

**INTRODUCTORY LOCAL LAW NO. 7 OF 2012
A LOCAL LAW AMENDING CHAPTER 185 ENTITLED
“ZONING”
OF THE CODE OF THE TOWN OF NEWBURGH
TO PROVIDE FOR THE REGULATION OF
ADULT-ORIENTED BUSINESSES**

SECTION 1 - TITLE.

This Local Law shall be referred to as “A Local Law Amending Chapter 185 Entitled “Zoning” of the Code of the Town of Newburgh to Provide for the Regulation of Adult-Oriented Businesses.”

SECTION 2 - AMENDMENT OF CHAPTER 185 - SECTION 185-10.

A new subsection 185-10D entitled “Adult-oriented businesses is hereby added to Section 185-10 entitled “Utilization of Use Table” of Chapter 185 entitled “Zoning” of the Code of the Town of Newburgh, Orange County, New York to read as follows:

“D. Adult-oriented businesses. A use meeting the definition of “adult-oriented business” contained in §185-67 shall additionally be subject to the supplementary regulations contained in Article XVI of this Chapter.”

SECTION 3 - AMENDMENT OF CHAPTER 185 – ADDITION OF NEW ARTICLE XVI.

A new Article XVI entitled “Adult-Oriented Businesses” is hereby added to Chapter 185 entitled “Zoning” of the Code of the Town of Newburgh, Orange County, New York to read as follows:

**“ARTICLE XVI
Adult-Oriented Businesses**

§185-65. Legislative Findings. The Town Board of the Town of Newburgh is familiar with the Town, the location of adult-oriented business within the Town and the issues raised by such business in the Town and throughout the country. Based on the Board’s local knowledge, the input of Town residents and business owners obtained during a public input session held on August 14, 2012 2004 and evidence and studies concerning the possible impacts or “secondary effects” of adult-oriented businesses on the surrounding community, as presented in judicial decisions such as, but not limited to, *City of Erie v. Pap's A.M. d/b/a "Kandyland"*, 529 U.S. 277 (2000); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976); *Stringfellow's of New York, Ltd. v. City of New York*, 671 N.Y.S.2d 406 (1998); *Town of Islip v. Caviglia*, 73 N.Y. 2d 544 (1989) and *Singer v. Town of East Hartford*, 736 F.Supp. 430 (D. Conn.1989), *aff'd* 901 F.2d 297 (2d Cir. 1990) (affirming judgment on basis of district court opinion); and on studies conducted by other communities including, but not limited to, *REPORT*

ON THE SECONDARY EFFECTS OF THE CONCENTRATION OF ADULT USE ESTABLISHMENTS IN THE TIMES SQUARE AREA; STUDY OF POLICE ACTIVITY MILFORD: TESTING FOR NEGATIVE SECONDARY EFFECTS OF ADULT BUSINESS; ADULT BUSINESS – STUDY (PLANNING DEPARTMENT, CITY OF PHOENIX); ADULT USE STUDY (NEWPORT NEWS DEPARTMENT OF PLANNING AND DEVELOPMENT); RURAL HOT SPOTS: THE CASE OF ADULT BUSINESSES (BY RICHARD McCLEARY); ADULT ENTERTAINMENT BUSINESSES IN INDIANAPOLIS AN ANALYSIS, REPORT ON ADULT ORIENTED BUSINESSES IN AUSTIN (OFFICE OF LAND DEVELOPMENT SERVICES); SURVEY OF FLORIDA APPRAISERS: EFFECT OF LAND USES ON MARKET VALUES; ADULT ENTERTAINMENT STUDY (DEPARTMENT OF CITY PLANNING CITY OF NEW YORK); EFFECTS OF ADULT ENTERTAINMENT BUSINESSES ON RESIDENTIAL NEIGHBORHOODS (OFFICE OF THE CITY ATTORNEY, CITY OF EL PASO); THE SECONDARY EFFECTS DOCTRINE SINCE ALAMEDA: AN EMPIRICAL RE-EXAMINATION OF THE JUSTIFICATION FOR LAWS LIMITING FIRST AMENDMENT PROTECTION (BY CHRISTOPHER SEAMAN and DANIEL LINZAND); and SURVEY OF TEXAS APPRAISERS SECONDARY EFFECTS OF SEXUALLY-ORIENTED BUSINESSES ON MARKET VALUES, the Board finds:

