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~~County~~
~~City~~
Town of CLARKSTOWN
~~Village~~

Local Law No. 10 **of the year 20**02

A local law entitled, "AMENDMENT TO CHAPTER 290 OF ZONING LOCAL LAW OF THE TOWN OF CLARKSTOWN TO PROVIDE FOR ADULT ENTERTAINMENT USES"
(Insert Title)

Be it enacted by the TOWN BOARD *(Name of Legislative Body)* **of the**

~~County~~
~~City~~
Town of CLARKSTOWN **as follows:**
~~Village~~

Article 36 is hereby added to Chapter 290 of the Zoning Local Law of the Town of Clarkstown as follows:

ARTICLE I, General Provisions

§ 36-1. Authority.

This chapter is enacted under the home rule power of the Town of Clarkstown, and is enacted in the interest of the public health, peace, safety, morals and general welfare of the citizens and inhabitants of the Town and nearby areas to regulate businesses within the Town of Clarkstown

§ 36-2. Intent.

It is the intent of the Town of Clarkstown, in enacting this chapter, to establish reasonable and uniform regulations of commercial establishments that will reduce the adverse effects of the concentration of adult entertainment establishments upon the morals, manners and property values of citizens of the Town and nearby areas.

§ 36-3. Findings.

There is presently in the Town of Clarkstown an increasing trend toward the opening of adult entertainment establishments. Based on evidence and testimony presented at public

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hearings before the Town Board of the Town of Clarkstown, the First Amendment of the United States Constitution, Article 1, Section 8 of the New York State Constitution, the Supreme Court case of City of Renton v. Playtime Theatres, studies conducted by the Planning Board of the Town of Clarkstown, and on the findings incorporated in the Secondary Effects Study of Adult Entertainment Uses, Village of Scotia, N.Y., Orange County, Florida Adult Entertainment Code, Chapter 83, the Jacksonville, Florida Municipal Code, Chapter 410, Ordinance No. 77-257-256, Section 1, the Los Angeles Municipal Code, Section 12.70, Ordinance No. 156509 (1982), the Detroit Zoning Ordinance, 66,0000, Ordinance No. 742-G, Section 1, October 24, 1972, and a "Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values," conducted by the Division of Planning, Department of Metropolitan Development, Indianapolis, January 1984, the Town Board hereby finds:

A. In the development and adoption of this chapter, it is recognized that there are some uses which, by their very nature, are recognized as having some serious objectionable operational characteristics, particularly when several such similar uses are concentrated within one (1) area within the Town, thereby having a deleterious effect upon adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods of the Town of Clarkstown and nearby areas of adjoining communities. The primary legislative objective in passage of this legislation is for the purpose of preventing a concentration of such uses in any area of the Town.

B. It is further found that the concentration within a limited area of the Town of business operations and activities as described above, and as defined in Section 36-4 below, tends to attract an undesirable number of transients, adversely affects property values, promotes an increase in crime, encourages illegal, immoral or unhealthy behavior and tends to expose minors to harmful materials and influences.

C. It is further found that the amount of through traffic on Interstate 87/287, the presence of several state highways and the presence of two (2) regional malls within the Town tend to attract businesses oriented to a market beyond the Town.

D. The Constitution and laws of the State of New York grant to the Town of Clarkstown certain powers, in particular, police powers, to enact reasonable legislation and measures to regulate and supervise adult entertainment establishments in order to protect the public health, peace, safety, general welfare and good order in the community.

E. Therefore, in order to preserve the public health, peace, safety, general welfare and good order of the community and to safeguard the present and future character of neighborhoods and citizens in the area, the Town of Clarkstown has an interest in planning, regulating and legislating the use of properties for specified commercial purposes.

§ 36-4. Definitions.

In this chapter, unless the context otherwise requires, the following terms shall have the definitions set out in this section.

ADULT ARCADE -- An establishment where, for any form of consideration, one (1) or more motion-picture projectors, slide projectors, video cassette players, DVD players or similar machines for viewing by five (5) or fewer persons each are used to show films, motion pictures, video cassette images, slides or other photographic reproductions such as, but not limited to, cartoons and virtual images which are characterized by emphasis upon the depiction or description of specified sexual activities or specified anatomical areas. For the purposes of this chapter, "adult arcade" is included within the definition of "adult motion-picture theater."

ADULT BOOKSTORE:

A. An establishment that sells or offers for sale, for any form of consideration, adult material, the gross sale of which represents more than ten percent (10%) of the gross sales of the place or that comprises more than twenty-five percent (25%) of the individual items it displays on the premises as its stock in trade in any one (1) or more of the following categories:

(1) New publications.
(2) Used publications.
(3) New merchandise.
(4) Used merchandise.

B. An "adult bookstore," which contains items such as, but not limited to, books, magazines, seasonal items, i.e. calendars, includes a place with only a portion or section of its area set aside for the display or sale to adults of materials listed in Subsection A(1) and (2) above, except that any place otherwise included within this definition that can prove that it derives not more than ten percent (10%) of its gross income from the sale of materials listed in Subsection A(1) and (2) above shall be exempt from the provisions of this chapter so long as such material is kept out of the reach of customers and is accessed only by employees.

ADULT DANCING ESTABLISHMENT -- A commercial establishment that permits, suffers or allows dancers to display or expose specified anatomical areas. Any establishment on whose premises an employee, who need not be the same employee, displays or exposes specified anatomical areas on more than one (1) day in a thirty-day period shall be deemed an "adult dancing establishment" and shall be required to obtain a license under this chapter.

ADULT ENTERTAINMENT ESTABLISHMENT -- An adult motion-picture theater, a massage establishment, an adult bookstore or an adult dancing establishment.

ADULT MATERIAL -- Any one (1) or more of the following:

A. Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes, video cassette players, DVD players, slides or other visual representations or recordings, lingerie, novelties and devices which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas.

B. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

ADULT MOTION-PICTURE BOOTH -- An enclosed area designed or used for the viewing by one (1) or two (2) persons of motion pictures, films, video cassettes, slides or other photographic reproductions which have as their primary or dominant theme matters depicting, illustrating or relating to specified sexual activities or specified anatomical areas. For the purposes of this chapter, an "adult motion-picture booth" is included within the definition of an "adult motion-picture theater."

ADULT MOTION-PICTURE THEATER -- An enclosed building or a portion or part of an enclosed building, or an open-air theater designed to permit viewing by patrons seated in automobiles, used to present on a regular basis, for any form of consideration, film material which has as its primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by adult persons thereof and includes any hotel or motel, boardinghouse, rooming house or other lodging for transient customers which advertises the presentation of such film material. For the purposes of this chapter, an "adult motion-picture theater" includes both an "adult arcade" and an '"adult motion-picture booth."

