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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
AUG 21 2003
MISCELLANEOUS
& STATE RECORDS

Town of Rosendale

Local Law No. 3 of the year 2003

A local law To Amend the Zoning Code of the Town of Rosendale
So as to Regulate the Conduct and Location of Adult
Businesses.

Be it enacted by the Town Board of he Town of Rosendale as follows:

§75-28.D.(16). Adult Business Regulations.

(a) FINDINGS AND PURPOSE

(1) Findings

The Town Board hereby finds that certain business activities categorized as adult uses by their nature have serious, objectionable characteristics related to their operation which can lead to a significant deleterious impact on the surrounding community. The Board further finds that the unrestrained proliferation and/or concentration of such businesses is inconsistent with existing development and future plans for the Town of Rosendale in that they often result in influences on the community which increase the crime rate and undermine the economic, cultural, and social welfare of the community. The deleterious effects of these businesses change the economic, social and cultural character of the existing community and adversely affect existing businesses and community and family life. These findings are based on studies and findings regarding such uses which have been undertaken by and incorporated in legislation enacted by other communities, including the City of Kingston and Town of Islip, New York; Austin, Texas; Indianapolis, Indiana; and Los Angeles, California, as well as the opinions expressed by local residents and business owners.

The Town Board further finds that the Town of Rosendale is particularly

vulnerable to the effects of adult businesses since it is a rural community containing several historic hamlets and is in close proximity to Ulster County Community College. The Town's resources would be severely strained if called upon to address the potential increased demand for crime prevention, degradation of the community's unique and fragile retail area, the potential decline in property values and overall quality of the community that the proliferation of such uses could dangerously affect.

The Town Board further finds that adult uses are commercial uses which are appropriately located only in business or industrial districts. The Town has two types of business districts. The B-1 District is located in a number of historic hamlets and includes other local business uses in close proximity to surrounding residences. The B-2 District is primarily located along Route 32 in the Town's main highway business area although it also includes other businesses and is near residences. The I-1 Industrial District is located in four separate areas. This situation makes it very difficult to establish appropriate locations for the full array of possible adult uses in a manner which will not alter the character of the business district or generate adverse impacts on nearby residences. Therefore, the Town Board has determined that there are no appropriate locations for adult uses that provide on-site entertainment and the assemblage of crowds and attendant noise and traffic within the B-1 and B-2 Districts. Such uses may be appropriate in the I-1 District subject to specific standards.

(2) Purpose

The purpose of this section is to prevent the unrestricted proliferation of adult businesses and to ensure that the effects of such businesses will not adversely affect the health, safety and economic well-being of the community by enacting criteria for the establishment of adult business uses in the Town.

(b) DEFINITIONS

ADULT ARCADE or MOTION PICTURE THEATER - An establishment where, for any form of consideration, one (1) or more motion-picture projectors, slide projectors or similar machines are available and are used to show films, motion pictures, video cassettes, slides or other photographic

reproductions which are characterized by emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE - An establishment or business, whether retail or wholesale, having more than 20% of its stock in trade (recordings, books, magazines, periodicals, films, DVD's, video tapes/cassettes or other audio or viewing materials) for sale or rent for viewing or use only off the premises, which stock is distinguished or characterized by its emphasis on matter depicting, describing, or relating to sexual activities or sexual anatomical areas.

ADULT ENTERTAINMENT CABARET - An enclosed building or structure or portion of a building or structure used for presenting film or similar materials or performances by live persons having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT BUSINESS - Any establishment or business involved in the dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, including but not limited to Adult Arcades, Adult bookstores, Adult theaters, and Adult Entertainment Cabarets.

SPECIFIED ANATOMICAL AREAS:

- A. The following areas of the body that are less than completely and opaquely covered:
 - (1) Human genitals or pubic region.
 - (2) The cleavage of the human buttocks.
 - (3) That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola (the colored ring around the nipple). This definition shall include the entire lower portion of the breast but shall not be interpreted to include any portion of the cleavage of the breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided that the areola is not so exposed.

- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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 touch of human genitals, pubic region, buttocks or female breasts.

(c) SPECIAL PERMIT REQUIRED FOR AN ADULT BUSINESS

- (1) Adult Bookstores, as defined in Paragraph 2 above, shall only be permitted in the B-2 District, upon issuance of a special permit in accord with §75-40.B. and subject to the standards set forth in Paragraph (d) below.
- (2) Adult businesses, other than adult bookstores, are permitted only in the I-1 District, subject to the standards set forth in paragraph (d) below and all other relevant requirements of this Zoning Law.
- (3) In addition to the application materials required in §75-40.B.(1), hereof, the following shall be submitted with the application for a special permit:
 - (i) A narrative statement describing the applicant's proposed business plan including a description of the nature of the operation, hours of operation, provisions for parking and traffic; and
 - (ii) Plans to avoid the deleterious secondary impacts associated with adult uses, including increased crime rates, depreciation of property values, deterioration of community character and adverse impact on the quality of life in surrounding residential areas.
- (4) Before issuing a special permit, the Planning Board shall find and determine that: (1) the proposed location of the use is in compliance with all setback requirements from sensitive, residential or other land uses; (2) the proposed location of the adult use has adequate parking and access, including adjoining streets and highways, sufficient to handle increased traffic from the use; (3) adjoining properties, highways and streets, and residential areas, particularly existing residences and sensitive uses, are adequately buffered from any potential adverse impacts associated with adult uses, including excessive noise, lighting or other visual impacts, and traffic; and (4) the Applicant's plan to avoid the deleterious secondary impacts associated with adult uses is adequate.