1. Adult-oriented businesses are unavoidably associated with unlawful, unhealthy and detrimental activities ancillary to the constitutionally protected speech activities of such businesses.
2. Employees of adult-oriented businesses engage in or may be requested to engage in sexual behavior as a result of the type of business by which they are employed.
3. People present in the vicinity of an adult-oriented business are often assumed by third parties to be engaged in, or amenable to, the types of unlawful, unhealthy and detrimental activities ancillary to such businesses. As a result, such persons are subjected to unwanted advances or attention by persons frequenting such adult-oriented business.
4. People who choose not to frequent adult-oriented businesses tend to avoid areas in which such businesses locate. As a result, areas in which adult-oriented businesses and massage establishments locate often become “dead zones”, *i.e.*, areas in which owners of non-adult-oriented businesses tend to choose not to locate in the first instance, or choose to migrate away from, because of diminished pedestrian traffic due to the presence of adult-oriented businesses and massage establishments.
5. Because non-adult-oriented businesses tend not to locate near, or migrate away from, adult-oriented businesses, the presence of one such business tends to attract other adult-oriented businesses into the dead zone, thereby increasing the pace and intensity of the unlawful, unhealthy and detrimental activities unavoidably associated with such businesses and contributing to the blighting of the area surrounding such businesses. The smaller the municipality, including the Town, the larger the effects of a dead zone because such a zone would encompass a larger proportion of the municipality’s businesses as opposed to a similar zone situated in a larger municipality.
6. Due to the small geographical area of the Town of Newburgh, the probability increases that adult-oriented businesses will have substantial effects upon residential areas within the

Town. Further, smaller municipalities, including the Town, are more likely to have fewer days and hours of commercial activity than a larger municipality. This increases the likelihood that an adult-oriented business or massage establishment will have a larger effect on the area in which it is located during the off-hours of non-adult-oriented businesses.

7. Sexual acts, including masturbation, occur at adult-oriented businesses, especially those which provide enclosed rooms, booths or other cubicles for viewing of films, videos or live sex shows, thereby creating unhealthy and unsanitary conditions within the premises of such businesses.

8. Sexual activity is often a secondary effect of the constitutionally protected speech activities presented at adult-oriented businesses, thereby creating unhealthy and unsanitary conditions.

9. Some patrons frequent adult-oriented businesses for the purpose of engaging in specified sexual activities within the premises of such businesses, thereby creating unhealthy and unsanitary conditions within the premises of such businesses as demonstrated by online reports of patrons of adult-oriented businesses located within the Hudson Valley stating that some employees such businesses provide "extras", *i.e.*, engage in specified sexual activities with patrons in exchange for monetary compensation.

10. Communicable diseases may be spread by specified sexual activities, including, but not limited to, transmission of the human immunodeficiency virus ("HIV") and the contraction of the acquired immunodeficiency syndrome ("AIDS"), hepatitis B and venereal diseases.

11. Venereal diseases, HIV, AIDS and hepatitis B, as well as other communicable diseases spread by specified sexual activities, are serious health concerns in the local community.

12. Sanitary conditions in some adult-oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities engaged in by some patrons of such businesses and the failure of some business owners and operators to self-regulate those activities and maintain the business premises.

13. Numerous studies and reports have determined that semen and other bodily fluids are found in certain areas of adult-oriented businesses, particularly where persons view, in enclosed rooms, booths or other cubicles, adult materials or entertainments characterized by an emphasis on nudity or specified sexual activities or specified anatomical areas.

