

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, 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 Perth

~~Town~~

~~Village~~

Local Law No. 1 of the year 2006

A local law amending Local Law # 1 of the year 2002 so as to add an ARTICLE  
(Insert Title)

III-A regarding Adult Use Businesses.

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

~~County~~

~~City~~ of Perth

~~Town~~

~~Village~~

as follows:

## SECTION 1: Amendment

Local Law # 1 of the year 2002 is hereby amended so as to add an ARTICLE III-A thereto which shall provide as follows:

### ARTICLE III-A: ADULT USE BUSINESSES

#### A. FINDINGS

Based upon a comprehensive study of the adverse secondary impacts of adult use establishments as documented in accordance with the ruling of the U.S. Supreme Court in the matter of the City of Renton v. Playtime Theaters, Inc. (475 U.S. 41), Stringfellow's of New York, Ltd. v. The City of New York, 91 NY2d 382 (1998) and commissioned by the Town Board of the Town of Perth, the Town of Perth finds that:

- 1) There are adverse secondary impacts associated with the establishment and operation of adult-oriented businesses within a community;
- 2) Among these adverse secondary impacts are a deterioration in the local quality of life, an adverse effect upon local property values, an adverse effect upon local economic viability, an imposition, whether intentional or unintentional, of exposure to adult-oriented expression undesired by neighbors, pedestrians and passersby, an increase in traffic, noise, litter and nuisance, criminal and illicit sexual behavior, a threat to the health and safety of children and young adults and an undermining of the established sense of community;
- 3) These adverse secondary impacts of the establishment and operation of adult-oriented businesses are a threat to the general health,

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

safety and economic viability of the community;

- 4) The unregulated establishment and operation of adult-oriented businesses would lead to the wide-spread imposition of adverse secondary impacts upon the residents, businesses, economic viability, property values, and quality of life of the Town and would, therefore, be detrimental to the general health, safety and economic viability of the community;
- 5) The U.S. Constitution, and the Constitution and laws of the State of New York grant to the Town of Perth the powers, especially police powers, to enact reasonable legislation and measures to regulate the location and operation of adult-oriented businesses, hereinafter defined, in order to protect the general health, safety and economic viability of the community.

#### B. STATEMENT OF INTENT

- 1) It is the express intent of the Town of Perth in adopting this local law to:
  - a) Ameliorate, mitigate, reduce or prevent the wide-spread and unregulated imposition of the adverse secondary impacts of adult-oriented businesses upon the residents, businesses, economic viability, property values, quality of life and general health, safety and welfare of the community;
  - b) To protect the right of free expression, guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.
- 2) It is not the intent of the Town of Perth in adopting this local law to:
  - a) Deny any person the right of free expression, guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses; or
  - b) To impose upon any person any additional limitations or restrictions upon the right of free expression, guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the U.S. Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression. These constitutionally protected rights are understood to include the right to sell, distribute and exhibit the legal goods and services offered by adult-oriented businesses; or
  - c) To impose upon any person any additional limitations or restrictions upon the right to obtain, view or partake of any communications guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented

in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the U.S. Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression; or

- d) To estimate, decide, determine, resolve, consider, conclude, judge or qualify in any manner or fashion the quality or value of the content, nature, message, form, format, appearance, substance or presentation of the free expression guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.

Aware that, according to numerous decisions by both Federal Courts and Courts of the State of New York, the regulation of the location of adult businesses must be based upon a finding of the adverse secondary impact of these businesses upon the community and must be directed solely toward the mitigation of these impacts, not be directed toward any form of speech or expression, be no broader than necessary and must provide alternative locations within the Town for adult use businesses, the Town of Perth hereby adopts the following amendment to its Zoning Law.

#### C. DEFINITIONS

For the purpose of this Town Law, an adult use business shall be defined as any business which:

- i) is the use of land, structures or location for an "adult use business" or as an "adult physical contact establishment" as herein defined;
- ii) is the use of land, structure or location which, by the provisions of the Penal Law, is required to restrict the access thereto by minors;
- iii) which is an establishment, location, building or structure which features topless dancers, nude dancers or strippers, male or female; or
- iv) which is a location, building or structure used for presenting, lending or selling motion picture films, video cassettes, cable television or any other such visual media, or used for presenting, lending or selling books, magazines, publications, photographs or any other written materials distinguished or characterized by an emphasis of matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below.
- v) Adult Use Businesses

Adult use businesses, including adult book stores, adult video stores, adult motion picture theaters, adult mini-motion picture theaters, adult cabarets, and adult drive-in theaters shall be defined as follows:

- 1) An adult book store is defined as an establishment having a substantial or significant portion of its stock in trade books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below.

