

Village of Cohocton

Local Law Numbered 1 of the year 2010

A local law entitled Adult Uses

Be it enacted by the Board of Trustees of the Village of Cohocton as follows:

**ARTICLE I
GENERAL PROVISIONS**

SECTION 1 - TITLE AND PURPOSE

This Local law shall be known and may be cited as Adult Uses Law within the Village of Cohocton, New York. The purpose of this Local law is to protect the public health, safety and welfare and the tranquility in all zoning districts within the Village of Cohocton, New York, while developing adequate regulations which may be uniformly developed to prevent any deleterious secondary effects and public nuisances that may be associated with adult uses.

SECTION 2 - LEGISLATIVE FINDINGS AND INTENT

The Board of Trustees hereby finds that studies conducted by other communities establish that adult entertainment uses encourage adverse secondary impacts on the community and that these uses, by their very nature, not only lead to an increase in prostitution, sexual assault and other crimes in the immediate vicinity of such businesses, but also significantly contribute to the degradation and blighting of the entire municipality. The Board of Trustees further finds that the promotion of urban revitalization and preservation of community character by controlling the adverse secondary impacts associated with adult-oriented businesses are legitimate goals and that the Village Law of the State of New York grants ample authority to adopt appropriate land use controls.

SECTION 3 - DEFINITIONS

A) In the interpretation of this Local law, the following rules apply:

- 1) Words used in the present tense include the future tense;
- 2) The singular includes the plural;
- 3) The word "person" includes a corporation as well as an individual;
- 4) The word "lot" includes the words "plot" or "parcel";
- 5) The term "used" or "occupied" is applied to any land or structure and shall be construed to include the words "intended", "arranged" or "designed to be used or occupied";

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

ADULT USE: The use of any building, structure or land, or portion thereof, for any purposes involving activities including but not limited to, the establishments defined below:

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 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.

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 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".

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 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 picture, 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 designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of oneself or others, or
- 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 that 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:

- 1) the number of different titles or kinds of such merchandise;
- 2) the number of copies or pieces of such merchandise;
- 3) the amount of floor space devoted to the sale and or display of such merchandise; or
- 4) the amount of advertising which is devoted to such merchandise, either in print or broadcast media.

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 characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

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 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 a 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 less than 8 hours or allows a tenant or occupant of a room to sub-rent the room for a period of time less than 8 hours.

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, characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"

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"

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 characterized by the exposure of "specified anatomical area" or by "specified sexual activities".

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 characterized by exposure of "specified sexual activities" or "specified anatomical areas"

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.

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.

MASSAGE PARLOR: Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, 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 where any person providing such treatment, manipulation or service related thereto, exposes his or her "specified anatomical areas". This 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.

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.

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.

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 of "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-nude. 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.

MINOR: A person less than eighteen (18) years of age.

NUDITY OR A STATE OF NUDITY: The appearance of:

- A) human bare buttocks, anus, male genitals, female genitals, or areola or nipple of the female breast; or
- 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 female breast.

PERSONS: An individual, proprietorship, partnership, corporation, association, or other legal entity.

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.

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.

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; public area, buttocks, or if such be female, breast.

SEXUAL EXCITEMENT: The condition of human male or female genitals when in a state of sexual stimulation or arousal.

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.

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;
- D) excretory functions as part of or in connection with activities set forth in A, B, and C above.

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, or sexual encounter center.

SUBSTANTIAL ENLARGEMENT: The increase in floor areas occupied by a sexually oriented business by more than twenty five (25) percent of the first floor area as it exists on the effective date of this Local law.

TRANSFER OF OWNERSHIP OR CONTROL: Means and includes any of the following:

- A) the sale, lease or sub-lease of a sexually oriented business;
- B) the transfer of securities which constitutes a controlling interest in a sexually oriented business, whether by sale, exchange or similar means;
- C) the establishment of a trust, gift or other similar legal device which transfers the ownership or control of a sexually oriented business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 4 - ESTABLISHMENT OF DISTRICT

For the purpose of promoting the health, safety, morals and general welfare of the community, the Village of Cohocton hereby establishes an Adult Entertainment (“AE”) District which is in addition to the districts previously established. In Local Law #4 of 2008, as amended, of the Village of Cohocton. The Adult Entertainment (“AE”) District shall include such lands set forth on Appendix A and also as may be placed in it from time to time by action of the Board of Trustees of the Village of Cohocton.