ALCOHOLIC BEVERAGE -- All beverages containing more than one percent (1%) alcohol by weight.

COMMERCIAL -- Operated for pecuniary gain, which shall be presumed for any establishment which has received an occupational license. For purposes of this chapter, operation for pecuniary gain shall not depend on actual profit or loss.

COMMERCIAL ESTABLISHMENT -- Any business location, place or business conducting or allowing to be conducted on its premises any commercial activity.

COMMISSION FOR ADULT ENTERTAINMENT-- The Town Board of the Town of Clarkstown.

EMPLOYEE -- A person who works or performs or acts as an independent contractor or agent in a commercial establishment, irrespective of whether said person is paid a salary or wage by the owner or manager of the premises, or whether said person works for tips.

ESTABLISHMENT -- A physical plant or location or the commercial activities or operations being conducted, or both together, as the context of this chapter may require.

INSPECTOR -- An employee of the Rockland County Department of Health or the Building Department or the Zoning Administrators Office or the Fire Inspector of the Town of Clarkstown authorized to inspect premises licensed under this chapter and to take or require the actions authorized by this chapter in case of violations being found on licensed premises, and also to inspect premises seeking to be licensed under this chapter and to require corrections of unsatisfactory conditions found on said premises.

LICENSED PREMISES -- Not only rooms and areas where adult materials regulated under this chapter or adult activities regulated by this chapter are sold, rented, offered, presented or stored or where any form of adult entertainment is presented, but also all other areas within five hundred (500) feet of the room or area where adult materials or adult activities are regulated and over which the licensee has some dominion and control and to which customers or patrons may pass, and shall include all of the floor or land areas embraced within the plan appearing on or attached to the application for the license involved and designated as such on said plan.

MASSAGE ESTABLISHMENT -- A site or premises or portion thereof upon which any person who is an employee, manager, independent contractor, owner or agent of owner, manipulates the superficial tissues of the body of another person with any portion of the hand, foot, leg, arm or elbow, but not including the following: licensed health care facilities, licensed physicians or nurses, licensed massage therapists engaged in the practice of their professions, educational athletic facilities, if the massage is a normal and usual practice in such facilities, or establishments exempted under New York State Statute.

PERSON -- Individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.

PERSONAL ADVERTISING -- Any communication on the part of an employee of an adult entertainment establishment that is designed to encourage a prospective patron to enter said establishment and is performed by repeatedly speaking in a raised tone of voice, by making prominent physical gestures, such as waving or repeatedly pointing, or by holding signs or other written statements. "Personal advertising" shall not include oral or physical references to an adult entertainment establishment by patrons or spectators.

POLICE CHIEF -- The Town of Clarkstown Chief of Police.

PREMISES -- Not only the rooms and areas physically occupied by a commercial establishment or where alcoholic beverages are sold, dispensed, offered, presented or consumed, but also all areas within five hundred (500) feet of the rooms and areas physically occupied by a commercial establishment or where alcoholic beverages are sold, dispensed, offered, presented or consumed over which the owner or management of

the premises has some dominion and control and to which customers or patrons may pass.

PRINCIPAL STOCKHOLDER -- Any individual, partnership or corporation that owns or controls, legally or beneficially, ten percent (10%) or more of a corporation's capital stock, and includes the officers, directors and principal stockholders of a corporation that is a principal stockholder under this chapter, provided that if no stockholder of a corporation owns or controls, legally or beneficially at least ten percent (10%) of the capital stock, all stockholders shall be considered principal stockholders, and further provided that if a corporation is registered with the Securities and Exchange Commission, and its stock is for sale to the general public, it shall not be considered to have any "principal stockholders."

RELIGIOUS INSTITUTION -- A building which is used primarily for religious worship and related religious activities.

RESIDENTIAL ZONING DISTRICT -- When used in the discussion of adult entertainment establishments, includes any area outside the Town of Clarkstown legally zoned in a manner primarily intended for dwellings and any area inside the Town which is included in any of the following zoning districts: R-10, R-15, R-22, R-40, R-80, R-160, RG-1, RG-2, MF-1, MF-2, MF-3 and any zoning district established in the future which is primarily intended for dwellings.

SCHOOL -- An institution of learning for minors, whether public or private or parochial, which offers instruction in those courses of study required under the Education Law of The State of New York, or which is maintained pursuant to standards set by the State Board of Regents or Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

SPECIFIED ANATOMICAL AREAS:

A. 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 CRIMINAL ACT -- A violation of this chapter or any other Local laws or New York State Penal Codes.

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.

STRADDLE DANCE -- Also known as a "lap dance" or "face dance". The use by an employee, whether clothed or not, of any part of his or her body to massage, rub, stroke, knead, caress or fondle the genital or pubic area of a patron while on the premises, or the placing of the genital or pubic area of an employee in contact with the face of a patron while on the premises.

SUBSTANTIALLY ENLARGED -- When used in the discussion of adult entertainment establishments, the increasing of the size of the permitted and/or licensed premises by more than ten percent (10%) of the original permitted and/or licensed premises.

VIOLATION OF THIS CHAPTER -- A violation of any provision of this chapter as found by a jury or any other trier of fact. All violations occurring on the same day prior to an arrest or the issuance of a notice to appear shall be considered as a single violation.

§ 36-5. Penalties for offenses.

Any person who violates any section of this chapter shall be prosecuted and as provided by § 290.36, and additionally shall be subject to suspension or revocation of his license or permit as provided in this chapter or as provided in other sections of the Code of the Town of Clarkstown.

§ 36-6. Immunity from prosecution.

All officers and employees of the Town who are acting within the scope of their authority and shall be immune from prosecution, civil and criminal, for trespassing upon real property.

ARTICLE II, Administration and Licensing

§ 36-7. Responsibility.

Ultimate responsibility for the administration of this chapter is vested in the Town Board of the Town of Clarkstown. The Building Department, only after certification by the Zoning Administrator, is responsible for issuing all licenses. The Police Chief is responsible for verifying information contained on an application. The Building Department is responsible for the inspection of licensed premises and premises applying for a license in order to pass upon the construction and physical configuration of the premises involved. The Fire Inspector is responsible for the inspection of licensed premises and premises applying for a license to ascertain compliance with all fire prevention codes, statutes or ordinances in effect in the Town of Clarkstown. The Rockland County Department of Health is responsible for the inspection of licensed premises and premises applying for a license to ascertain compliance with Rockland County and New York State health codes and applicable state laws and regulations. The Zoning Administrator is responsible for ascertaining compliance with all locational requirements of this chapter, all zoning regulations and all other applicable land use laws.

§ 36-8. Administrative actions.