- 2) An adult video store is defined as an establishment having as a substantial or significant portion of its stock in trade films, video cassettes or other formats of electronic media for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below.
- 3) An adult motion picture theater is defined as a building with a capacity of fifty (50) persons or more used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below for the observation of patrons therein;
- 4) An adult mini-motion picture theater is defined as an enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below for the observation of patrons therein;
- 5) An adult cabaret is defined as an establishment which features live go-go dancers, exotic dancers, strippers, male or female, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity;
- 6) An adult drive-in theater is a drive-in theater utilized for the presentation of materials distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below for the observation of patrons therein;
- 7) An adult physical contact establishment is defined as any establishment, which offers or purports to offer massage or other physical contact to patrons of either gender by employees or staff of either gender. Medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as a physical therapist or physical therapist assistant and electrolysis, karate, judo and dance studios are not to be considered adult physical contact establishments under this section.
- 8) As used hereinabove, the words "having a substantial or significant portion of its stock in trade" shall mean that such establishment devotes more than twenty-five (25%) per cent of its business to the sale, rental or display of adult materials as determined by any of the following:

- I. the number of different titles of adult materials,  
or
- II. the number of different copies of adult materials,  
or
- III. the amount of floor space devoted to adult materials,  
or

IV. the amount of on-site advertising or cost of other advertising of adult materials.

V. as used above, the words "adult materials" shall include any things referred to or labeled as sex toys or sexual novelty items.

vi) Specified sexual activities

- 1) human genitals in a state of sexual stimulation or arousal; or
- 2) acts of human masturbation, sexual intercourse or sodomy; or
- 3) fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

vii) Specified anatomical areas

- 1) less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the aerola; or
- 2) human male genitals in a discernable turgid state, even if completely or opaquely covered.

D. C-R (AU) DISTRICT

An overlay zone is hereby established for adult use businesses within a portion of the Commercial-Residential District and shall be known as CR (AU) District as shown on zoning map. All zoning requirements of the C-R District, which are not superseded herein, shall apply to the C-R (AU) District.

The boundaries of the overlay zone known as the C-R (AU) District are those parcels described in the area wholly contained within the following boundaries:

All parcels of land lying within the C-R District only, which are color-coded in yellow as depicted upon the Town of Perth Adult Use Map. The said Map is hereby incorporated into and made a part of this Local Law by reference thereto, and copies thereof may be obtained by the public from the Office of the Perth Town Clerk.

E. ADULT USE BUSINESSES-LOCATIONAL REQUIREMENTS

A. Any private booths or areas within such Adult Use Businesses, either for the viewing of motion pictures or live performances, shall be subject to the following requirements:

- i) any and all such booths, cubicles, studios, studies and rooms for the private viewing of adult motion pictures and/or live performances or areas shall be open to public view from the common areas of the establishment and that there not be any doors, curtains, blinds or other structures or devices that shall obstruct observation of the viewing areas from the common area of the establishment;

- ii) that such private viewing areas be well lighted and readily accessible at all times and shall continuously be open to view.
  - iii) lighting throughout the adult establishment shall be sufficient to illuminate every area which patrons are permitted access.
- B. All Adult Use Businesses shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window, or by means of a depiction or decoration, or to allow to be displayed or exhibited, any Specified Anatomical Areas or Specified Sexual Activities.
- C. The exterior appearance of any building containing an adult use business shall be consistent with the character of surrounding structures and shall not detract from the appearance of the neighborhood.
- D. Adult use businesses shall conform with all existing applicable sign regulations in addition to the following specific requirements:
- 1) Signs which are illuminated in neon or which contain flashing lights shall be prohibited.
  - 2) Exterior signs, displays or other advertisements which contain nude, semi-nude or provocative pictures or silhouettes shall be prohibited.
  - 3) Interior signs, displays, posters or other advertisements which contain nude, semi-nude or provocative pictures shall be located a minimum of six (6) feet from any window or door, and shall not be visible from the exterior of the establishment.
  - 4) Permanent and/or temporary window and door signs shall not occupy more than twenty percent (20%) of each window or door.
- E. Adult use businesses shall be required to meet all zoning and construction standards and requirements of the laws of the Town of Perth, including, but not limited to, lot and bulk regulations, parking requirements, signage, facade and screening regulations.

#### F. COMPLIANCE

Any person, corporation, firm, partnership or other entity which owns and/or operates an adult use business within the Town of Perth, prior to the effective date of this local law, which is not in compliance with the requirements set forth herein shall be allowed, for a period not to exceed one (1) year, to continue such business, during which time such adult use business shall arrange to comply with the requirements set forth herein. If, at the end of such period, such adult use business is not in full compliance with the requirements set forth herein, such adult use business shall cease and desist.

#### G. VIOLATIONS

Any violation of this Article shall be treated in the same manner as provided in Article VIII, Section D, of the Town of Perth Zoning Law.

#### SECTION 2: Severability

Should any section or provision of this Article be declared to be unconstitutional or invalid by the Courts, such decision shall not affect the validity of the balance of this Article.

**SECTION 3: Effective Date and Repealer**

This local law shall take effect upon the filing thereof in the office of the Secretary of State of the State of New York. All prior Local Laws of the Town of Perth pertaining to adult uses are hereby superseded and repealed.

# STATE HIGHWAY 30

178.2-1-20

178.2-1-21

178.2-1-23

178.2-1-22

178.2-1-24.200

178.2-1-24.100  
178.-2-25

178.4-1-6

178.4-1-7

178.4-1-8

178.2-1-25

178.4-1-5

178.4-1-3

178.4-1-4

