

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 Clyde, New York _____
Town _____
Village _____

Local Law No. 3 of the year 2003

A local law ADULT ENTERTAINMENT
(Insert Title)

Be it enacted by the BOARD OF TRUSTEES of the
(Name of Legislative Body)

County _____
City of Clyde, New York _____ as follows:
Town _____
Village _____

(See Attached Pages)

(If additional space is needed, attach pages the same size as this sheet, and number each.)

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
JUL 23 2003
MISCELLANEOUS
& STATE RECORDS

(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. 3 of 2003 of the ~~(County)~~(City)(Town)(Village) of CLYDE was duly passed by the BOARD OF TRUSTEES on JULY 17th 2003, in accordance with the applicable provisions of law.

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.

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 ²____, above.

Frances M Burt
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 7/17/03

(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 WAYNE

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.

[Signature]
Signature

attorney
Title

County
city of Clyde, New York

Town
Village

Date: 7/18/03

ARTICLE XVI

ADULT ENTERTAINMENT

Sec. 136-92 General Provisions.

A. Findings and Intent.

1. It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the Village of Clyde and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the Village of Clyde. The provisions of this chapter have neither the purpose nor the intent of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials.
2. Similarly, it is not the purpose or the intent of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the Constitution of the United States, the Constitution of the State of New York, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. It is not the purpose or the intent of this chapter to condone or legitimize the distribution of obscene materials.

B. Definitions.

1. In the interpretation of this section, the following rules apply:
 - a. Words used in the present tense include the future tense.
 - b. The singular includes the plural.
 - c. The word "person" includes a corporation as well as an individual.

- d. The word "lot" includes the words "plot" or "parcel".
 - e. 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".
2. The following definitions shall apply in this chapter:
- 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 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 the depicting or describing of a specified sexual activity or specified anatomical areas.
 - ADULT BOOKSTORE or ADULT VIDEO STORE:
 - a. A commercial establishment which, as one of its principal business purposes, offers for sale or rental or any form of consideration any one or more of the following:
 - (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices or paraphernalia that are designed for use in connections with specified sexual activities.
 - b. 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 an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an 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 that depict or describe specified sexual activities or specified anatomical areas. A "principal business purpose" shall mean more than one-quarter of the business is devoted to the sale, rental or display of such materials as determined by any of the following:

- (1) The number of different titles of printed, visual or audio materials of any kind that are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities;
- (2) The number of copies of printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities;
- (3) The amount of floor space devoted to the sale and display of printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities;
- (4) The dollar amount of sales of printed, visual or audio materials of any kind which are characterized by their emphasis on

the description or depiction of specified anatomical areas or specified sexual activities; or

- (5) The amount of on-site advertising which can be viewed by passersby, or the amount or cost of advertising in print or broadcast media devoted to printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities.
- ADULT CABARETS - Nightclubs, bars, restaurants or similar commercial establishments that feature:
 - a. Persons who appear in a state of nudity or seminudity;
 - b. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - c. Films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.
 - ADULT MOTEL - A hotel, motel or similar commercial establishment that:
 - a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions that 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 that advertises the

availability of this adult type of photographic reproductions;

- b. Offers sleeping rooms for rent for a period of time that is less than ten (10) hours; or
 - c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- ADULT MOTION-PICTURE THEATER - A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown that 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.
 - ADULT USES - Adult arcades, adult bookstores, adult cabarets, adult motels, adult motion-picture theaters, adult theaters, adult video stores, escort agencies, nude model studios and sexual encounter centers.
 - ADULT VIDEO STORE - See "adult bookstore".
 - ESCORT - A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
 - ESTABLISHMENT - Any of the following:
 - a. The opening or commencement of any adult use as a new business.

- b. The conversion of an existing business, whether or not an adult use, to any adult use.
 - c. The relocation of any adult use.
- NUDE MODEL STUDIO - Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.
- NUDITY - The appearance of a human bare buttocks, anus, genitals or full female breast.
- PERSON - An individual, proprietorship, partnership, corporation, association or other legal entity.
- SEMINUDITY - A state of dress in which clothing covers no more than the genitals, pubic region, and areolas of the female breast, as well as portions of the body covered by supporting straps or devices.
- SEXUAL ENCOUNTER CENTER - A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:
 - a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - b. 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 seminudity.
- SPECIFIED ANATOMICAL AREAS - The male genitals and/or vulva or more intimate parts of the female genitals.
- SPECIFIED SEXUAL ACTIVITIES - Any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
 - c. Masturbation, actual or simulated; or
 - d. Excretory functions as part of or in connection with any of the activities set forth in Subsections a, b and c above.
- STATE OF NUDITY - See "nudity".
 - TRANSFER OF OWNERSHIP OR CONTROL - Means and includes any of the following:
 - a. The sale, lease or sublease of an adult use;
 - b. The transfer of securities which constitute a controlling interest in an adult use, whether by sale, exchange or similar means; or
 - c. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of an adult use, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec. 136-93 Establishment and Continuation of Adult Uses.

