

Local Law Filing

(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 Cohocton
- Town
- Village

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Local Law No. 1 of the year 20 08 DEPARTMENT OF STATE

A local law The Regulation of Adult Entertainment in the Town of Cohocton.
(insert Title)

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

- County
- City of Cohocton as follows:
- Town
- Village

1. Definitions

- a. Adult Cabaret: A building or portion of a building regularly featuring dancing or other live entertainment if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if the dancing or entertainment is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons therein.
- b. Adult Massage Parlor: An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, *unless* such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the state.

- c. **Adult Media:** Magazines, books, videotapes, movies, slides or other media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas
- d. **Adult Media Outlet:** An establishment that rents or sells books, magazines, videotapes, slides, movies or other media, and meets either of the following tests: more than fifty percent (50%) of the gross floor area is devoted to adult media; or more than fifty percent of the gross sales (including rentals) result from the sale or rental of adult media.
- e. **Adult Motion Picture Theater:** A building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons therein.
- f. **Adult Use:** An escort bureau, massage parlor, bathhouse or hourly motel, an adult motion picture theater, an adult mini-motion picture theater, or an adult media outlet.
- g. **Adult Use, Licensed:** An escort bureau, adult entertainment establishment, massage parlor or bathhouse licensed under other ordinances, local laws or by a state agency.
- h. **Specified Anatomical Areas:** These include: (1) less than completely and opaquely covered: human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernible turgid state even if completely and opaquely covered.
- I. **Specified Sexual Activities:** Human genitals in a state of sexual stimulation or arousal or acts of human masturbation, sexual intercourse or sodomy or fondling or other touching or other erotic touching of human genitals, pubic region, buttock or female breast.

2.

- a. For the purposes of this local law all uses set forth in Section 1 of this local law in paragraphs a through g inclusive shall be known as adult entertainment businesses and shall include a commercial establishment where all or a substantial portion of the establishment is used for purposes as set forth in paragraphs a through g of Section 1 of this local law or any combination thereof.

permissible only within all zoned areas as set forth in the Zoning Ordinance of the Town of Cohocton.

- b. Application to establish any adult entertainment business shall be made to the Code Enforcement Officer, who shall present such application to the legislative body at its next regular meeting.
- c. Upon presentation to the legislative body, the legislative body shall determine if the proposed location of the adult entertainment business is not within the distances established in Section 4.

In the event such proposed location is within the distances set forth in Section 4, the legislative body shall reject the application. Such determination shall be in writing and shall set forth the reason for making such rejection.

- d. If the legislative body determines there already exists an adult use within five hundred (500) feet of the boundaries of the proposed site it shall disapprove the application.
- e. The legislative body may waive the distance requirement set forth in paragraph d., immediately above, after the public hearing and a finding that:
 - 1. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this local law will be observed;
 - 2. The proposed use will not enlarge or encourage the development of a skid row area;
 - 3. The establishment of an additional adult entertainment business in the area will not be contrary to any proposed neighborhood conservation program nor will it interfere with any proposed program relating to neighborhood renewal; and
 - 4. All applicable regulations of this local law will be observed.

6. Parking Requirements Specified:

- a. All on-site parking areas and premise entries of adult entertainment uses shall be illuminated from dusk until one hour past closing hours of operation.
- b. All parking must be visible from the fronting street.

7. Exterior Display and Signage:

- a. No adult entertainment establishment 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 by display, decorations, sign, show window or other opening from any public view.
- b. There shall be no electronic reader boards or changing message center signs.
- c. Illustrations depicting partially or totally nude males and/or females shall not be posted or painted on any exterior wall of the building used for such businesses or on any door or apparatus attached to such building.
- d. No more than one business wall sign shall be permitted for an adult entertainment business and said sign shall be permitted only on the front facade.
- e. The sign surface areas of a business wall sign for an adult entertainment business shall not exceed an amount equal to five percent (5%) of the front building facade of the first floor elevation (first ten (10) feet) of the premises occupied by the adult entertainment business, or one hundred (100) square feet whichever is the lesser.
- f. Signs and sign structures may be illuminated, provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or flood lights), or any flashing or animated lights (either interior to the sign, on the exterior of the sign, or as a border to the sign).

8. Procedure:

- a. **Notice:** Prior to the public hearing upon such completed application, the applicant shall give notice of the application under consideration and the date, time and place of the public hearing to the owners of any real property, the boundary of which is within one thousand (1,000) feet of the premises, as determined from the last assessment roll, and to the occupants of all single, two-, three- and four family buildings and to the managers of all multi-unit buildings over four families (who shall be requested to post such notice in an appropriate location within the multi-unit building) and to all places of business, the property line of which is within one thousand (1,000) feet and to neighborhood improvement organizations known to exist in the area or who have informed the legislative body, in writing, of their existence. Such notice shall be delivered personally or by mail, return receipt requested, addressed to the respective owners and if the tenants name is not known, the term "Occupant" may be used. The applicant shall provide proof of service upon all necessary parties by affidavit of personal service or return receipt.