14. Adult-oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial governmental concerns raised by the various findings herein while permitting patrons and owners of such businesses to engage in constitutionally-protected speech activities.

15. The unregulated presence of adult-oriented businesses is associated with declining property values.

16. The unregulated presence of adult-oriented businesses is associated with increased crime rates against both property and persons.

17. Children and teenagers are more likely to be exposed to graphic sexual images because of the unregulated presence of adult-oriented businesses.

18. Because persons patronizing adult-oriented businesses often travel a significant distance to such businesses these persons tend to not share with Town residents the concerns for the quality of life in the Town. Consequently, persons from outside the Town patronizing such businesses tend to place an inordinate strain on Town services and facilities such as parking, usage of Town streets, and trash collection and removal.

19. The unregulated presence of adult-oriented businesses tends to alter the character of the community in which they are located and quality of life for the residents of such community. The Town is presently in the process of addressing legislative and administrative Action Items recommended by the adoption of the Town's Comprehensive Plan Update in a deliberate process in an effort to alter and improve both the character and quality of life in the Town. The alterations to character and quality of life associated with the unregulated presence of adult-oriented businesses are at odds with the goals of the alteration and improvement the Town is undergoing and, consequently, the failure to properly regulate adult-oriented businesses and massage establishments could undermine this process.

20. The Town's intent in regulating adult-oriented businesses is not to restrict constitutionally-protected speech activities but rather to provide constitutionally sufficient alternate avenues for persons to engage in such activities in a manner consistent with the constitutions of the United States and New York State while addressing the unlawful, unhealthy and detrimental activities ancillary to such speech and ameliorating these secondary effects on the peace, good order, commercial viability and safety of Town residents and non-adult-oriented businesses.

21. The Town has granted a franchise to both Verizon and Time-Warner for the provision of cable television and these franchisees additionally provide high-speed internet services within the Town and such access is available to all Town residents. This universal availability of cable television and high-speed internet access throughout the Town provides additional alternate avenues for residents to view constitutionally-protected adult materials and adult entertainment if they exercise their right to do so.

22. The regulations set forth in this local law are the least intrusive method available to ameliorate the negative secondary effects of adult-oriented businesses within the Town without infringing on constitutionally-protected speech activities. The Town considered imposing separation restrictions from cemeteries and establishments serving alcoholic beverages, but declined to do so in order to ensure the availability of a sufficient number of commercially-viable sites for the location of adult-oriented businesses within the Town. Similarly, the Town considered, but declined, to implement a prohibition on nudity in live adult entertainment offered by adult-oriented businesses as it was determined that such a restriction would impose an unjustified burden on the underlying expressive activity. The Town also rejected creating any type of licensing scheme for adult-oriented businesses as the Board believed doing so might create, either on facially or as applied, an unconstitutional system of prior restraint. Finally, the

Board rejected dedicating additional police resources toward the more aggressive enforcement of existing penal and public nuisance laws, because of both budgetary limitations and to avoid possibly chilling the free-speech activities of law-abiding adult-business owners and their patrons.

23. The studies conducted by other communities that were reviewed by the Board, particularly, but not limited to, the 1994 study prepared by New York City, are applicable to the particular circumstances and experiences of the Town regarding adult-oriented businesses. Although most of the studies reviewed by the Board were conducted by larger municipalities, the studies themselves often focused their factual sampling and analysis on small, discrete areas of the municipality rather than the whole municipality. The relatively small size of the “study areas” in which secondary effects were found to occur is far more analogous to the geographic area of the Town. As such, the experiences and conclusions documented in the secondary effects studies are valid predictors of the effects of adult-oriented businesses within the Town. In order to screen the quality of secondary effects studies considered, the Board reviewed and relied on only those studies that were based on collected data, *e.g.*, crime statistics, property value assessments, etc., rather than on anecdotal statements.

