

**INTRODUCTORY LOCAL LAW #1 OF 2012
A LOCAL LAW IMPOSING A SIX MONTH MORATORIUM ON PERMITS
AND APPROVALS FOR
ADULT-ORIENTED BUSINESSES**

BE IT ENACTED by the Town Board of the Town of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as “A Local Law Imposing a Six Month Moratorium on Permits and Approvals for Adult-Oriented Businesses”.

SECTION 2 – LEGISLATIVE FINDINGS, PURPOSE AND AUTHORITY

A. The Town Board of the Town of Newburgh hereby finds that:

(1) the Town does not currently regulate or impose operational requirements related to the establishment and operation of adult-oriented businesses within the Town;

(2) adult-oriented businesses appear to be unavoidably associated with unlawful, unhealthy and detrimental effects secondary to the constitutionally protected speech activities of such businesses;

(3) included among the secondary effects which appear to be associated with adult-oriented businesses are: negatively affecting economic development and revitalization; a tendency to decrease property values, thereby limiting tax revenues; impeding economic activity; encouraging criminal activity, particularly when such businesses are located in concentration; proliferating sex-related criminal enterprises; damaging neighborhood character and the well-being of residents including children; and increasing the cost of maintaining and patrolling areas in which such businesses are located;

(4) further study of the secondary effects of adult-oriented businesses is necessary as a precursor to possibly amending the Zoning Code of the Town of Newburgh and its associated maps and tables to address such effects and is recommended by the adopted Town of Newburgh Comprehensive Plan Update;

(5) the enactment of the moratorium period is necessary to ensure that any possible amendment to the Zoning Code and its associated maps and tables comport with the rights of adult-oriented businesses and their patrons to engage in all constitutionally protected speech activities inherent in such businesses, while protecting against harmful secondary effects to the greatest extent possible consistent with law;

(6) it is desirable to immediately forbid the issuance of any use permit, variance, building permit, business license or other applicable entitlement for the expansion of an existing, or the establishment of a new, adult-oriented business, except within a specified zoning district as hereinafter provided; and

(7) that it is necessary to adopt this moratorium in order to protect the public health, safety, and welfare.

B. The intent of the Town Board in enacting this Local Law is to limit the harmful secondary effects of adult-oriented businesses so that the Board may, in a prompt and orderly fashion, complete its consideration of the studies of such effects conducted by other municipalities and agencies, such studies having been submitted to the Board by the Attorney for the Town on January 31, 2012 (copies of such studies and the Attorney for the Town's covering memorandum are annexed to this Local Law as Appendix "A"), and, if determined by the Town Board to be warranted upon completion of its consideration of the studies, to prepare a possible amendment to the Zoning Code and its associated maps and tables for the purposes of mitigating such effects. The intent of the Board is not to limit constitutionally protected expressive activity and, to this end, this Local Law is not intended to prohibit the continued operation of currently existing adult-oriented businesses or prevent the establishment of new adult-oriented businesses in compliance with the content-neutral, time, place and manner restrictions established by this enactment.

C. This chapter is enacted under the authority of the New York State Constitution, Article IX, § 2; the New York State Municipal Home Rule Law, Article 2; the relevant provisions of the Town Law for the State of New York; and the general police power vested with the Town of Newburgh to ensure the health, safety and welfare of all the residents and all the property owners within the Town of Newburgh.

SECTION 3 - DEFINITIONS

As used in this Local Law, the following terms shall be defined as follows

A. **Adult-Oriented Business:** Use of a building, structure, or property for a business that has adult materials in a section or segment devoted to such materials or as a substantial or significant portion of its stock in trade for the purposes of sale, rental, lease, trade, gift or display of such adult materials. For the purposes of this law adult-oriented businesses shall also mean and include any restaurant, nightclub, bar, tavern, eating and drinking place or establishment, arcade, theater, video store, motel, hotel, or any other establishment that regularly features, for economic gain or other consideration, entertainment in any form which is characterized by nudity or the depiction or display of specified sexual activities or adult materials and any massage establishment.

B. **Adult Materials:** Adult materials shall include but not be limited to any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, DVD's, video cassettes, slides; or other

visual representations, mechanical devices, instruments, clothing or any other writings, materials or accessories which are distinguished or characterized by their emphasis on matter depicted described or related to specified sexual activities or specified anatomical areas as defined herein, or an establishment with a segment or section exclusively devoted to the sale, lease, gift, trade, display of such materials.