When a provision of this chapter gives the Building Official, the Police Chief, the Rockland County Department of Health, the Building Department, the Zoning Administrator or the Fire Inspector the authority or duty to act, the authority or duty vests in the Building Official, the Police Chief, the Public Health Officer, the head of the Building Department or the Zoning Administrator or in the Fire Inspector or in any inspector or employee who is given the authority or duty to act in accordance with the administrative procedures of the agency or office concerned.

§ 36-9. License required.

A. Requirement. No adult bookstore, massage establishment, adult motion-picture theater or adult dancing establishment shall be permitted to do business without having first obtained a license under this chapter.

B. Classification.

(1) Licenses referred to in this chapter shall be classified as follows:

(a) Adult bookstore.

(b) Adult motion-picture theater, which shall include adult arcades, places or buildings having adult motion-picture booths, places or buildings having a hall or auditorium for the presentation of film material, places designed to permit viewing by patrons seated in automobiles and places or buildings having a combination of any or all of the foregoing.

(c) Massage establishment.

(d) Adult dancing establishment.

(2) Each application for a license shall state the classification and location for which it is to be issued. A license may be issued in only one (1) classification and for only one (1) location, but this shall not prohibit an applicant or multiple applicants from filing separate applications for licenses in two (2) or more classifications at the same location.

§ 36-10. Denial of license.

A. Noncompliance of premises. No license shall be issued if the Building Official, as a result of investigations by the Building Department, the Zoning Administrator, the Rockland County Department of Health and the Fire Inspector, determines that the proposed licensed premises does not meet each and every one of the general and special requirements for the type of license applied for as established in this chapter or if the proposed licensed premises fails to satisfy all applicable buildings, zoning, health and fire codes, ordinances, statutes or regulations, whether federal, state or local, nor shall any license be issued on false information given in the application for license.

B. Issuance of license where prior license has been revoked or suspended. No license shall be issued to:

(1) Any individual, partnership or corporation whose license under this chapter is revoked, while suspended, or has been convicted of a crime under the Penal Law of the State of New York or any Federal Law.

(2) Any partnership, a partner of which has a license presently suspended or revoked under this chapter or has been convicted of a crime under the Penal Law of the State of New York or any Federal Law.

(3) Any corporation, an officer, director or principal stockholder of which presently has its license under this chapter suspended, revoked or has been convicted of a crime under the Penal Law of the State of New York or any Federal Law.

(4) Any individual who is or was at the time of suspension or revocation, a partner in a partnership or an officer, director or principal stockholder of a corporation, whose license under this chapter is presently suspended, revoked, or has been convicted of a crime under the Penal Law of the State of New York or any Federal Law.

C. Prohibited by law or court order. No license shall be issued when its issuance would violate a statute, ordinance or law, or when an order from a court of law prohibits

the applicant from obtaining an adult entertainment or occupational license in the Town of Clarkstown.

§ 36-11. Application; fee.

A. Required information and documents. Any individual, partnership or corporation desiring to engage in the business of operating an adult bookstore, massage establishment, adult motion-picture theater or adult dancing establishment shall file with the Building Official a sworn application on forms supplied by the Building Official. The application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(a) An individual, his legal name, address, and all aliases used by him.

(b) A partnership, the full name and names of all partners.

(c) A corporation, the exact corporate name, the date of incorporation, evidence that the corporation is in good standing and the names, addresses, and capacity of all the officers, directors and principal stockholders.

(2) If the business is to be conducted under a name other than that of the applicant, the business name and the county of registration under the Business Corporation Law, or other applicable New York State Laws.

(3) Whether the applicant or any of the other individuals listed pursuant to Subsection A(1) have, within the five-year period immediately preceding the date of the application, been convicted of a specified criminal act and, if so, the particular criminal act involved and the place of conviction.

(4) Whether the applicant or any of the other individuals listed pursuant to Subsection A(1) above have had their license under this chapter previously suspended or revoked or have been a partner in a partnership or an officer, director or principal stockholder of a corporation whose license under this chapter has previously been suspended or revoked, including the date of the suspension or revocation.

(5) The classification of the license for which the application is being filed.

(6) Whether the applicant holds any other licenses in the classification for which the application is being filed and, if so, the license number and locations of such licensed premises.

(7) The proposed location of the business.

(8) Consent agreement from the owner of the property.

(9) The names of the employees, if known, or, if presently unknown or there will be no employee, a statement to that effect.

(10) A plan drawn to appropriate scale by a licensed New York State design professional of the proposed licensed premises indicating the areas to be covered by the license, all windows, doors, entrances and exits and the fixed structural features of the proposed licensed premises. The term "fixed structural features" shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths or stands, immovable counters and similar structures that are intended to be permanent.

B. Application fee. Each application shall be accompanied by a nonrefundable application process fee of one thousand dollars ($1000.) payable at the time the application is filed. In the event that an applicant applies for more than one (1) license for the same premises and submits said applications at the same time, he shall submit a nonrefundable fee of one thousand dollars ($1000.) per license application. Fees shall be paid by certified check or bank.

§ 36-12. Investigation.

Upon receipt of an application properly filed with the Building Department and upon payment of the application fee, the Police Chief shall conduct an investigation to verify the information required by § 36-11 of this chapter. The Rockland County Department of Health, the Building Department, the Zoning Administrator and the Fire Inspector shall investigate the proposed licensed premises for compliance with this chapter and other applicable laws and regulations relating to construction, safety, fire protection, zoning and public health. At the conclusion of its investigation, each administrative agency shall endorse on the application the results and findings thereof, recommending either approval or disapproval of the application.

§ 36-13. Issuance, denial and revocation of licenses.

A. Approval and issuance. Upon the completion of the investigation of an application by the Police Chief, the Building Department, the Zoning Administrator and the Fire Inspector, the Building Department shall approve or disapprove the application. If approved, the Building Department shall issue the license upon the payment of the appropriate license fee provided in § 36-21.

B. Disapproval and denial.

(1) If the Police Chief, the Rockland County Department of Health, the Building Department, the Zoning Administrator or the Fire Inspector, or any one of them, recommends disapproval, the disapproval recommendation shall indicate

the reason therefor upon the application or in a separate writing, and the Building Department shall deny the application. If the application is not approved, by all reviewing departments, the Building Department shall notify the applicant of the preliminary disapproval and the reasons therefor. Notification shall be by certified mail to the address on the license application, which shall be considered the correct address.

(2) Notwithstanding any other provision in this chapter, the Building Department shall deny any application for a license in which the applicant has supplied false or untrue information.

(3) The Building Department shall approve or disapprove all applications within ninety (90) days from the date a completed application has been submitted. Upon the expiration of ninety (90) days, the applicant shall be permitted to initiate operating the adult entertainment establishment for which a license was sought, unless the Building Department notifies the applicant of a preliminary denial of the application. A preliminary denial shall specify the reasons for denial and shall be sent to the address on the license application, which shall be considered the correct address.