24. The separation of adult-oriented businesses from sensitive sites and the boundaries of residential zoning distances mandated by this local law, and the requirement that such businesses locate in non-residential districts, will ameliorate the negative secondary effects of such businesses by creating a spatial buffer between those portions of the Town most subject to the harms of increased crime, decreased property values, influx of patrons from outside of the Town, late night traffic and parking congestion, noise, unhygienic conditions, and the likely exposure of children and teenagers nudity, specified anatomical areas or specified sexual activities.

25. This local law provides for alternative sites on which adult-oriented business may locate and these sites are both physically and legally available, within the Town’s borders. These alternate sites are part of an actual business real estate market within the Town. The local law makes available for adult-oriented businesses approximately forty-one (41%) percent of the total area of the Town open for commercial activity. Applying a 500 foot separation requirement between adult-oriented businesses in addition to separation requirements between adult-oriented businesses and residential zoning district boundaries and sensitive sites, approximately thirty-nine (39%) percent of the land area of the IB Zoning District and 40% of the land area in the B Zoning District outside the latter separation requirements remains available for adult-oriented businesses. These alternate sites have been identified and reviewed and are accessible to the public, have some likelihood of being available for use by adult-oriented businesses, and are suitable for commercial activity as they have access to the necessary public infrastructure required to support a commercial activity, *e.g.*, water, sewage and electrical service, as well as a reasonable ability for patrons to lawfully ingress and egress such sites.

26. Massage establishments are associated with many of the same unavoidably unlawful, unhealthy and detrimental activities associated with adult-oriented business that offer adult materials or adult entertainment.

27. The general welfare, health, comfort and safety of the citizens of the Town will be promoted by the enactment of this section and it is, therefore, necessary to do so.

28. The intent of the Town Board in enacting this Local Law is to ameliorate the negative secondary effects of adult-oriented businesses. 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 establishment or operation of adult-oriented businesses in compliance with the content-neutral, time, place and manner restrictions established by this enactment.

§185-66. Legislative Purpose. The primary purposes of this Article are as follows:

1. To preserve the character and quality of the life of the Town's neighborhoods and business and maintain the viability of the Town's alteration and improvement pursuant to the Comprehensive Plan Update;

2. To ameliorate the documented adverse secondary effects that are ancillary to adult-oriented businesses as set forth in §185-65 including, but not limited to: decreased property values; attraction of transients; parking and traffic problems; increased crimes against persons and property; loss of business for surrounding non-adult-oriented businesses; and deterioration of neighborhoods;

3. To maintain property values;

4. To prevent crime;

5. To safeguard the continued commercial viability of currently existing non-adult-oriented businesses;

6. To insure the continued commercial viability of the Town as a location for new non-adult-oriented businesses;

7. To restrict minors' inadvertent exposure to nudity, specified anatomical areas or specified sexual activities;

8. To preserve and protect public hygiene, health and sanitation; and

9. To maintain the general welfare, health, comfort and safety of Town residents and businesses.

So as to effectuate these purposes, and based upon the findings set forth in §185-65 such uses shall be subject to the standards and regulations set forth in this section.

§185-67. Definitions: As used in this Article, the enumerated terms shall be defined as follows:

ADULT-ORIENTED BUSINESS - The term "adult-oriented business" shall mean a use of a building, structure, or property for a business which includes the regular offering, for economic gain or other consideration, of adult materials or adult entertainment 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 or adult entertainment. For the purposes of this law adult-oriented businesses shall include any restaurant, nightclub, bar, tavern, eating and drinking place or

establishment, arcade, theater, video store, motel, hotel, or any other establishment that regularly offers, for economic gain or other consideration, adult entertainment, a retail store that offers adult materials as hereinafter defined and any massage establishment.

ADULT MATERIALS -

(a) The term "adult materials" shall include any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, digital video discs, 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 nudity, specified sexual activities or specified anatomical areas as defined herein.