A. Uses permitted.

1. Adult uses shall only be located in an Industrial District subject to the annual issuance of a special use permit, renewable once before the anniversary thereof, provided that:
 - a. An adult use may not be operated within one thousand (1,000) feet of a church or other place of worship; a nursery,

elementary school or vocational school; a hospital, nursing home or convalescent home; a library or museum; a cemetery; the boundary of a residential district; or a public park, playground or recreation area.

- b. An adult use may not be operated within five hundred (500) feet of a dwelling.
- c. An adult use may not be operated within one thousand (1,000) feet of another adult use, or on the same lot or parcel of land.
- d. An adult use may not be operated in the same building structure or portion thereof containing another adult use.
- e. An adult use may not be operated on any watercraft, barge, vessel or floating platform which is in any way tied up to, attached or anchored near a pier, wharf, dock or boathouse located in any waters within the Village.
- f. For the purposes of this section, 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 dwelling; a church or other place of worship; a nursery, elementary, secondary or vocational school; a hospital, nursing home or convalescent home; a library or museum, a cemetery, the boundary of a rural residential or medium-density residential district; or a public park, playground or recreation area.
- g. For the purposes of this section, 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.

- h. 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 chapter shall be able to see any specified anatomical area or any specified sexual activity by virtue of any display that depicts or shows that area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.

B. Inspection Requirement.

1. As heretofore provided, a person may operate an adult use in the Village of Clyde only with a special permit.
2. Prior to the commencement of any adult use or upon any transfer of ownership or control of an adult use the premises must be inspected by the Code Enforcement Officer or Building/Zoning Officer and found to be in compliance with all laws, ordinances, rules and regulations applicable to the use and occupancy for an adult use in compliance with the Village of Clyde Code and NYS Uniform Fire Prevention and Building Code.
3. All code enforcement officials, including the Village Building Inspector and/or Code Enforcement Officer, shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of the inspection of the premises by such officials.
4. 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 Wayne County sheriff's Department, the New York State Police, the State Health Department, the Village Building Inspector, the Village Code Enforcement Officer, the Village Police Department 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 for the purpose of ensuring compliance with this chapter at any time it is occupied or open for business.

C. Nonconforming Adult Use.

1. Subsequent to the operation of the adult use, any adult use lawfully operating as a conforming use is not rendered a nonconforming use by the location of a church, public or private elementary school or secondary school, public park, residential zoning district or a residential lot within one thousand (1,000) feet of the adult use business.

D. Signs.

1. Signs for adult use businesses shall be governed by Article IX of the Village of Clyde Zoning Law.

Sec. 136-94 Administration and Enforcement.

A. Enforcement.

1. This chapter shall be enforced by the Village of Clyde Code Enforcement Officer or Building/Zoning Officer.

B. Building Permits.

1. The issuance of building permits shall be governed by Article VII (I) of the Village of Clyde Zoning Law.

C. Certificates of Occupancy.

1. A certificate of occupancy for use is required.

D. Special Use Permit.

1. A special use permit will be required and governed by Article VII (I) of the Village

of Clyde Zoning Law. The permit may be renewed on an annual basis subject to the approval of the Planning Board of the Village of Clyde after certification of compliance has been given by the Code Enforcement Officer or Building/Zoning Officer. Such certification of compliance shall be issued only after inspection by the Code Enforcement Officer and/or Building/Zoning Officer to confirm that the business is in full compliance with the terms of this chapter and other applicable laws.

E. Application for Permits and Certificates.

1. 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 chapter.

F. Duration of Special Use Permits.

1. The duration of any special use permit shall be for a maximum period of one year. Any special use permit for uses under this chapter shall expire on December 31st of each year unless stated. The special use permit shall run for the calendar year if so renewed by the Planning Board of the Village of Clyde.

G. Violations.

1. It shall be deemed a violation of this chapter 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 chapter.
 - b. Has refused to allow any inspection of the adult use as authorized by this chapter.
 - c. Has had any illegal gambling take place on the adult 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.

H. Penalties for Offenses.

1. A violation of this section shall be punishable as a violation by a fine not to exceed \$2,000 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 a fine not to exceed \$3,000 or by imprisonment for a period not to exceed forty-five (45) days or both. Each day in which the violation continues shall constitute a separate additional violation. In addition, the Village Board shall have such other remedies as are provided by law to enforce the provisions of this chapter.