C. Revocation. Should a license be issued as a result of false information, misrepresentation of fact or mistake of fact, it shall be revoked. If the application is revoked, the Building Department shall notify the licensee of the revocation and the reasons therefor. Notification shall be by certified mail and shall be sent to the address on the license application, which shall be considered the correct address.

D. Appeal. Within fifteen (15) days after the mailing of either a notice of denial or preliminary denial of an application for a license or a notification of the revocation of a license, the applicant or licensee may take an appeal to the Commission for Adult Entertainment as provided in this chapter. If the Commission finds that the application should be approved, it shall so order, and upon payment of the appropriate license fee provided in this chapter, the Building Department shall issue the license. If the Commission finds that the license should not have been revoked, it shall notify the Building Department, who shall reissue the license.

§ 36-14. Limitation on licenses and licensed premises.

There shall be no limitation on the number of licenses issued, but licensed premises shall observe the locational restrictions contained in this chapter. A licensed premises may be owned by the licensee or may be leased by the licensee from a person not a licensee under this chapter, provided that a licensee who is a tenant or lessee may not surrender his tenancy or lease to the owner or lessor if by so doing said owner or lessor will take possession, control and operation of the licensed premises and the business licensed under this chapter, unless the license is transferred as provided in this chapter, and further, provided that a licensee who is the owner of the licensed premises may not lease or otherwise give up possession, control and operation of the licensed premises and the

business licensed under this chapter to any other individual, partnership or corporation, unless the license is transferred as provided in this chapter.

§ 36-15. Display of license; mutilation prohibited.

All licensees licensed under this chapter shall display their licenses in conspicuous places on their licensed premises in a clear, transparent cover or frame. The license shall be available for inspection at all times by the public. No person shall mutilate, cover, obstruct or remove a license so displayed.

§ 36-16. Term of license; renewals.

A. Term. All licenses issued under this chapter, except new licenses, shall be annual licenses with an annual licensee fee as provided herein which shall be paid for on or before October 1 and shall expire on September 30 of the following year. A licensee beginning business after October 1 and before April 1 may obtain a new license upon application therefor and the payment of the appropriate license fee, and such license shall expire on the following September 30. A licensee beginning business after March 31 and before October 1 may obtain a new license upon application therefor and the payment of one-half (1/2) of the appropriate license fee herein required for the annual license, and such license shall expire on September 30 of the same year. The provisions of this subsection shall not affect any other provisions of this chapter.

B. Renewals. A licensee under this chapter shall be entitled to an annual license renewal from year to year, as a matter of course, on or before October 1 by presenting the license for the previous year, or satisfactory evidence of its loss or destruction, to the Building Department and by paying the appropriate annual license fee. A license that is not renewed by October 1 of each year shall be considered delinquent and, in addition to the regular license fee, subject to a delinquency penalty of ten percent (10%) of the license fee for the month of October and any additional month, or fraction thereof, of delinquency until paid, provided that the total delinquency penalty shall not exceed twenty-five percent (25%) of one (1) license fee. All licenses not renewed within thirty (30) days of September 30 will be revoked by the Building Department, unless such license is involved in litigation.

§ 36-17. Transfer of license.

When a licensee shall have made a bona fide sale of the licensed business, the licensee may obtain a transfer of the license issued under this chapter to the purchaser of said business but only if, before the transfer, the application of the purchaser shall be approved by the Building Department in accord with the same procedure provided in this chapter for the issuance of new licenses. Before the issuance of any transfer of license, the transferree shall pay a transfer fee of two hundred fifty dollars ($250.). Licenses issued under this chapter shall not be transferable in any other way than provided in this section.

§ 36-18. New locations; change of name.

A. New location. A licensee may not move the licensed premises to a new location and operate at the new location without first following the same procedure for the issuance of new licenses in this chapter and payment of the application fee of five hundred dollars ($500.). The licensee shall submit to the Building Department an application for a change of location, accompanied by an application fee of five hundred dollars ($500.) at the time the application is filed. The application will contain or have attached to it a plan drawn to appropriate scale by a New York State licensed design professional of the licensed premises at the new location indicating the area to be included in the new licensed premises, all windows, doors, entrances and exits and the fixed structural features of the new licensed premises. If more than one (1) license has been issued to the licensed premises at the old location, the licensee shall state in the application for a change of location which of said licenses are being moved to the proposed new location. Upon approval of the application, there shall be issued to the licensee a license for the new location.

B. Change of name. No licensee may change the name of the business located at his licensed premises without first giving the Building Department thirty (30) days' notice, in writing, by certified mail of such change and without first making payment to the Building Department of a change-of-name fee of ten dollars ($10.).

§ 36-19. Suspension of license.

A. Violations of health, building, zoning or fire provisions. In the event a licensed premises is found in violation of a health, building, zoning or fire provision of any state, county or local regulation, the appropriate agency shall notify the licensee of said violation according to the standard procedures of the agency and shall follow its normal agency procedures for correcting said violations and shall grant the licensee the right to exhaust applicable administrative remedies. Should the licensee fail either to correct the violation or to obtain an administrative reversal of the agency finding, the appropriate agency shall notify the Building Department, who shall forthwith initiate procedures for suspension of the license.

B. Other violations. In the event that a jury or other trier of fact in a court of law finds that a licensee has violated any section of this chapter, whether or not an adjudication of guilt has been entered, the Building Department shall forthwith initiate procedures for suspension of license.

C. Fine or suspension of license.

(1) Procedure. Upon receiving notice that a licensee has violated a provision of this chapter, as provided in Subsections A, B and C above, or any other county, state, federal or other statute, ordinance or resolution, the Building Department shall suspend all licenses issued for the premises where said violation occurred, unless otherwise provided below, and shall notify the licensee(s) of the

suspension action. Notification shall be by certified mail and/or hand delivery and shall be sent to the address on the license application, which shall be considered the correct address.

(2) Periods of suspension. A single violation by a licensee of this chapter shall result in suspension of the adult entertainment license for thirty (30) days. Upon a second violation of this chapter within a period of two (2) years from the date of a prior violation of this chapter, but not including any time during which the license was suspended, the license shall be suspended for the balance of the license term. Upon a third violation of this chapter within a period of two (2) years from the first of three (3) violations, but not including any time during which the license was suspended, the license shall be revoked. All periods of suspension or revocation shall begin on the 10th calendar day from the date the Building Department mails a notice of suspension or revocation to the licensee or on the date the licensee surrenders the license to the Building Department, whichever comes first.

(3) Surrender of license required. If a licensee, after having been mailed notice of the suspension of the license in the manner herein provided, fails to surrender the license to the Building Department within ten (10) days after notice has been received, or fails otherwise to account for the license to the satisfaction of the Building Department, the license shall be considered terminated and of no further force or effect.