(b) Exceptions. An item otherwise falling within the definition set forth in (a) shall not be considered to be within such definition if:

- (i) the item is printed matter that does not contain at least one visual depiction of nudity or specified sexual activities or specified anatomical areas; or
- (ii) the item is printed matter containing at least one visual depiction of nudity or specified sexual activities or specified anatomical areas and:
 - (a) the item, when viewed as a whole, presents such depiction for educational or scholarly purposes; and
 - (b) the item is offered for sale by an establishment in which not more than ten (10) percent of the establishment's total interior square footage which is open to the general public is devoted to the sale, rental, lease, trade, gift or display of adult materials.

ADULT ENTERTAINMENT –

(a) The term "adult entertainment" shall include all entertainment in any live or recorded form or format which includes nudity or the depiction or display of specified sexual activities, specified anatomical areas or adult materials, as well as employees of any establishment who, as part of their employment duties, are required to wear costumes or uniforms or engage in live performances, in addition to their non-performance employment duties, where, during any portion of the discharge of their employment duties, such employees are in a state of nudity or depict or describe specified sexual activities or specified anatomical areas as defined herein.

(b) Exceptions. Any entertainment otherwise falling within the definition set forth in (a) shall not be considered to be within such definition if:

- (i) the entertainment does not include at least one visual depiction of nudity or specified sexual activities or specified anatomical areas; or

- (ii) the entertainment includes at least one visual depiction of nudity or specified sexual activities or specified anatomical areas and:
 - (a) the entertainment, when viewed as a whole, presents such depiction for educational or scholarly purposes; and
 - (b) such depiction constitutes less than ten (10) percent of total duration of the entertainment.

EMPLOYEE – The term “employee” shall mean any person who provides services or any other type of labor, including live performances, on the premises of an adult-oriented business, as such term is defined herein, regardless of the nature of the legal relationship between such person and the adult-oriented business in which such services or labor occur and whether such services or labor are performed for economic gain or other consideration.

FINANCIAL EXPENDITURES - The term “financial expenditures” shall mean any improvements or other capital outlay made by an owner of an adult-oriented business to establish such business, exclusive of the fair market value of the building, structure, and/or property in or on which such business is located at the time of any application pursuant to section 185-75(D) and exclusive of any improvements or other capital outlay unrelated to the offering of adult materials or adult entertainment which renders the use a non-conforming adult-oriented business.

NUDITY - The term “nudity” shall mean 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.

MASSAGE ESTABLISHMENT -

(a) The term “massage establishment” shall mean 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.

(b) Exceptions. The definition provided for under (a) above shall not be construed to include the following:

- (i) Hospitals, nursing homes, medical clinics, or the offices of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapists, occupational therapists, or duly licensed massage therapists;
- (ii) Barber shops, beauty salons or nail salons in which massages are administered only to the scalp, face, neck or shoulders; or
- (iii) Health clubs or Fitness Facilities and recreational Membership 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.

NON-ADULT MATERIALS - The term “non-adult materials” shall mean any literature, books, magazines, pamphlets, newspapers, papers, comic books, drawings, articles, computer or other images, motion pictures, films, photographs, digital video discs, video cassettes, slides; or other visual representations, mechanical devices, instruments, clothing or any other writings, materials or accessories not within the definition of adult materials.

NON-ADULT ENTERTAINMENT - The term “non-adult entertainment” shall mean all entertainment in any live or recorded form or format not within the definition of adult entertainment.

SENSITIVE SITE - The term “sensitive site” shall mean any one of the following: churches, synagogues, mosques or other places of worship, schools, child or day nursery facilities, public or semi-public parks or recreational facilities in existence as of September 15, 2012.