SECTION 5 - DISTRICT BOUNDARIES

- A) The boundaries of the AE District are established as shown on the map entitled the “Zoning Map of the Village of Cohocton” and called the “Zoning Map” in this Local law and in Local Law #4 of 2008, as amended, of the Village of Cohocton. The Zoning Map, including all of the explanatory material on it, is made a part of this Local law as well as Local Law #4, as amended, of the Village of Cohocton.

- B) The Village Clerk shall certify the Zoning Map as part of this Local law and shall keep it on file in her office.
- C) Any changes in the district boundaries shall be made in accordance with Local Law #4, as amended, of the Village of Cohocton.
- D) Any local law making a change in district boundaries shall provide for its immediate entry upon the Zoning Map.

SECTION 6 - INTERPRETATION OF DISTRICT BOUNDARIES

District boundaries shall be interpreted pursuant to Local Law #4, as amended, of the Village of Cohocton.

**ARTICLE II
ADULT USE ENTERTAINMENT DISTRICT**

SECTION 1 - USES PERMITTED

Adult uses shall be permitted only in any AE district provided that:

- A) An adult use may not be operated within one thousand (1000) feet of:
 - 1) A church, cemetery, synagogue or regular place of worship;
 - 2) A public or private elementary school, secondary school or licensed child day care center;
 - 3) A public park
- B) An adult use may not be operated within five hundred (500) feet of another adult use, or on the same lot or parcel of land.
- C) An adult use may not be operated in the same building, structure or portion thereof, containing another adult use.
- D) For the purposes of this local law, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where an adult use is conducted, to the nearest property line of the premises of a church or public or private elementary school, secondary school or licensed child day care center, or to the nearest boundary of an affected public park, residential district, or residential lot.
- E) For the purposes of this local law, the distance between any two adult uses shall be measured in a straight line, without regard to intervening structures or objects, from the

- closest exterior wall of the structure in which each business is located.
- F) All adult uses shall be conducted in an enclosed building. Regardless of location or distance, no one who is passing by an enclosed building having a use governed by this local law shall be able to see any specified anatomical area or any specified sexual activity by virtue of any display which depicts or shows that area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.

SECTION 2 - INSPECTION REQUIREMENT

- A) A person may operate an adult use business only within the AE district in the Village of Cohocton in accordance with the provisions of this local law and Local Law #4, as amended, of the Village of Cohocton.
- B) Prior to the commencement of any adult use business or upon any transfer of ownership or control, the premises must be inspected and found to be in compliance with all laws, ordinances, rules and regulations applicable to the use and occupancy for an adult use business and in compliance with this local law.
- C) All code enforcement officials, including the Village Building Inspector and Village Code Enforcement Officer shall complete their certification that the premises are in compliance or not in compliance within 20 days of the inspection of the premises by such officials.
- D) Any owner and/or operator, employee of the owner and/or operator, or agent of the owner and/or operator, shall permit representatives of the Village Building Department, the Steuben County Sheriff's Department, the New York State Police, the State Health Department, the Village Building Inspector, the Village Code Enforcement Officer or any other Village, County or State department or agency that has permitting authority regarding the use of the premises to inspect the premises of an adult use business for the purpose of insuring compliance with this local law at any time it is occupied or open for business.

SECTION 3 - AMORTIZATION OF EXISTING ADULT USES:

Any adult uses operating on the effective date of this Local law and not permitted 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 (30) days to apply for a permit or license as authorized this Local law. In the event such license or permit is denied because the business cannot be operated in a location or in a 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 to exceed three (3) years from the date of enactment of this Local Law, unless sooner terminated for any reason or voluntary discontinuance for a period of thirty (30) days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the nonconforming use may be changed to a conforming use.

SECTION 4 - SIGNS

Signs in this district shall be governed local Law #4, as amended, of the Village of Cohocton.