(d) STANDARDS FOR ADULT BUSINESSES

- (1) Adult Bookstores are permitted only in the B-2 District with frontage on Route 32, upon issuance of a special permit, subject to the following standards and all other relevant requirements of this Zoning Law:
 - (i) Such use shall not be located within 100 feet of a residential zoning district.
 - (ii) Such use shall not be located within 500 feet of a school, library, religious institution, day care facility, hospital, community center or public park.
 - (iii) Such use shall not be located within 500 feet of another adult business.
 - (iv) Such use shall not be located in any building or on any lot of which any portion is used for residential purposes.

- (2) Adult businesses other than adult bookstores are permitted only in the I-1 District, upon issuance of a special permit, subject to the following standards and all other requirements of this Zoning Law.
 - (i) Such uses shall not be located on a lot within one hundred (100) feet of the boundary of any residential district.
 - (ii) Such uses shall not be located within one thousand (1000) feet of a school, library, religious institution, day-car facility, hospital, community center or public park.
 - (iii) Such uses shall not be located within five hundred (500) feet of a similar use.
 - (iv) Such uses shall not be located in any building or on any lot of which any portion is used for residential purposes.
 - (v) Such use shall have direct vehicular access from a state or county road.

- (3) No adult business shall be conducted outside the walls of a fully enclosed structure or in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from the exterior of the building in which the use is

located. This provision shall apply to any display, decoration, sign, show window, screen or other opening.

- (4) Loudspeakers or similar audio equipment used to describe or discuss specified anatomical areas or sexual activities shall not be audible from the exterior of the building in which it is located.

(e) ANNUAL REVIEW AND RENEWAL OF SPECIAL PERMIT

- (1) Annual Report. The Building Inspector or his/her designee shall be responsible for conducting an annual review of adult uses operating under special use permits no later than one month before the anniversary of permit expiration, and shall report his/her findings to both the owner and the Planning Board. In conducting such review, the following issues shall be considered:
 - i) Compliance with the approved special use permit, site plan, and operating standards; and
 - ii) Nature and frequency of emergency calls and neighbor complaints, if any; and
 - iii) Compliance with other regulating authorities, including, but not limited to, State Liquor Authority and the Ulster County Board of Health. The fee for annual review shall be determined by resolution of the Town Board. Upon receipt of such fee, the Building Inspector or his/her designee shall certify to the Planning Board in writing that the adult use is in compliance with the approved site plan and operating standards for the special use permit.
- (2) Non-compliance. If the Building Inspector determines that the Adult Business is not in compliance with the conditions and operating standards of the special use permit, the Building Inspector shall direct the Owner/Operator to bring the operation into compliance. If the operation is not brought into compliance within thirty (30) days, the Building Inspector shall commence proceedings to terminate the special permit. If the Building Inspector determines that there is an immediate danger to the health, safety and welfare of the area due to such non-compliance, the Building Inspector may suspend the Special Permit without notice.

(3) Special Use Permit Renewal.

(i) Special use permits issued for adult uses shall be subject to annual renewal as provided under this section. The application for renewal of the special use permit shall be submitted, with any required fee, to the Building Inspector at least one month prior to the expiration of the permit, in which case the expiration date of the permit shall be extended until the date of the Planning Board's action on the application for renewal. Failure to submit such renewal application may be grounds for termination of the special use permit for non-compliance.

(ii) Upon receipt, of an application for renewal the Building Inspector shall conduct an inspection, and prepare a report to the Planning Board as to applicant's compliance with the Town Code and with the conditions and operating standards of the special use permit. The Planning Board shall consider reports of the Building Inspector, Town Engineer, and any other town departments. In the event that non-compliance issues or violations are discovered, the Planning Board shall provide notice to the special use permit holder, prior to any action to terminate or renew the Special Permit. An application for renewal shall be approved when the Planning Board determines that the management and operation of the adult use has conformed with the requirements of the Town Code, the conditions of the special use permit and with site plan approval. In the event that the Planning Board approves the renewal application with modifications or denies approval, it shall make specific findings as to the grounds for its action. The Planning Board Clerk shall file a copy of the Planning Board determination, together with any conditions of approval with the Town Clerk and the Building Inspector, and mail a copy to the applicant within five (5) business days of filing with the Town Clerk.

(f) DISTANCE MEASUREMENTS

For the purposes of this chapter, distance measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest part of the portion of the building or structure used as an adult business establishment to the nearest property line of the premises of a church, school, public park or public recreation area or to the nearest boundary of a residential zoning district.

(g) EXCLUSIONS

The provisions of this section shall not apply to licensed or accredited schools or museums, or to private artists studios or galleries not open to the general public, or to activities in a private residence by the occupants thereof.

(h) PRE-EXISTING ADULT BUSINESSES

1. Any adult business existing as of the effective date of this local law shall be deemed a non-conforming use and shall be subject to all conditions and provisions relating to non-conforming uses in the Town of Rosendale as set forth in Article VI of the Code of the Town of Rosendale.

(i) VALIDITY

The validity of any provision of this Local Law shall not effect the validity of any other provision of this Local Law which can be given effect without such invalid provision.

(j) EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State as provided in Section 27 of Municipal Home Rule Law of the State of New York.

(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. Three of 2003 of the Town of Rosendale was duly passed by the Town Board on Aug. 13 2003, 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.
(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____. 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.

* 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.

Mary Ann Tapley

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

MARY ANN TAPLEY, Rosendale Town Clerk

Date: August 19, 2003

(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 Ulster

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.

Beatrice Havranek

Signature BEATRICE HAVRANEK

Title Attorney for Town

Town of Rosendale

Date: August 19, 2003