C. When a license is suspended for a violation of a health, building, zoning, or fire provision of this Code, as described in Subsection A above, the license shall not be reactivated until said violation is corrected.

§ 36-20. Appeals.

A. Appeals alleging error in the denial, suspension or revocation of a license or permit under this chapter shall be by petition for a formal hearing before the Commission for Adult Entertainment.

B. A notice of appeal shall also be filed with the Building Department within fifteen (15) days of the mailing of a notice of denial, suspension or revocation of a license or permit. Thereafter, and upon payment of a fee of two hundred fifty dollars ($250.) to cover administrative costs, a hearing will be scheduled within sixty (60) days. The Building Department shall give the petitioning party at least ten (10) days written notice of the time and place for the hearing.

§ 36-21. License fees.

A. Levy of fees. There are hereby levied the following annual license fees under this chapter:

(1) Adult bookstore: five hundred dollars ($500.).

(2) Massage establishment: five hundred dollars ($500.).

(3) Adult motion-picture theater, as follows:

(a) Having only adult motion-picture booths: one hundred dollars ($100.) for each booth.

(b) Having only a hall or auditorium: three dollars and fifty cents ($3.50) for each seat or place; or seated in automobiles: three dollars and fifty cents ($3.50) for each speaker or parking space.

(c) Having a combination of any of the foregoing: the license fee applicable to each under this Subsection A(3)(a) and (b).

(4) Adult dancing establishment: one thousand dollars ($1000.).

(5) Two (2) or more licenses in any of the above categories, except massage establishment, to a single premises: one thousand dollars ($1,000.).

B. License fees as regulatory fees. The license fees collected under this chapter are fees paid for the purpose of examination and inspection of licensed premises under this chapter and are declared to be regulatory fees in addition to and not in lieu of any occupational license taxes which are or may be imposed by other sections of the Code of the Town of Clarkstown or may be in the future.

§ 36-22. Records and reports; consent by licensee.

Each licensee shall keep such records and make such reports as may be required by the Building Department, the Police Chief, the Rockland County Department of Health, the Zoning Administrator and the Fire Inspector to implement this chapter and carry out its purpose. By applying for a license under this chapter, an individual, partnership or corporation shall be deemed to have consented to the provisions of this chapter and to the exercise by the Building Department and other interested agencies of the powers given by this chapter and in the manner therein specified.

ARTICLE III, Licensed Premises

§ 36-23. General requirements.

Each licensed premises shall:

A. Conform to all applicable building statutes, codes or ordinances, whether federal, state or county or Town.

B. Conform to all applicable fire statutes, codes or ordinances, whether federal, state or local.

C. Conform to all applicable health statutes, codes or ordinances, whether federal, state or local.

D. Have each and every glass area that faces a public thoroughfare in which casual passersby can see the materials or activity inside the licensed premises covered over by black paint or other opaque covering, provided that this requirement shall not apply if the uncovered glass area exposes to public view only a lobby or anteroom containing no material or activity other than a reception counter or desk and chairs or couches for customers to use while waiting.

E. Each licensed premises shall be deemed to be a "place serving the public" for the purpose of sanitary facilities, provided that when more than one (1) license is issued for a single location, they shall collectively be considered as one (1) licensed premises, if customers may circulate freely throughout the entire area of the licensed premises.

F. Sanitary facilities requirements.

(1) Water supply. The water supply must be adequate, of safe and sanitary quality and from an approved source in accordance with applicable Health codes.

(2) Plumbing. Plumbing shall be sized, installed and maintained in accordance with provisions of the New York State Uniform Fire Protection and Building Code.

(3) Restrooms. All toilet facilities must be of readily cleanable design and kept clean, in good repair and free from objectionable odors. Restrooms must be vented to the outside of any building, be equipped with mechanical exhaust systems and be well lighted. Floors shall be of impervious easily-cleanable materials. Walls shall be smooth, nonabsorbent and easily cleanable.

§ 36-24. Advertising; prohibited acts.

No adult bookstore, massage establishment, adult motion-picture theater or adult dancing establishment shall:

A. Display a sign advertising the presentation of any activity prohibited by a New York State statute, a Town of Clarkstown Local Law, or any applicable municipal or county ordinance.

B. Display a sign capable of leading a reasonable person to believe that the establishment engages in an activity prohibited by a New York State statute, a Town of Clarkstown Local Law, or any applicable municipal ordinance of the Town of Clarkstown or County of Rockland.

C. Erect, install, maintain, alter or operate any sign in violation of any ordinance or Local Law of the Town of Clarkstown.

D. Display a sign in neon or any other media depicting any specified anatomical area or suggesting movements of all or part of the human body in a manner intended to invoke sexual messages.

E. Engage in, encourage or permit any form of personal advertising for the commercial benefit of the establishment or for the commercial benefit of any individual who displays or exhibits specified anatomical areas within the establishment.

§ 36-25. Prohibited use of loudspeakers and sound equipment.

No loudspeakers or sound equipment shall be used to describe or discuss specified anatomical areas or specified sexual activities which can be discerned by the public from public and/or semipublic areas.

§ 36-26. Prohibited acts.

A. No employee, as defined in this chapter, shall engage in specified sexual activities on the licensed premises in the presence of patrons or spectators or for any form of consideration. Notwithstanding any provisions of this chapter to the contrary, it shall not be unlawful for any person or employee of a commercial establishment or adult entertainment establishment to expose specified anatomical areas in connection with the use of approved sanitary facilities commonly known as "restrooms." However, specified anatomical areas shall be exposed or displayed only in connection with excretory functions and may not be filmed or videoed and shown on a screen.

B. It shall be unlawful for any employee, customer or patron of a licensed premises to participate in a straddle dance, as defined in this chapter, on the licensed premises.

C. No employee, while on the licensed premises or within the scope of his employment, shall contract or agree to perform for any form of consideration a straddle dance and actually perform said straddle dance, regardless of where such performance takes place.

D. It shall be unlawful for a customer or patron of a licensed premises to touch with the hands, or any object, an employee's pubic area or genitals, whether said employee is clothed or not.

§ 36-27. Adult bookstores.

In addition to the general requirements contained in this chapter, an adult bookstore shall observe the following special requirements:

A. All materials, devices and novelties shall be so displayed that they cannot be seen by anyone other than customers who have entered the licensed premises.

B. If recordings, visual or aural, are offered for sale or rental and customers may listen to them while on the licensed premises, soundproof booths or rooms shall be available for use by customers who desire to listen or watch, and each such booth or room shall have:

(1) One (1) clear window facing the major portion of the licensed premises, covering not less than one-fourth (1/4) of the wall area into which the window is set, which window shall not be covered or obscured in any manner while the booth or room is in use.

(2) Sufficient chairs or couches to accommodate the expected number of persons who will occupy the booth or room at one (1) time.