SPECIFIED ANATOMICAL AREAS - The term “specified anatomical areas” shall include:

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

SPECIFIED SEXUAL ACTIVITIES - The term “specified sexual activities” shall include:

- (a) Actual or simulated fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
- (b) Actual or simulated acts of human masturbation, sexual intercourse, contact between the mouth and genitals, contact between the mouth and anus, contact between the mouth and breast;
- (c) Human genitals in a state of sexual stimulation or arousal;
- (d) Actual or simulated sexual acts between humans and animals; or
- (e) Excretory functions as part of or in connection with any of the activities set forth in (a), (b), (c) or (d) above.

SUBSTANTIAL OR SIGNIFICANT PORTION -

(a) General Rule. An establishment that regularly offers, for economic gain or other consideration, adult materials or adult entertainment shall be considered to include adult materials or adult entertainment as a “substantial or significant portion” of its stock-in-trade where only a portion or section of such establishment’s area is set aside for the sale, rental, lease, trade, gift or display of adult materials or adult entertainment.

(b) Ten-Percent Safe Harbor Exception. Any establishment that would otherwise be subject to this article that can prove that adult materials are contained, or adult entertainment are permitted to occur, in not more than ten (10) percent of the establishment’s total interior square footage which is open to the general public, shall be exempt from the provisions of this article so long as such adult materials are kept out of the reach of minors and the method of operation of such establishment does not permit minors to view nudity, specified sexual activities or specified anatomical areas.

(c) Exception to Ten-Percent Safe Harbor Exception. The ten-percent safe harbor exception otherwise provided for under this definition shall not apply to any establishment possessing one or more of the following features:

- (i) An interior configuration and layout requiring customers to pass through an area of the establishment with adult materials or adult entertainment in order to access an area of the establishment with non-adult materials or non-adult entertainment;
- (ii) One or more individual enclosures where adult materials or adult entertainment are available for viewing by customers;
- (iii) A method of operation requiring customer transactions with respect to non-adult materials or non-adult entertainment to be made in an area in which nudity, specified sexual activities or specified anatomical areas are visible;
- (iv) A method of operation under which non-adult materials or non-adult entertainment are offered for sale only and adult materials or adult entertainment are offered for sale or rental;
- (v) A greater number of different titles of adult materials than the number of different titles of non-adult materials;
- (vi) A method of operation excluding or restricting minors from the establishment as a whole or from any section of the establishment with non-adult materials or non-adult entertainment;
- (vii) A sign advertising the availability of adult materials or adult entertainment which is disproportionate in size relative to a sign advertising the availability of non-adult materials or non-adult entertainment, when compared with: the proportions of adult materials or adult entertainment and non-adult materials or non-adult entertainment offered for sale or rent in the establishment; or the proportions of the establishment’s total interior square footage open to the general public

containing adult materials, or in which adult entertainment is permitted to occur, and such square footage containing non-adult materials or in which non-adult entertainment is permitted to occur; or

- (viii) A window display in which the number of products or area of display of adult materials or adult entertainment is disproportionate in size relative to the number of products or area of display of non-adult materials or adult entertainment, when compared with: the proportions of adult materials or adult entertainment and non-adult materials or non-adult entertainment offered for sale or rent in the establishment; or the proportions of the establishment's total interior square footage open to the general public containing adult materials, or in which adult entertainment is permitted to occur, and such square footage containing non-adult materials or in which non-adult entertainment is permitted to occur.

ZONING BOARD OF APPEALS - The terms "Board", "Board of Appeals" and "Zoning Board of Appeals of the Town of Newburgh" shall mean the Zoning Board of Appeals of the Town of Newburgh.

§185-68. Prohibition on Massage Establishments. Massage establishments shall not be a permitted use within the Town of Newburgh.

§185-69. Location of Adult-Oriented Business. An adult-oriented business shall be permitted, in accordance with the requirements of this section, only in the B, IB or I zoning districts as shown on the August 19, 1974, Zoning Map, Town of Newburgh, last amended on June 4, 2012, 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.

§185-70. Separation, lot, bulk and parking requirements.