C. Specified Sexual Activities:

- (1) Fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast.
- (2) Sex acts, normal or deviant, actual or simulated, including intercourse, oral copulation or sodomy.
- (3) Acts of human masturbation, actual or simulated.
- (4) Excretory function as part of or in connection with any of the activities set forth in (1), (2) or (3) above.

D. Specified Anatomical Areas:

- (1) Less than completely or opaquely covered:
 - (a) Human genitals;
 - (b) Pubic Region;
 - (c) Buttock; or
 - (d) Female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

E. Substantial or Significant Portion: includes a place with only a portion or section of its area set aside for the display, rental, sale of adult materials or an adult oriented business defined above in this section, except that any place otherwise included in this section that can prove that not more than then (10) percent of its square footage (of space of the interior which is open to the general public) is devoted to display of or sale of materials listed for the foregoing definitions shall be exempt from the provisions of this article so long as such material is kept out of the reach and visibility of minors.

F. Nudity: Nudity means the showing of the human male or female genitals, public areas, buttocks, or anus, any part of the nipple or any part of a female breast below a point immediately above the top of the areola with less than a fully opaque covering.

G. **Massage Establishment:** Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. The definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist, occupational therapist, or duly licensed massage therapist, or barber shops, beauty salons or nail salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquet ball courts, ice skating rinks, or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

SECTION 4 - SCOPE OF TEMPORARY MORATORIUM

A. The moratorium period will commence on the date on which Local Law #1 of 2012 is filed in the Office of the New York State Secretary of State and shall end six months from such date of filing.

B. The Town Clerk shall post in a conspicuous location open to the public at the Town of Newburgh, Town Hall, located at 1496 Route 300, Newburgh, New York 12550, the commencement and ending dates of the moratorium period, post such dates on the Town's website and shall provide such information to any member of the public requesting same.

C. During the moratorium period, no applications will be accepted or processed nor a permit or approval issued for a preliminary or final site plan or amended site plan, special use permit, area or use variance, interpretation, building permit, certificate of occupancy or other applicable entitlement which would authorize the expansion or alteration of an adult-oriented business existing and operating within the Town of Newburgh as of the effective date of Local Law #1 of 2012 nor which would authorize the establishment of a new adult-oriented business which was not existing and operating as of the date of enactment of Local Law #1 of 2012 except as provided in Subsection D below.

D. During the moratorium period, applications will be accepted and processed and permits or approvals may be issued, for a preliminary or final site plan, amended site plan, special use permit, area or use variance, interpretation, building permit, certificate of occupancy or other applicable entitlement for an adult-oriented business, provided that such proposed adult-oriented business is:

- (1) situated within the B, IB or I Districts as shown on the August 19, 1974, Zoning Map, Town of Newburgh, last amended July 20, 2009, which accompanies and which, with all explanatory matter thereon, is hereby adopted and made a part of this local law. The exact location of each zoning district boundary is recorded on the Official Zoning Map in the office of the Town Clerk in accordance with § 264 of Town Law and § 185-5 of the Town's Zoning Law; and

(2) not located within 1,000 feet of any boundaries of the RR, AR, R1, R2 or R3 residential zoning districts, church, synagogue, mosque or other place of worship, school, nursery or day-care center, public or semi public park, playground or recreational facility; and

(3) is a permitted use or use subject to site plan review within the applicable Zoning District.

For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the adult oriented business is or will be located to the nearest property line of any land use, land use district, or zone described in subsection D(2) of this section, or to the nearest point of the building or structure or part thereof occupied or leased by the adult oriented business if less than the entire structure is occupied by or proposed to be occupied by an adult oriented business.

SECTION 5 - JUDICIAL REVIEW

Those wishing to challenge the validity of this Article are advised that judicial review of same is available under, *inter alia*, 42 U.S.C. §1983 and Article 78 of the New York Civil Practice Law and Rules.