(3) The number of persons who may occupy the booth or room at one (1) time clearly stated on or near the door to the booth or room, and only that number of persons shall be permitted.

(4) The door or doors opening into the booth or room incapable of being locked or otherwise fastened so that it or they will freely open from either side.

(5) All areas where a patron or customer is to be positioned visible from a continuous main aisle and not obscured by any curtain, door, wall or other enclosure.

§ 36-28. Massage establishments.

In addition to the general requirements contained in this chapter, a massage establishment shall observe the following special requirements:

A. Any massage establishment seeking a license under this chapter shall present to the Building Department a state license issued pursuant to State law, at the time a license under this chapter is to be issued. No license under this chapter shall be issued in the event that the applicant fails to present said state license.

B. Dressing rooms shall be proportioned to the maximum number of persons who are expected to be in them at one (1) time, excluding attendants and assistants, and separate dressing rooms shall be provided for men and women. Floors shall be of a smooth, impervious material with a nonslip surface and shall be covered at the wall junction for thorough cleaning. Partition walls shall terminate at least six (6) inches above the floor or be placed on continuous raised masonry or concrete bases at least four (4) inches high.

C. One (1) shower shall be provided for each forty (40) men or women or fraction thereof, based upon the maximum number of persons who are expected to be using

shower facilities at one (1) time, and separate shower facilities shall be provided for men and women. Floors and partition walls shall be constructed as required in Subsection B for dressing rooms, and duckboards or wooden gratings may be used on shower floors if duplicate sets are provided and rotated in use.

D. One (1) locker shall be provided for each patron who is expected to be on the licensed premises at one (1) time, which shall be sufficient size to hold clothing and other articles of wearing apparel. Each locker shall be capable of being locked by the patron, with no one else having the key so long as the patron is using the locker, or the locker shall be under the constant attention and supervision of an attendant.

E. Massages of a person by another person who displays or exhibits specified anatomical areas are prohibited.

F. No person shall massage the genitals or pubic area of another person.

§ 36-29. Adult motion-picture theaters.

In addition to the general requirements contained in this chapter, an adult motion-picture theater shall observe the following special requirements:

A. Each adult motion-picture booth shall be open or have a rectangular-shaped entranceway not less than two (2) feet wide nor less than six (6) feet high.

B. Each adult motion-picture booth shall have sufficient seats or couches to accommodate the maximum number of persons expected to use the booth. The maximum number of persons who may occupy a booth shall be stated on or near the entranceway, and only that number shall be permitted to be in a booth at one (1) time.

C. All areas where a patron or customer is to be positioned must be visible from a continuous main aisle and must not be obscured by any curtain, door, wall or other enclosure.

D. In addition to the sanitary facilities required by Article III, § 36-23, there shall be provided within or adjacent to the common corridor, passageway or area in adult motion-picture theaters having adult motion-picture booths adequate lavatories equipped with running water, hand-cleansing soap or detergent and sanitary towels or hand-drying devices; common towels are prohibited.

E. An adult motion-picture theater designed to permit viewing by patrons seated in automobiles shall have the motion-picture screen so situated or the perimeter of the licensed premises so screened that the projected film material may not be seen from any public right-of-way or residential property.

§ 36-30. Adult dancing establishments.

A. In addition to the general requirements contained in this chapter, an adult dancing establishment shall observe the following requirements:

(1) Persons engaged in displaying or exposing specified anatomical areas are prohibited from simulating sexual activity with any patron, spectator, employee or other person on the premises of an adult dancing establishment.

(2) No person in an adult dancing establishment shall engage in the display or exhibition of the human genital or pubic region, the cleavage of the human buttocks or the areola of the human female breast, except while the person is positioned in an entertainment area consisting of a platform or other structure raised eighteen (18) inches above the immediately surrounding area and encompassing an area of at least one hundred (100) square feet, and while the person is positioned at least three (3) feet from any patron or spectator.

(3) No spectator or patron shall be present in the entertainment area defined in Subsection B during the course of any performance involving the display or exhibition of the human genital or pubic region, the cleavage of the human buttocks or the areola of the human female breast.

(4) No person maintaining, owning or operating an adult dancing establishment shall suffer or permit the construction, maintenance or use of areas partitioned or screened from public view that are designed to be occupied or are commonly occupied alone or together by any person or persons on the premises of such establishment for private performances involving the display or exhibition of specified anatomical areas.

(5) (a) No person on the premises of an adult dancing establishment shall be permitted to use or to be present in areas partitioned or screened from public view that are designed to be occupied together or alone by any person or persons on the premises of such establishment for the display or exhibition of specified anatomical areas.

(b) Nothing in this chapter pertaining to adult dancing establishments shall be construed to permit or authorize any acts or activities therein that are prohibited by state or county law.

ARTICLE IV, Special Provisions

§ 36-31. Unlicensed operation.

It shall be unlawful for any person to operate an adult bookstore, adult motion-picture theater, massage establishment or adult dancing establishment unless such business shall

have a currently valid license therefor under this chapter, which license shall not be under suspension or permanently or conditionally revoked.

§ 36-32. Commercial advertising; license required.

Any commercial establishment that displays within one hundred (100) feet of its premises a sign or other form of advertisement capable of leading a reasonable person to believe that said establishment engages in an activity required by this chapter to be licensed shall obtain an adult entertainment license for said activity.

§ 36-33. Proscriptions where alcoholic beverages are sold, dispensed or permitted.

No portion of the human genital or pubic region, the cleavage of the human buttocks or the areola of the human female breast shall be displayed or exposed on a licensed premises where alcoholic beverages are sold, dispensed or permitted.

§ 36-34. Admission of minors; applicability.

It shall be unlawful for a licensee to admit or to permit the admission of minors within a licensed premises. This Adult Entertainment Chapter shall not apply to conduct, the regulation of which has been preempted to the state under applicable New York State Statutes.

§ 36-35. Sale to minors.

It shall be unlawful for any person to sell, barter or give or to offer to sell, barter or give to any minor any service, material, device or thing sold or offered for sale by an adult bookstore, adult motion-picture theater, massage establishment or adult dancing establishment.

§ 36-36. Responsibility of licensees.

No licensee, owner or employer shall permit, suffer or allow violations of this chapter or illegal acts to take place on the licensed premises, if the licensee or employee knows or has reason to know that such violations or illegal acts are taking place.

§ 36-37. Permits for employees in licensed premises; application procedure; suspension.

A. Adult entertainment permit required. Unless specifically excluded below, it shall be unlawful for any person to obtain employment in an establishment licensed under the Adult Entertainment Chapter for any form of consideration or to exhibit or display specified anatomical areas in an adult bookstore, massage establishment, adult motion-picture theater or adult dancing establishment unless and until such person shall have first obtained an adult entertainment permit or temporary permit from the Town of Clarkstown. This section shall not apply to employees engaged exclusively in performing janitorial or maintenance services.