**ARTICLE III
ADMINISTRATION AND ENFORCEMENT**

SECTION 1 - ENFORCEMENT

This local law shall be enforced by the Village of Cohocton Code Enforcement Officer.

SECTION 2 - BUILDING PERMITS

The issuance of building permits shall be governed by Local Law #4, as amended, of the Village of Cohocton.

SECTION 3 - CERTIFICATES OF OCCUPANCY

A certificate of occupancy for use in the AE district is required and shall be valid for a one year period only. This certificate of occupancy must be renewed on an annual basis and must be approved by the Board of Trustees of the Village of Cohocton after initial approval has been given by the Code Enforcement Officer. Such certificate of occupancy shall only be renewed after inspection by the Code Enforcement Officer to confirm that the adult business is in full compliance with the terms of this local law. The annual fee for such certificate of occupancy shall be determined by resolution of the Board of Trustees.

SECTION 4 - APPLICATION FOR PERMITS AND CERTIFICATES

Applications for building permits and certificates of occupancy shall be made upon such forms and shall be accompanied by such layout or plot plans as shall be prescribed by the Code Enforcement Officer to facilitate enforcement of this local law.

SECTION 5 - DURATION OF PERMITS

- A) The duration of the building permits shall be for a period of six (6) months. If construction has not been started within the six month period, then the permit shall lapse and shall be of no force and effect.
- B) The duration of the certificate of occupancy shall be for a maximum period of one year. All certificates of occupancy for uses under this local law shall expire on December 31 of each year. All new certificates of occupancy shall run for the Village year if so renewed by the Board of Trustees of the Village of Cohocton.

SECTION 6 - VIOLATIONS

It shall be deemed a violation of this local law if the owner and/or operator, an employee of the owner and/or operator or an agent of the owner and/or operator:

- A) has violated or is not in compliance with any section of this local law;
- B) has refused to allow an inspection of the adult use business premises as authorized by this local law;
- C) has had gambling take place on the adult use business premises;

- D) has had the possession, use, or sale of a controlled substance occur on the premises;
- E) has had prostitution occur on the premises;
- F) has had any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct occur on the premises.

SECTION 7 - PENALTIES FOR OFFENSE

A violation of this local law shall be punishable as a violation by a fine not to exceed Two Hundred Fifty Dollars (\$250.00) or by imprisonment for a period not to exceed fifteen (15) days or both for the first offense. For the second and each subsequent offense punishment shall be by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment for a term not to exceed forty five (45) days or both. Each week in which the violation continues shall constitute a separate additional violation. In addition, the Board of Trustees shall have such other remedies as are provided by law to enforce the provisions of this local law.

SECTION 8 - SAVING CLAUSE

If any part of this law is held unconstitutional or invalid, the remainder of this law shall remain in full force and effect.

SECTION 9 - EFFECTIVE DATE

This local law shall take effect immediately upon its filing as provided by law.

CERTIFICATION

I hereby certify that the local law annexed hereto, designated as Local Law No. 1 of 2010 of the Village of Cohocton was duly passed by the Board of Trustees on November 17, 2010, in accordance with the applicable provisions of law.

Dated: November 17, 2010

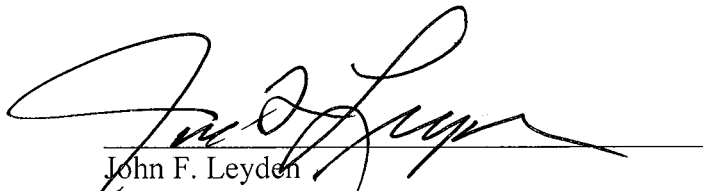
(Seal)


Katherine Wise, Village Clerk

CERTIFICATION

I 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.

Dated: Nov 17, 2010


John F. Leyden
Village Attorney
Village of Cohocton



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

RUTH NOEMI COLON
ACTING SECRETARY OF STATE

December 16, 2010

John F. Leyden
Sullivan & Leyden, P.C.
110 North Main Street
Wayland, NY 14572

RE: Village of Cohocton, Local Law 1 2010, filed on December 15

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.state.ny.us.

Sincerely,
State Records and Law Bureau
(518) 474-2755