

ORDINANCE
Town of LaFayette

**An Ordinance Amending the 1970 Zoning Ordinance
of the Town of LaFayette, as Previously Amended,
With Respect to Adult Uses.**

Be it Ordained, that the 1970 Zoning Ordinance of the Town of LaFayette, as previously amended, is further amended, as follows:

§1. **Purpose.**

It is recognized that buildings and establishments operated as **adult uses** have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town of LaFayette, this ordinance is intended to restrict **adult uses** to Industrial (I) District areas of the Town. The Town Board of the Town of LaFayette (hereinafter the "Board") hereby finds that the operational characteristics of **adult uses** and the secondary effects of **adult uses** increase the detrimental impact on a community when such uses are spread throughout the community. Based upon common knowledge and experience and studies conducted by other municipalities (including but not limited to: Syracuse, New York; Kansas City, Missouri; Bergen, New York; Scotia, New York; Dryden, New York; and Ellicottville, New York) (which studies have been reviewed by the Board), and considering the study conducted by Syracuse, New York concerns itself with an area in proximity to the Town of LaFayette, the Board finds that the **adult uses** sought to be regulated by this ordinance have been associated with criminal and other socially undesirable behavior, such as disorderly conduct, prostitution, pornography, drug trafficking and substance abuse, which have the resulting effects of depressing property values in the surrounding neighborhood and increasing the burden upon law enforcement personnel and municipal expenditures. Therefore, this ordinance is intended to promote the health, safety and general welfare of the residents of the Town of LaFayette by regulating the concentration and location of such **adult uses**. This ordinance has neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by the distributors and exhibitors of adult entertainment and/or sexually orientated entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

§2. Definitions.

- A. General. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.
- B. Specific Terms. As used in this ordinance, the following terms shall have the meanings indicated, and ARTICLE VIII, Section B (“Particular Definitions”) of the 1970 Zoning Ordinance of the Town of LaFayette, as previously amended, (hereinafter the “Zoning Ordinance”) is amended to add the following definitions:

Adult Use - Any business involved in the dissemination of material distinguished or characterized by an emphasis on matter depicting describing or relating to **specified sexual activities or specified anatomical activities**, including but not limited to adult arcades, adult bookstores or video stores, adult cabarets, adult live entertainment, adult motels, adult motion picture theaters, adult novelty stores, and massage establishments.

Specified anatomical activities include any of the following:

- A. Less than the completely and opaquely covered human genitals, Pubic region, pubic hair or buttocks or female breast or breasts 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 include any of the following:

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Acts of actual or simulated human masturbation, sexual intercourse, oral copulation or sodomy.
- C. Fondling or other intentional erotic touching of human genitals, pubic region, buttocks, anus or female breasts.
- D. Excretory functions as part of or in connection with any of the activities set forth in subdivisions A through C of this subsection.

Adult Arcade - an establishment where, for any form of consideration, one or more still or motion picture projectors, slides projectors, or similar machines, or other image producing machines, for viewing for five or fewer persons each, are regularly used to

show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical activities.

Adult Bookstore or Video Store - A business which (i) derives twenty-five percent (25 %) or more of its gross income from the sale, or rental of, or (ii) utilizes twenty-five percent (25 %) or more of its retail selling area for, or (iii) has stock comprised of twenty-five percent (25%) or more of, any of the following: Books, magazines, periodicals, films, motion pictures, video cassettes, DVDs, slides, compact discs and/or computer generation or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult Cabaret - A nightclub, bar, restaurant, bottle club, juice bar, club or similar commercial establishment, whether or not alcoholic beverages are served, which features:

- A. Persons who appear nude or in a state of nudity or semi-nudity; or
- B. Live performances which are characterized by the exposure of Specified anatomical activities or by specified sexual activities; or
- C. Films, motion pictures, video cassettes, slides, or other Photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical activities.

Adult Motel - A hotel, motel or similar business which:

- A. Offers public accommodations, for any form of consideration, which provide patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions characterized by the depiction or description of specified sexual activities or specified anatomical activities and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television or;
- B. Offers a sleeping room for rent for a period of time less than ten (10) hours; or
- C. Allows a tenant or occupant to sub-rent the sleeping room for a period of time less than ten (10) hours.