B. Qualifications. Employees of a licensee on a licensed premises shall not be less than eighteen (18) years of age.

C. Application for and issuance of adult entertainment permit.

(1) All present and prospective employees of an adult entertainment establishment shall file an application for an adult entertainment permit with the Building Department of the Town of Clarkstown.

(2) All applications shall be accompanied by a nonrefundable payment of fifty dollars ($50.).

(3) The Building Department shall submit the names of all applicants for an adult entertainment permit who intend to work in an adult dancing establishment or a massage establishment to the Rockland County Department of Health. If, in the thirty (30) days immediately preceding submission of an application, such applicant was a known carrier of any notifiable communicable disease, as defined in applicable New York State Statutes, the Rockland County Department of Health shall notify the Building Department, and no permit shall be issued unless and until the applicant presents a statement from a licensed physician certifying that the applicant is free of all notifiable communicable diseases.

(4) At the time an applicant applies for a permit and completes all requirements for the issuance of a permit, the applicant shall be issued a temporary permit valid for seven (7) days. No later than seven (7) days from the filing of an application and, if applicable, upon presentation of the statement of a licensed physician as required in Subsection C(3) above, the Building Department shall issue a permit.

(5) It shall be the duty of the Building Department to issue the applicant a written permit, which shall be signed by the Building Department and shall bear the name, address, sex, age, signature and photograph of the applicant. The Building Department shall procure the fingerprints and a photograph of the applicant and the name(s) of all entertainment establishments where the applicant is to work or perform and shall keep the same on permanent file in his or her office. The fingerprints, name(s) of establishment(s) and photograph of the applicant shall be furnished by the applicant at the time of filing his application. The Building Department may request an applicant to provide such information as is necessary to effect other purposes of this chapter. Upon delivery of the permit to the applicant, the applicant may begin working on the licensed premises as a permanent employee. There shall be submitted with each application for a permit proof of the applicant's age. Such proof may be provided by production of the applicant's driver's license, passport or a certified copy of his or her birth certificate. If the applicant is unable to furnish any of such documents, a certificate from the public school authorities as to the age of the applicant upon

entering school as required under applicable New York State Statutes, or the school authorities of the state where the applicant enrolled in school shall be submitted. Upon the inability of the applicant to establish a birth date as above provided, then the same may be established in the order of preference as provided under New York State Statute. However, uncertified copies of such documents shall not be accepted. Any applicant who does not possess a driver's license, passport or certified copy of his or her birth certificate may obtain a temporary permit upon completion of all other requirements for an application and submission of a written request to the appropriate authority in his or her state of birth that certified evidence of his or her date of birth be sent to the Building Department.

(6) No permit shall be issued when its issuance would violate a statute, ordinance or law or when an order from a court of law prohibits the applicant from obtaining an adult entertainment permit in the Town of Clarkstown, or to a person who is not a citizen of the United States, or if a non-citizen, to a person who does not possess a valid residency permit authorizing employment in the United States.

(7) Any adult entertainment establishment holding a valid adult entertainment license issued pursuant to this chapter shall provide to its employees current permit application forms approved by the Building Department and to take the photograph of the applicant in a manner and with equipment approved by said Department. No person who cannot meet all the qualifications for employment shall be knowingly hired by a licensee. All licensees shall observe the following:

(a) Require the employee to complete the application form and be photographed within one (1) working day after the time said employee begins to work or perform in said establishment.

(b) Mail a notice, in writing, to the Building Department within one (1) working day after said employee has begun to work or perform at said establishment.

(c) Make the employee available for fingerprinting at a time and location to be determined by an agent appointed by the Building Department, at which time and place said employee shall present to the agent the employee's completed application form and photograph.

(d) On the first Monday of every month, provide the Building Department with a current listing of all employees and their positions.

(e) In exchange for acceptance of the benefits provided by this subsection, waive any and all rights to challenge the permit requirements of this chapter.

(f) Reimburse the Town of Clarkstown for reasonable additional expenses incurred pursuant to this subsection.

D. Revocation. Should a permit be issued as a result of false information, misrepresentations of fact or mistake of fact, it shall be revoked.

E. Expiration and renewal. An adult entertainment permit issued under this chapter shall expire one (1) year from the date of issuance. A permittee under this chapter shall be entitled to a renewal of his or her permit as a matter of course, except when said permit has been suspended or revoked, upon presentation of the previous permit or presentation of an affidavit as to its loss or destruction to the Building Department and payment of a fee of fifty dollars ($50.).

F. Possession of permit required.

(1) It shall be unlawful for an employee, as defined in this chapter, to work, perform or to exhibit or display specified anatomical areas in an adult entertainment establishment without an adult entertainment permit in his immediate possession at all times.

(2) No person charged with violating this section shall be convicted if he produces to the Building Department or Police Chief, within seventy-two (72) hours of detention or incarceration, a valid adult entertainment permit.

(3) Upon receipt of a properly authenticated notification from the Building Department or Police Chief verifying issuance of a valid permit, the Justice Court Clerk is authorized to dismiss such cases at any time prior to the defendant's appearance in court.

G. Violations. Any person who violates the provisions of this section or otherwise fails to secure a permit as required by this section shall be prosecuted and punished in accordance with general law.

H. Suspension of permit.

(1) Procedure. Upon receiving notice that a jury or other trier of fact in a court of law has found that a permittee violated any provision of this chapter, whether or not an adjudication of guilt has been entered, the Building Department shall suspend the permit and shall notify the permittee of his action. Notification shall be by certified mail and shall be sent to the address on the permit application, which shall be considered the correct address.

(2) Periods of suspension. A single violation of this chapter shall result in the suspension of the adult entertainment permit for thirty (30) days. Upon a second violation of this chapter within a period of two (2) years from the date of a prior violation of this chapter, but not including any time during which the permit was

suspended, the permit shall be suspended for ninety (90) days. Upon a third violation of this chapter within a period of two (2) years from the first of three (3) violations, the permit shall be revoked. All periods of suspension shall begin on the 15th day after the date the Building Department mails a notice of suspension to the permittee or on the date the permittee delivers his permit to the Building Department, whichever comes first.

(3) Surrender of permit required. If a permittee, after having been mailed notice of the suspension of his permit in the manner herein provided, fails to surrender his permit to the Building Department within fifteen (15) days, the period of suspension of the permit shall be extended until and shall not expire until a period has elapsed after the date of surrender of the permit or after the date of expiration of the permit, whichever comes first, which is identical in length with the original period of suspension.