A. Minimum separation requirements.

(a) General provision. No adult-oriented business shall be located within 1,000 feet of the property line of any sensitive site or the boundary lines of the RR, AR, R1, R2 or R3 residential zoning districts.

(b) Separation between adult-oriented businesses. No adult oriented business shall be located within 500 feet of any other adult-oriented business.

B. Measurement.

(a) General provision. 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 sensitive site defined in §185-67, or nearest boundary line of any zoning district described in

subsection A 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..

(b) Multi-tenant facility. Where a multi-tenant facility such as a shopping center is involved, measurement shall be made from the most proximate point along the boundary of the leasehold interest of such business or such site rather than the lot line of the facility containing such business or such site.

C. Buildings containing residential uses. No adult-oriented business shall be established or permitted in any building of which any part is used for residential purposes. No residential use shall be established in a building of which any part is used as an adult-oriented business.

D. Bulk, parking and supplemental regulations. Adult-oriented businesses shall conform to applicable , bulk regulations for the B, IB or I zoning districts and the applicable bulk and supplemental regulations set forth in this chapter for the appropriate classification of permitted use or use subject to site plan review by the Planning Board, as such regulations may be enacted or amended from time to time.

E. Limitation per zoning lot. No more than one adult-oriented business permitted under this section shall be established on a zoning lot.

F. Maximum square footage. The total interior square footage open to the general public of any adult-oriented business shall not exceed, in total, 10,000 square feet.

§185-71. Signs and Displays.

A. Signs and displays shall not depict or describe specified sexual activities or specified anatomical areas.

B. Signs and displays shall not depict nudity.

C. Signs and displays visible from the outside of an adult-oriented business may be illuminated or composed of lighted material such as neon but shall not feature flashing illumination.

D. Additional regulations applicable. In addition to the provisions of this section, signs and displays identifying or portraying an adult-oriented business shall be subject to all regulations applicable to signs and displays within the Town of Newburgh in addition to the requirements of this section.

§185-72. Interior and exterior lighting. During the period that an adult-oriented business is occupied, it shall be illuminated by sufficient natural or non-flashing artificial light to permit safe ingress and egress to and from the premises.

§185-73. Live entertainment security. Each adult-oriented business offering entertainment consisting of live performances shall maintain adequate security during hours of operation to

ensure the public peace and order. The provisions of this subsection shall require each adult-oriented business offering live performance to employ not less than one uniformed security guard per every 50 or fewer patrons on the premises. For any number of patrons over 50, each adult-oriented business offering live performances shall employ not less than two uniformed security guards. All uniformed security guards shall be employed in accordance with the New York State Security Guard Act of 1992, as may be amended from time to time

§185-74. Non-conforming Buildings or Lots. No non-conforming building or lot shall be used for an adult-oriented business, unless a variance has been obtained from the Zoning Board of Appeals. No existing building, lot or use shall be added to, enlarged, expanded in size or converted for purposes of conducting an adult-oriented business so as to render such building, lot or use non-conforming.

§185-75. Termination and Amortization of Non-Conforming Adult-Oriented Businesses.

A. Termination of Non-Conforming Adult-Oriented Businesses. Any establishment in existence or which has obtained vested rights to exist prior to the effective date of this local law which:

(a) has made financial expenditures for the purpose of operating or to commence operating an adult-oriented business;

(b) falls within the definition of an adult-oriented business; and

(c) is not in conformity with the requirements of this Article shall either conform to the requirements of this Article or terminate its operation as an adult-oriented business within two (2) years following the effective date of this local law or, if later, the date of issuance of a certificate of occupancy for a use which includes an adult-oriented business, or such later date as hereinafter provided. Such nonconforming uses shall not be increased, enlarged, extended, or altered within the two-year period or any extension thereof, except that the use may be changed to a conforming use.

