

A Local Law: pertaining to Adult Entertainment Facilities in the Village of Cassadaga.

Be it enacted by the: Board of Trustees of the Village of: Cassadaga as Follows:

Section 1. PURPOSE.

It is the purpose of this Local Law to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Village of Cassadaga, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Village. The provisions of this law have neither the purpose nor effect of imposing a limitation or restriction of the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Local Law to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this law to condone or legitimize the distribution of obscene materials.

Section 2. FINDINGS.

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Village Board and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini-Theaters*, 426 U.S. 50 (1976), *F.W./P.B.S. Inc v. City of Dallas*, 493 U.S. 215 (1990), *Barnes v. Glen theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 Supreme Court 1382 (2000), and on studies in other communities including, but not limited to Phoenix, Arizona; Minneapolis/St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York, and St. Croix Country, Wisconsin, the Village Board finds:

a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by operation of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

b) Certain employees of sexually oriented businesses defined in this law as adult theaters and adult cabarets engage in higher incidents of certain types of illicit sexual behavior than employees of other establishments.

c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

d) Offering and providing such space encourages such activities, which creates unhealthy conditions.

e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses.

f) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, Hepatitis B, Non A, Non B, amebiasis, salmonella infections and shigella infections.

g) That here in Chautauqua County we have, in recent years, had an HIV-AIDS outbreak which has caused the County to become aware of the inherent problems.

h) The development and proliferation of adult entertainment facilities without regulations as to siting, concentration and location may result in the deterioration of residential neighborhoods and business districts. In addition, if these types of businesses are located near schools, churches and/or other youth related facilities, they may adversely affect the public welfare and morals of minors and others residing in the Village of Cassadaga.

i) The findings noted in subsections "a" through "h" raise substantial governmental concerns.

j) Sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.

Section 3. DEFINITIONS.

(a) Adult Book/Video/Media Store: An establishment having as its stick-in-trade, books magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined herein, or an establishment with a segment or section devoted to the sale or display of such material.

(b) Adult Entertainment Facilities: Means and refers to “adult news- racks”, “adult book stores”, adult motion picture theaters and “exotic cabarets”.

(c) Adult Motion Picture/ Video Theater: An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by persons within the use.

(d) Adult News Rack: Any Machine or device, whether coin operated or not, which dispenses material which is distinguished or characterized by emphasis depicting, describing, or relating to the “specified sexual activities” or “specified anatomical areas” defined herein.

(e) Exotic Cabaret: A nightclub, bar or restaurant or similar commercial establishment which regularly features:

- 1) persons who appear nude or semi-nude; or
- 2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities” or
- 3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”.

(f) Specified Sexual Activities:

- a) human genitals in a state of sexual stimulation or arousal;
- b) acts of human masturbation, sexual intercourse or sodomy;
- c) fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

(g) Specified anatomical Areas: a) less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below a point of immediately above the areola; b) human male genitals in a discernibly turgid state even if completely and opaquely covered.

Section 4. LOCATION.

The following provisions shall apply to the location of adult entertainment facilities:

- a) adult entertainment facilities shall be permitted only in Industrial Districts, as established under Article IV of the Zoning Law of the Village of Cassadaga, upon approval of a special use permit;
- b) no adult entertainment facility shall be permitted within 500 feet of any lot with a residential use;
- c) no adult entertainment facilities shall be permitted within 1000 feet of any:
 1. school,
 2. religious institution, or

3. Public park or public recitation facility.

Section 5. ADDITIONAL SIGN REQUIREMENTS.

The following provision shall apply to signs erected or maintained in connection with adult entertainment facilities: a) no off-site signs shall be permitted.

Section 6. PUBLIC DISPLAY OF CERTAIN MATTER PROHIBITED.

Materials offered for sale from “adult news-racks” shall not be displayed or exhibited in any manner which exposes to the public view any picture or illustration depicting any “specified sexual activity” or any “specified anatomical area”. Materials offered for sale or viewing at any adult entertainment facility shall not be displayed or exhibited in a manner which exposes any depiction of specified sexual activity” or “specified anatomical areas” to view of persons outside the building or off the premises on which such store or theater or use is located.

Section 7. RESECTIONS CUMULATIVE IN NATURE.

The restrictions set forth in this law are in addition to any other applicable provision on the Zoning Law of the Village of Cassadaga. In the event of any conflict between any such provisions, the more restrictive provisions shall be applied.

Section 8. PENALTIES.

Any violation of any provision of this law by any person, corporation or entity shall be punishable by a fine of not less than \$350.00, or imprisonment. Each week’s continued violation shall constitute a separate additional violation. The Village may also, in addition to the above penalties, seek any and all other remedies, such as set forth in Section 7-714 of the village law of the State of New York, and/or any other legal remedies, as it deems necessary and appropriate.

Section 9. SEVERABILITY.

Each section and provision of this law are hereby declared to be independent divisions and subdivisions and notwithstanding any other evidence of legislative intent, it is hereby declared to be controlling legislative intent that if any provision of this law or the application thereof to any person or circumstances is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section, or provisions so known to be invalid.

Section 10. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.