I. Appeal. If an application for a permit is denied or if a permit is suspended or revoked, the procedures specified in this chapter shall be available to the applicant or permittee in the manner herein specified. If the applicant or permittee does not appeal the denial, suspension or revocation of a permit, the applicant or permittee shall be deemed to have failed to have exhausted his administrative remedies.

J. Replacement of lost permits. Replacements for lost permits shall be obtained by completing an application as required in this section. All applications for replacement permits shall be accompanied by a fee of ten dollars ($10.).

K. Change of address, name or place of employment. Whenever any person after applying for or receiving an adult entertainment permit shall move from the residential address named in such application or in any permit issued pursuant thereto, or when the name of the permittee is changed by marriage or otherwise, or when the permittee takes on employment or begins to perform at an adult entertainment establishment not indicated in his application, such person shall, within ten (10) days thereafter, notify the Building Department, in writing, of his old and new address or of such former and new names.

ARTICLE V, Locational Requirements

§ 36-38. Prohibited locations.

Notwithstanding any other provision of this chapter or any provision of the Code of the Town of Clarkstown, no permit shall be issued for the establishment or substantial enlargement of an adult bookstore, adult motion-picture theater, massage establishment or adult dancing establishment within one thousand (1,000) feet of another such establishment, within one thousand (1,000) feet of any preexisting religious institution or school, within one thousand (1,000) feet of an area zoned for residential use within the Town of Clarkstown, or within five hundred (500) feet of a commercial establishment that in any manner sells or dispenses alcohol for on-premises consumption. "Substantial

enlargement" shall mean increasing the size of the licensed premises by more than ten percent (10%) of the original licensed premises. The above distance requirements shall be considered locational rather than zoning requirements.

§ 36-39. Conditional use approval.

Before an adult entertainment establishment is approved, the Commission for Adult Entertainment shall determine that the creation of the use is in the public interest and, in making this determination, shall be satisfied that:

A. The location, size, operating and other characteristics of the proposed establishment shall be compatible with and shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

B. No adult entertainment establishment shall be allowed unless it complies with the distance requirements specified in § 36-38 or unless the Commission waives these distance requirements after finding that all appropriate regulations of this chapter will be observed, that the spirit and intent of this chapter will be observed and that the proposed use will not be contrary to the public interest or injurious to nearby properties.

§ 36-40. 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 entertainment 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.

§ 36-41. Nonconforming uses.

A person owning or controlling an adult entertainment establishment which, on the effective date of this chapter, does not comply with the distance requirements of § 36-38 shall be subject to the nonconforming use provisions contained in the zoning regulations of the Code of the Town of Clarkstown.

§ 36-42. Residential zoning.

In the event that an area is zoned residential for the first time or an area is rezoned for residential use and lies within one thousand (1,000) feet of an existing adult entertainment establishment, the adult entertainment establishment shall be considered an existing nonconforming use, as defined in § 36-41 hereof, from the effective date of the rezoning ordinance.

ARTICLE VI, Alcoholic Beverages

§ 36-43. Prohibited displays where alcoholic beverages served.

It shall be unlawful for any employee of a commercial establishment, regardless of whether it is licensed under this chapter, where said employee knows or should have known that alcoholic beverages are on the premises, to exhibit or display the human genital or pubic region, the cleavage of the human buttocks or the areola of the human female breast.

§ 36-44. Straddle dancing prohibited.

A. It shall be unlawful for any employee, customer or patron of a commercial establishment, regardless of whether it is licensed under this chapter, to participate, while on the premises, in a straddle dance, as that term is defined in this chapter, where said employee, customer or patron knows or has reason to know, that alcoholic beverages are sold, dispensed or brought onto the premises for consumption on the premises.

B. No employee, while on the premises or within the scope of his employment, shall contract or agree to perform for any form of consideration a straddle dance and actually perform said straddle dance, regardless of where such performance takes place.

C. It shall be unlawful for a customer or patron of a premises to touch with the hands an employee's pubic area or genitals, whether said employee is clothed or not.

§ 36-45. Restroom use.

Notwithstanding any provisions of this chapter to the contrary, it shall not be unlawful for any person or employee of a commercial establishment or adult entertainment establishment to expose specified anatomical areas in connection with the use of approved sanitary facilities commonly known as "restrooms." However, specified anatomical areas shall be exposed or displayed only in connection with excretory functions.

§ 36-46. Responsibilities of employers.

A. Employers of commercial establishments within the Town of Clarkstown are responsible for the acts of their employees.

B. It shall be unlawful for any person maintaining or operating a commercial establishment, regardless of whether it is licensed under this chapter, where said person knows or has reason to know that alcoholic beverages are on the premises of the commercial establishment, to knowingly, or with reason to know, permit, suffer or allow any employee on the premises to perform or participate in a straddle dance, as broadly defined by this chapter, or to exhibit or display the human genital or pubic region, the cleavage of the human buttocks or the areola of the human female breast.

C. Any establishment which has received an occupational license to operate commercially is presumed to be a commercial establishment.

§ 36-47. Evidence.

A. In all actions, civil or criminal, for violation of this chapter, testimonial evidence that a beverage was an alcoholic beverage, beer or wine may be offered by any person who, by experience in the past in handling or using alcoholic beverages, beer or wine, or who, by taste, smell or drinking of such liquids, has knowledge of the presence of the alcoholic content thereof or the intoxicating effect thereof.

B. The presence of alcoholic content of any beverage, beer or wine may be shown by hydrometer or gravity test made in or away from the presence of the fact finder by any person who has knowledge of the use of said instrument, but the production of such evidence is optional.

§36-48. Pre-existing Adult Entertainment Uses.

Uses in existence on the effective date of this chapter shall be deemed pre-existing non-conforming uses. Any additions or alterations to such existing premises shall conform to this chapter. Additionally, any such pre-existing uses must conform to the annual licensing requirements of this chapter.

This local law shall become effective immediately upon filing with the Secretary of State.

(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. 10 of 20 02 of the (County)(City)(Town)(Village) of CLARKSTOWN was duly passed by the TOWN BOARD on September 10, 20 02, 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
(Name of Legislative Body)

disapproval) by the ---------- and was deemed duly adopted on ---------- 20----,
(Elective Chief Executive Officer)*
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
(Name of Legislative Body)

disapproval) by the ---------- on ---------- 20----. Such local law was submitted
(Elective Chief Executive Officer)*
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
(Name of Legislative Body)

disapproval) by the ---------- on ---------- 20---. Such local law was subject to
(Elective Chief Executive Officer)*
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.

Patricia Sheridan

Clerk ~~of the County Legislature, City, Town Clerk~~
or officer designated by local legislative body
Patricia Sheridan

(Seal)

Date: September 12, 2002

(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 ROCKLAND

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

John Costa, Town Attorney
Title

~~County~~
~~City~~
Town
~~Village~~ of CLARKSTOWN

Date: September 12, 2002