Adult Live Entertainment- A business where an adult male or female exposes parts of their body identified in specified anatomical activities.

Adult Motion Picture Theater - An enclosed or unenclosed building or structure or portion of a building or structure or drive-in theater used for presenting materials having, as a dominant theme, material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical activities for observations by patrons therein.

Adult Novelty Store - A business which (i) derives twenty-five percent (25%) or more of its gross income from the sale, or rental of, or (ii) utilizes twenty-five percent (25%) or more of its retail selling area for or (iii) has stock comprised of twenty-five percent (25%) or more of, any of the following: instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomachistic use or abuse of themselves or others.

Business - Any commercial enterprise, establishment, association or arrangement for profit.

Dissemination - The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a person, customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical activities.

Massage - A method of treating the external part of the human body by rubbing, stroking, kneading or vibrating with the hand or any instrument or any other treatment or manipulation of the human body which occurs as part of or in connection with **specified sexual activities** or where any person providing such treatment, manipulation or service related thereto, exposes his or her specified anatomical areas.

Massage Establishment - Any business where body rubs, body shampoos, massages (as defined above) or similar services are administered. This definition shall not include persons licensed or authorized pursuant to Article 155 of the Education Law, or specifically exempt from Article 155 of the Education Law See, Education Law Sections 7800 et seq.).

Person - Any individual, firm, partnership, corporation, association, limited liability company, business entity or legal representative, acting individually or jointly.

Town - The Town of LaFayette.

§3. Article II, Section F, Subsection 1 of the Zoning Ordinance (which describes the structures and uses permitted in Industrial (I) Districts is amended to include a new subsection “(e)”, which shall read as follows:

“(e) Upon controlled site approval, **Adult Uses** meeting the requirements of Article II, Section F, Subsection 3 below.”

§4. **Restrictions.**

A new Article II, Section F, Subsection 3 shall be added to the Zoning Ordinance which shall state as follows:

“3. Restrictions on **Adult Uses**:

- a. No **adult use** shall be allowed or permitted in any zoning district of the Town, except an Industrial 1 District. All **adult uses** shall comply with all applicable provisions of the Zoning Ordinance including those relating to structures and uses permitted in an Industrial 1 District.
- b. No person shall construct, establish, operate, or maintain, or be issued a certificate of occupancy for, any **adult use** within the Town unless such use meets the following standards:
 1. No more than one **adult use** shall be allowed or permitted on any one lot.
 2. No **adult use** shall be allowed or permitted on a lot that is within 500 feet of:
 - (a) any Residential District (AR, RPC, RM) or the Hamlet (H) District;
 - (b) any property that is used, in whole or in part, for residential purposes;
 - (c) any church or other regular place of worship, community center, library, school, nursery school, day-care center, public park, playground, recreational area or field; (d) any public buildings; and (e) any hotels or motels.
 3. Where there is a conflict between the regulations as

provided in this Section (II)(F)(3) and any other ordinance, law, rule or regulation of the Town including without limitation the Zoning Ordinance, the most restrictive law, ordinance, rule or regulation shall apply.

4. All distances set forth herein shall be measured from the building or structure in which the adult use is located or any sign advertising same to lot line of the receptor use.

c. No **adult use** shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical activities from any public way or from any other lot, including but not limited to any lighting, display, decoration, poster, photograph, video, sign, show, doorway, window, screen or other opening.”

§5. Penalties for offenses.

A violation of any provision of this ordinance shall be punishable as provided in the Zoning Ordinance.

§6 Severability.

If any part or provision of this ordinance or the application thereof to any persons or circumstances shall be judged invalid, such judgment shall be confined to the part or application adjudged to be invalid. Such decision shall not affect the validity of this ordinance as a whole or any part thereof, other than the part so decided to be invalid.

Effective Date. This Ordinance shall take effect as provided in Section 265 of the New York Town Law.