- b. **Content of Application:** The application shall be available from the Code Enforcement Officer and shall include the applicant's name, the address of the applicant, and a description of the activities that are proposed to take place on the premises, and the address or specific location of the proposed adult entertainment business. Such application may set forth requirements relating to the method of operating the business to protect the health and safety of patrons as shall be established by the legislative body by resolution and may include, but shall not be limited to, exits, parking, lighting of the interior and exterior of the establishment.
- c. A copy of the completed application shall be sent by the Code Enforcement Officer to any interested party upon request made to the legislative body. Interested parties may express comments, statements or opinions in writing to the Code Enforcement Officer who shall make a notice of such comments, statements or opinions including the name of the person making same and forward them to the legislative body. All such comments, statements or opinions shall be presented to the Code Enforcement Officer at least five business days prior to the public hearing on the application. Such comments, statements or opinions shall in no manner preclude the person from speaking at the public hearing on the completed application.

9. **Completion of Application:**

In the event an application is submitted which does not contain the required information, the applicant shall be so notified by the Code Enforcement Officer, in writing by regular mail addressed to the applicant at the address indicated on the application. The applicant shall have ten days from the post date to submit the required information. Upon the completion of such application, the Code Enforcement Officer shall so advise the legislative body at its next regularly scheduled meeting. In the event the required information is not submitted within ten days such application shall be rejected; however, in the event the applicant advises the Code Enforcement Officer that the applicant is in the process of obtaining the required information and that such information will be submitted within thirty days, the time to submit such additional information shall be extended by the Code Enforcement Officer for such thirty day period. However, such an extension shall be granted only once.

10. **Public Hearing on Application:**

Upon the receipt of the completed application the legislative body shall schedule a public hearing within thirty days and shall forthwith so advise the applicant of said public hearing date so as to allow the applicant sufficient time to give the required notice under Paragraph 8(a) of this local law. A notice of public hearing shall be published by the Code Enforcement Officer at least ten days before the hearing in the same manner as notices of public hearings on proposed local laws.

11. Decision:

Within 62 days after the public hearing on the completed application the legislative body shall, after taking into consideration the comments, statements and opinions expressed, grant the application or deny such application. In the event such application is denied, the legislative body shall set forth in writing the reasons for such denial. In the event such application is approved, the legislative body may set forth conditions or limitations upon the establishment, location, construction, maintenance, or operation of the adult entertainment business, as in the judgment of the legislative body, is necessary for the protection of the public interest. Evidence and guarantees may be required by the legislative body as proof that conditions stipulated in connection with such approval will be fulfilled.

12. Effect of Denial:

No application for an adult entertainment business which has been denied wholly or in part shall be resubmitted for a period of one year from the date of denial, except on the grounds of new evidence or proof of changed conditions.

13. Lapse of Permit:

Where a permit for an adult entertainment business under this local law has been granted, the applicant shall proceed to complete the project within six months from the date of the granting of the permit. In the event the project is not completed within six months such permit shall be null and void.

14. Fees:

- a. The applicant shall submit with the application a fee of Two Hundred Fifty Dollars (\$250.00) which shall be used for the expenses incurred for administration and publishing the public notice required by this local law. The application shall be valid for one year and may be renewed yearly by the legislative body without further action upon the payment of a fee of Two Hundred Fifty Dollars (\$250.00)
- b. Any applicant granted a permit under this local law shall pay an annual permit fee of One Thousand Dollars (\$1,000.00) to cover the municipality's cost of monitoring compliance with the local law annually including compliance with the conditions and limitations imposed under Section 11 of this local law.

15. Violation:

Any violation of this local law shall result in the withdrawal of the permit and application and/or a fine or penalty of Five Hundred Dollars (\$500.00). Each day the applicant is in violation of this local law shall constitute a separate violation. Any person who operates

an adult entertainment business in violation of this local law shall be subject to a fine or penalty as herein provided.

16. Amortization of Existing Adult Entertainment Businesses:

Any adult entertainment business lawfully operating on the effective date of this local law and not licensed as required by this local law shall be deemed to be in violation of this local law. However, the owner or operator shall have thirty days to apply for a license as authorized by this local law. In the event such license is denied because the business cannot be operated in a location or manner as permitted by this local law, such operation shall be deemed a nonconforming use. Such nonconforming use shall be permitted to operate for a period not exceeding three years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty 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.

17. If any clause, sentence, paragraph, subdivision, section or part thereof this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment, decree or order shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment, decree or order shall have been rendered and the remainder of this local law shall not be affected thereby and shall remain in full force and effect.

18. Effective Date:

This local law shall take effect upon the filing thereof in the office of the Secretary of the State of the State of New York but shall take effect immediately upon a person personally served a copy after its adoption.

(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 08 of the ~~(County)(City)(Town)(Village)~~ of Cohocton was duly passed by the Town Board on September 22, 20 08, 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 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.
(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 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 _____
(Name of Legislative Body)
(Elective Chief Executive Officer*)

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.
(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 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 1, above.

Sandra J. Riley
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body Sandra Riley

Date: September 24, 2008

(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 STEUBEN

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.

Patrick F. McAllister
Signature Patrick F. McAllister
Cohocton Town Attorney
Title

County _____
City of Cohocton
Town _____
Village _____

Date: September 24, 2008