

Local Law Filing

Town of Hornby, Steuben County, New York

Local Law #1 of the year 2007

A local law amending and supplementing the Town of Hornby Zoning Ordinance Article 4 Use Regulations and Article 13 Development Guidelines and General Provisions, specifically Adult Usage, with the addition of definitions.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF HORNBY, STEUBEN COUNTY, NEW YORK, AS FOLLOWS:

Add to Section 2.1 DEFINITIONS:

ADULT LIVE ENTERTAINMENT ESTABLISHMENTS – A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or provocative services: topless and/or bottomless dancers; strippers; topless waitressing, busing or serving; topless hair care or massages; service or entertainment where the servers or entertainers wear only pasties or G-strings or both; adult arcade; adult cabarets; adult juice bar; adult motels; adult visual theaters; adult theaters; escort agencies; nude model studios; nude encounter studios, massage studios not operated by medical professionals or certified massage therapists, body painting studios, and sexual touching and encounter businesses. “Body piercing and/or tattoo parlors or specialists” are not defined as “Adult Live Entertainment Establishments.” Adult Entertainment Establishments customarily exclude minors by reason of age.

ADULT ARCADE – Any place 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 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 CABARET – A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (a.) Persons who appear in a state of nudity; or
- (b.) Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or

- (c.) Films, motion pictures, video cassettes, video cable, satellite internet connections, slides, other photographic reproductions, CD's, DVD's, or any other form of digital and/or electronic media which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT JUICE BAR- An Adult Cabaret, which does not serve and/or provide alcohol.

ADULT MOTEL – A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, CD's, DVD's, slides, other photographic reproductions, or any other digital and/or electronic media which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of visual reproductions.

ADULT VISUAL THEATER – A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, CD's, DVD's, or any other form of digital and/or electronic media 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 regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

ESCORT – A person who, for a fee, tip or other consideration, agrees or offers to act as a date for another person; for consideration, agrees or offers to privately model lingerie for another person; for consideration, agrees or offers to privately perform a striptease for another person; or, for consideration, but without a license granted by the State of New York, agrees or offers to provide a massage for another person.

ESCORT AGENCY – A person, or business association who furnishes, or offers to furnish, or advertise to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

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 a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York or by an individual(s) to create works with serious literary, artistic, political or scientific value.

SEXUAL TOUCHING AND ENCOUNTER CENTER – A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, 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.

ADULT USE – An adult use is an adult bookstore, adult video store, or sex shop as defined in these regulations or any similar use not involving adult live entertainment.

ADULT BOOKSTORE, ADULT VIDEO STORE, OR SEX SHOP – A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films motion picture, videocassettes or video reproductions, digital video disks (DVD's), compact disks (CD's), slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or instruments, devices, toys, or paraphernalia, which are primarily intended, labeled, designed, advertised or promoted for use in connection with "specified sexual activities".

A commercial establishment may have 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 the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas". For purposes of this definition, "principal business purpose" shall mean twenty-five percent (25%) or more of any of the following:

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

BODY PIERCING AND/OR TATTOO PARLOR OR SPECIALIST – An establishment providing body piercings and/or tattoos as licensed by NYS Public Health Law.

MASSAGE STUDIO –An establishment offering massage therapy and/or body work by a massage therapist licensed under New York State Law, Article 155 or under the direct supervision of a licensed physician.

NUDIST RESORT, CAMP, OR DEVELOPMENT – Any temporary residence establishment, campground, resort, hotel, motel, club, building group or association of landowners that encourages or allows its residents/guest to appear in a common space in the nude.

NUDITY or a STATE OF NUDITY – The visual display of “specified anatomical areas”.

PROVOCATIVE SERVICES – Services in which the intended outcomes are specified sexual activities, such as topless waitressing, topless busing or serving, topless hair care or massage, nude body painting studios, sexual touching and encounter businesses.

SPECIFIED ANATOMICAL AREAS – Refer to American Planning Association (APA) Planning Advisory Service (PAS) Report Number 495/496 page 132 for the definition.

SPECIFIED SEXUAL ACTIVITIES – Refer to American Planning Association (APA) Planning Advisory Service (PAS) Report Number 495/496 page 132 for the definition.

TATTOO PARLOR OR SPECIALIST – SEE BODY PIERCING AND/OR TATTOO PARLOR OR SPECIALIST.