SECTION 6 - SUPERCESSION

This Local Law restricts the authority of the Planning Board, Zoning Board of Appeals, and Code Compliance Supervisor/Building Inspector to review and approve site plans, grant special use permits, grant use and/or area variances, make interpretations, and issue any permits, certificates or approvals with respect to adult oriented uses. Pursuant to Section 10 (1)ii(a) 11, 12 and 14 and (d)3, and Section 10(2) of the Municipal Home Rule Law of the State of New York, this local laws is intended to supercede the provisions contained in Article 16 of the Town Law of the State of New York which require action within specified time periods by the Planning Board and/or the Zoning Board of Appeals on special use permit and/or site plan applications for residential uses elsewhere prohibited by this local law and which may also require related actions by the Zoning Board of Appeals regarding variance applications. This local law also supercedes Town Law Sections 274-a and 274-b as those sections apply to the approval of special use permits and/or site plan approval otherwise prohibited herein. Additionally, this local law supercedes Town Law Sections 267, 267-a, 267-b and 267-c as those sections apply to an appeal and/or variance applications for a special use permit or site plan elsewhere prohibited by this moratorium that may be filed with the Zoning Board of Appeals in connection with any of the provisions of the Zoning Law of the Town of Newburgh including, without limitation, the provisions of this local law.

Pursuant to Section 10(1)ii(a) 11, 12 and 14 and (d)3 and Section 10(2) of the Municipal Home Rule Law of the State of New York, this local law is intended to supercede the provisions contained in Article 8, Section 8-0109, subsections (4) and (5) of the NYS

Environmental Conservation Law and the regulations thereunder (6 NYCRR Part 617) to the extent that such provisions require that the Planning Board or any lead agency determine the environmental significance of an application for al special use or site plan approval otherwise prohibited herein within certain specified time frames.

Pursuant to Section 10(1)ii(a) 11, 12 and 14 and (d)3 and Section 10(2) of the Municipal Home Rule Law of the State of New York, this local law is intended to supercede the various provisions of the Zoning Law and Building Construction Code of the Town of Newburgh to the extent that such provisions require that the Planning Board, Code Compliance Department, or Zoning Board of Appeals of the Town of Newburgh receive, review and decide special use permit, site plan, building permit or certificate of occupancy applications otherwise prohibited herein within specified time frames. The relevant sections of the Zoning Law, Chapter 185 of the Municipal Code of the Town of Newburgh, that are superceded by this local law regarding such site plan applications include the following: Articles VII (Enforcement and Penalties), VIII (Board of Appeals), IX (Site Plan Review) and XII (Master Plan) . Additionally, Article III (Building Permits and Certificates of Occupancy) of Chapter 71, Building Construction, of the Municipal Code of the Town of Newburgh, likewise, is superceded to the extent that such Article requires receipt, review, processing and deciding building permit and certificate of occupancy applications otherwise prohibited herein within certain specified time frames.

SECTION 7 - VALIDITY

If any clause, sentence, paragraph, word, section or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 8 – PENALTIES

A. After the fifth day following written notice served by personal service by the Building and Code Enforcement Officer to the effect that an adult-oriented business is operating or has been established in violation of any of the provisions of this local law, for each and every such violation any person who commits, takes part in, or assists in such violation, or who maintains any building or premises in which any such violation shall exist, shall be guilty of an offense. Upon conviction thereof, the person violating the same shall be subject to a fine of not more than \$350 or imprisonment for not more than six months, or both, for conviction of a first offense; a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both, for conviction of a second offense committed within a period of five years of the committing of the first offense; and a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both, for conviction of a third or subsequent offense, all of which were committed within a period of five years. Each week's continued violation shall constitute a separate additional violation. No notice shall be required for a violation

which is a continued or a recurring violation for which an original notice has already been given.

B. A person who commits, takes part or assists in violation of any provision of this local law or who maintains a building or premises in which any such violation shall exist shall be subject to monetary civil penalties not exceeding \$350 for the first violation; not less than \$350 nor more than \$700 for the second violation occurring within a period of five years; and not less than \$700 nor more than \$1,000 for a third or subsequent violation occurring within a period of five years. Each week's continued violation shall constitute a separate additional violation. No notice shall be required for a violation which is a continued or a recurring violation for which an original notice has already been given.

C. The Justice Court of the Town of Newburgh shall have original and trial jurisdiction over summonses and appearance tickets served and informations filed charging violations of this local law. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors, and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation. No notice shall be required for a violation which is a continued or a recurring violation for which an original notice has already been given.

D. In case any adult-oriented business is operating or has been established in violation of this local law or any regulations made under authority conferred hereby, the Town Board or, with its approval, the Building and Code Enforcement Officer or other proper official, in addition to other remedies, may institute any appropriate action or proceedings to prevent, correct or abate such violation.

SECTION 9 - EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

APPENDIX "A"