices which show images to one (1) person per machine at any (1) time, and where the images so displayed are characterized by the depiction of a specified sexual activity or specified anatomical area: or instruments, devices or paraphernalia which are designed for use in connection with a specified sexual activity; or
- B. A commercial establishment which regularly features waiters, waitresses, dancers or other live performances characterized by the exposure of a specified anatomical area or by a specified sexual activity, or which regularly shows films motion pictures, video cassettes, slides or other photographic representations which depict or describe a specified sexual activity or specified anatomical area; or
- C. A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration, and which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slide or other visual representations which depict or describe a specified sexual activity or specified anatomical area, and has a sign visible from a public right-of-way which advertises the availability of these visual representations, or offers a sleeping room for rent for a period of time that is less than ten (10) hours; or allows an occupant of a sleeping room to sub-rent for a period of time that is less than ten (10) hours.

SPECIFIED ANATOMICAL AREA:

- A. Less than completely and opaquely covered human genitals, public region, buttock or female breasts below a point immediately above the top of the areola: or
- B. Human male genitals in a discernibly turgid state, even if covered.

SPECIFIED SEXUAL ACTIVITY:

A. The fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttocks or female breast; or

B. Any actual or stimulated act of human masturbation, sexual intercourse or deviate sexual intercourse.

Purpose.

It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town of Deerfield, this ordinance is intended to restrict adult uses to commercial areas of the Town. The Town Board hereby finds that the operational characteristics of adult users increase the detrimental impact on a community when such uses are concentrated; therefore, this ordinance is intended to promote the health, safety and general welfare of the residents of the Town of Deerfield by regulating the location of such uses.

Restrictions

In a addition to the requirements of the Zoning Ordinance of the Town of Deerfield, adult uses shall be permitted subject to the following restrictions:

A. No adult use shall be allowed within three thousand (3,000) feet of another existing adult use.

B. No person shall operate a sexually oriented business within three thousand (3,000) feet of any residential district, municipal or county playground or place of public resort and recreation or of a public or private recreational facility, including but not limited to bowling alleys, skating rinks, pool parlors, video arcades, restaurants or similar enterprises catering to or frequently attended by minors under the age of eighteen (18) years.

C. No adult use shall be located within three thousand (3,000) feet of a preexisting school or any school bus stop or place of worship.

D. No adult use shall be located in any zoning district, except those districts zoned as a Commercial District.

E. This ordinance shall not apply to any establishments existing on the effective date of said ordinance.

Prohibited and Required Sign age.

A. Observation from public way prohibited.

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, screen or other opening.

B. Sign prohibiting minors required.

A sexually oriented business shall display one (1) exterior sign giving notice that the premises is off limits to minors.

Buffer Required:

Every sexually oriented business shall be surrounded by a perimeter buffer of at least fifty (50) feet in width, consisting of plantings, to the satisfaction of the Planning Board and Town Board. This subsection shall not apply to a sexually oriented business already lawfully established on the effective date of this Article.

Registration:

A. No person, firm, corporation or other entity shall lease, rent maintain, operate use or allow to be operated or used any business or establishment, or any part thereof which contains adult use, without first complying with the provisions of this section set forth below.

B. In addition to any other necessary licenses and permits, no form of adult use shall be allowed to operate nor allowed to continue to operate, until a certificate of registration is filed with the Planning Board containing:

1. The address of the premises.
2. The name and address of the owner (s) of the premises and the name and address of the beneficial owner (s) if the property is in a land trust.
3. The name of the business or establishment subject to the provisions of this ordinance.
4. The names, business and home address, business or home phone numbers of all owners of the business or establishment subject to the provisions of this ordinance.
5. The names, business and home addresses, business or home phone numbers of all those persons having substantial connection with the business or establishment subject to the provisions of this ordinance.
6. The date of the initiation of the adult use.

7. The exact nature of the adult use.

8. If the premises of the building in which the business containing the adult use is located is leased, a copy of the lease.

C. If there occurs any change in the information required for the certificate of registration, the Planning Board and Town Board shall be notified of such change, and a new or amended certificate filed within thirty (30) days of such change.

D. The processing fee for each certificate of registration or amendment thereto shall be one thousand dollars (1,000.00), to be kept in escrow to cover any professional fees necessary to adequately evaluate the project. Any monies remaining in the escrow account upon the Town rendering a decision shall be returned to the applicant within ten business days.

E. No certificate of registration 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 that stated in the certificate of registration.

F. The owner, manager or agent of any adult use shall cause a copy of the certificate or registration issued under the provisions of this section to be prominently displayed on the premises, building or location for which it is issued.

G. Any knowingly false statement, or any statement which the registrant or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for rejection, suspension or revocation of the certificate of registration.

H. It is a violation of this ordinance for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate an adult use without having in force a certificate of registration complying with this section.

Special Use Permits.

A. No use as described in this ordinance shall be established until the issuance of an annual special use permit by the Planning Board. Application for such a special use permit shall be in conformity with this ordinance and as provided for herein. The application shall be, in writing to the Planning Board and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed and such additional information as shall be required by the Planning Board. The Planning Board shall call a public hearing for the purpose of considering the request for each and every special use permit. At least ten (10) days notice of the time and place of the public hearing shall be given by the publication of a notice in a newspaper of general circulation in the Town of Deerfield, indicating the general nature of the public hearing and the fact that those persons interested therein may be heard at the time and place of such hearing .

B. A special use permit issued under the provisions of this section shall not be transferable.

Violations and Penalties.

Any person, firm or corporation with a substantial connection to a business involving adult use violating any of the provisions of this Article shall be subject to one (1) or more of the following: imprisonment in the county jail or in any other place provided by the municipality for the detention of prisoners for any term not exceeding ninety (90) days or by a fine not exceeding one thousand dollars (1,000.00) or by a period of community service not exceeding ninety (90) days, to become effective on the effective date of this chapter. Every day which the violation exists after the date of the initial citation shall constitute a separate violation.

(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. _____ of 19⁹⁶ of the ~~(County)~~(City)(Town)(Village) of Deerfield was duly passed by the Town Board on June 10, 19⁹⁶, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 19____ in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 19____. 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 _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

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 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* 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 19____ 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 _____ 19____, 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 19____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19____, 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.

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

(Seal)

Date: _____

(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 Oneida

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.

Signature

Attorney for the Town
Title

~~COUNTY~~
~~CITY~~ of Deerfield
Town
~~VILLAGE~~

Date: _____