ARTICLE 4. USE REGULATIONS

Section 4.0 Agriculture-Residential District (A-R)

C. Conditional Uses

12. Business/commercial uses:

- (gg) Adult Use
- (hh) Adult Live Entertainment Establishment
- (ii) Body piercing and/or tattoo parlor or specialist
- (jj) Massage Studio
- (kk) Nudist Resort, Camp or Development

Section 13.3 Off-Street Parking

B. Required Off-Street Parking Spaces. The minimum cumulative number of spaces shall be determined by the amount of dwelling units, bedrooms, floor area, members, equipment, employees, and/or seats contained in such new buildings or structures, or added by alteration of buildings or structures, and such minimum number of spaces shall be maintained by the owners of such buildings or structures, as follows:

- 12. Commercial Recreation, Private Membership Clubs, Nudist Resort, Camp or Development – One (1) space for every one hundred (100) SF of gross floor area

Section 13.5 Signs

D. Business, Commercial and Industrial Signs

1. Two (2) primary business identification signs, one free-standing with a maximum of two display faces and one sign mounted on the building may be displayed on the same lot as the business with which they are associated. The total display area of such signs shall be related to the lot size, size or scale of the business, and its arrangement on such lot as determined by the Planning Board. Adult Uses and Adult Live Entertainment Establishment signs must use muted colors.

Section 13.8 Fences, Walls, Hedges and Screen Planting

- C. Fences, walls, hedges or screen plantings may be required, in multi-family, commercial; industrial; adult use/entertainment developments; or nudist resorts, camps or developments; by the Planning Board, as is necessary to protect the residential quality of adjacent property.

Section 13.25 Adult Uses and Adult Live Entertainment and Bars and Nightclubs

- A. It is the purpose of this law to regulate Adult Uses and Adult Live Entertainment Establishments, as herein defined, and bars and nightclubs in order to achieve the following:

1. To preserve the character and the quality of life in the Town of Hornby's Agriculture Residential Zone
2. To control such documented harmful and adverse secondary effects of adult uses, bars and nightclubs on the surrounding areas as: decreased property values; attraction of transients; parking and traffic problems; increased crime; loss of business for surrounding non-adult businesses; and deterioration of neighborhoods.
3. To restrict minors' access to adult uses, adult entertainment, bars and nightclubs.
4. To maintain the general welfare and safety for the Town of Hornby's residents and the general public as well as the patronage of such establishments.

B. Location.

1. General Restrictions. An Adult Use, Adult Live Entertainment Establishment, bar or nightclub shall not be allowed:

a. Within twelve hundred (1200) feet of a residence in the Town;

b. Within twelve hundred (1200) feet of a church, synagogue, other place of worship, library, school, daycare facility, park, or property line of a park, or playground, municipal facility, cemetery or other place of public gathering within the Town;

c. On the same parcel as another Adult Use, Adult Live Entertainment Establishment, bar or nightclub;

d. Within twelve hundred (1200) feet of another Adult Use or Adult Entertainment Establishment, whether or not such other establishment is located in the Town; or

e. Within twelve hundred (1200) feet of an establishment with a liquor license.

The above distances of separation shall be measured from the nearest exterior wall of the portion of the structure containing the Adult Use, Adult Live Entertainment Establishment, bar or nightclub.

2. Additional Restrictions. Adult Entertainment Establishments, bars and nightclubs may only be located on a state highway or on a private drive with direct access to a state highway.

D. Display Prohibited. All adult uses and adult entertainment establishments shall be conducted in an enclosed building. It shall be a violation to display or exhibit (in the open air, through a window, or by means of a sign, depiction or decoration), or to allow to be displayed or exhibited, any “specified anatomical area” or “specified sexual activity”.

E. Site Design. The building may be no more than 1,600 SF gross floor area and must be finished in muted colors.

Section 13.26 NUDIST RESORT(s), CAMP(s), OR DEVELOPMENT(s)

A. It is the purpose of this law to regulate Nudist Resorts, Camps, or Developments in order to achieve the following:

1. To preserve the character and the quality of life in the Town of Hornby’s Agricultural Residential areas

2. To protect the privacy of Nudist Resorts, Camps, or Developments

3. To protect the freedom of speech/expression of the inhabitants and/or visitors to such use
4. To maintain the general welfare and safety for the Town of Hornby's residents and the general public.
5. To mitigate the public disturbance caused by a nudist lifestyle, and
6. To prohibit using the nudist lifestyle as adult live entertainment

B. Location.

1. General Restrictions Nudist Resorts, Camps, or Developments shall not be allowed:
 - a. Within twelve hundred (1200) feet of a residence in the Town;
 - b. Within twelve hundred (1200) feet of a church, synagogue, other place of worship, library, school, daycare facility, or the property line of a park, or playground, municipal facility, cemetery or other place of public gathering within the Town;
 - c. On the same parcel as an Adult Use, Adult Entertainment Establishment, Bar or Nightclub
2. Specific Restrictions - Nudist Resorts, Camps, or Developments shall abide by the following regulations:
 - a. The minimum lot acreage is 20 acres
 - b. At no time shall nudity be viewable from outside of the property, only clothed person(s) may be viewable from the entrance and/or road frontage of the property; in order to facilitate this fences, walls, hedges or screen planting shall be erected around the entirety of the area in which person(s) are expected to be, or appear in, the nude. (*See Section 13.8.*)