B. Notice of Termination.

(1) Following the effective date of this Local Law, the Building Inspector shall serve a notice of termination upon the owners of the real property and the mortgagee, if any, of any recorded mortgage on real property, notifying them that the operation of the nonconforming adult-oriented business shall terminate on the date specified in the notice. The notice shall further state that the owner or mortgagee, or both, may, within the time period set forth in Subsection C below, file an application with the Zoning Board of Appeals for an extension of the termination date.

(2) If no such application is filed within the time set forth herein, it shall be presumptive proof that the termination date set forth in said notice is reasonable and that the nonconforming adult oriented

business aspect of the use has been fully amortized, and the use shall terminate on the date specified in the notice.

- (3) The notice of termination shall be sent by certified mail, return receipt requested, to the owner of the real property at the address set forth on the most recent tax rolls of the Town and to any mortgagee at the address set forth on any recorded mortgage.
- (4) In the event that the certified letter is not accepted by the owner, the posting of a copy of the notice on the property and the mailing of a copy by regular mail to the owner's address shall be deemed sufficient notice.

C. Board of Appeals Jurisdiction. The Board of Appeals of the Town of Newburgh shall have the power to hear and decide applications submitted to the Board for the continuation of a non-conforming adult-oriented business made pursuant to this subsection. The Board shall hear and decide such applications using the same procedures by which it hears applications for use and area variances pursuant to New York State Town Law Section 267-A and Town of Newburgh Code Section 185-55 and subject to the same time constraints for rendering a decision. Submissions of such applications to the Board shall be subject to payment of the same fees and costs as are required by the Town of Newburgh from time to time for zoning variance applications. The applicant shall not be required to obtain an order, requirement, decision, interpretation or determination by an administrative official of the town in order to submit an application for continuation.

D. Amortization of Certain Non-Conforming Adult-Oriented Businesses. Notwithstanding subsection A, the Board, may permit an adult-oriented business subject to termination to continue for a limited period of time not to exceed three years beyond the two-year period established in subsection A, for a maximum total of five years, provided that:

- (1) an application is made by the owner of such adult-oriented business to the Board at least one hundred and twenty (120) days prior to the date on which such business must terminate;
- (2) the Board shall find, in connection with such adult-oriented business, that:
 - (a) the owner of such a business had made, prior to the non-conformity, substantial financial expenditures related to such business;
 - (b) the owner has not recovered substantially all of such financial expenditures;
 - (c) the period for which such business may be permitted to continue is the minimum period sufficient for the owner of such business to recover substantially all of such financial expenditures; and
 - (d) without such continuation the owner will not have a reasonable opportunity to recover substantially all of such financial expenditures; and
- (3) in any application for a continuation beyond the two-year period established in Subsection A, the owner shall bear the burden of proving by substantial evidence each item set

forth in Subsection D(2) via competent expert and/or scientific testimony supported by reliable documentary proof, including audited financial data, regarding the subject adult-oriented business.

E. Should any nonconforming adult-oriented business cease operation for a period exceeding six consecutive months within the amortization period or at any other time, the adult-oriented business shall be deemed to terminate its nonconforming status and shall not be continued or reopened at the location unless the adult business is in full conformity with the provisions of this Article.

§185-76. Prohibited Activities. The following shall not be permitted on the premises of any adult-oriented business within the Town of Newburgh:

1. Appearance by a person knowingly or intentionally engaging in specified sexual activities; or

2. The use of sound amplification equipment to amplify a description or discussion of nudity, specified anatomical areas or specified sexual activities if:

(a) such description or discussion is audible beyond the exterior of the structure from which the description or discussion originates; or

(b) such description or discussion is amplified in a public place.

M. Enforcement and penalties. Violations of this article are subject to enforcement and penalties as provided for in Code Section 185-52 and in case any adult-oriented business or massage establishment is operating or has been established in violation of this section or any regulations made under authority conferred hereby, the Town Board of the Town of Newburgh 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 4 - TITLES

Any title enumerated under this local law is for organization purposes only and shall not be deemed part of the text of this local law.

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 - 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 7 - 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.

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