

Village of Fonda

1-89 Regulating the Operation and Maintenance of Adult Bookstores

Section 1 Findings; Purpose: In the development and execution of this local law it is recognized that adult bookstores, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances, thereby having a deleterious effect upon the adjacent area. Special regulation of such uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood or pose a threat to the welfare and safety of the public.

Section 2 Definitions: As used in this local law, the following terms shall have the meanings indicated: Adult Bookstore-an establishment having, as a substantial or significant portion of its stock-in-trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting or relating to specified sexual activity or specific anatomical areas, as defined below, for observation by patrons therein. Specified anatomical areas: A) less than completely and opaquely covered human genitals, public region, buttock and female breast below a point immediately above the top of the areola. B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered. 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, buttock or female breast.

Section 3 Proximity to residential dwellings or other adult bookstores: It shall be unlawful to hereafter establish any adult bookstore within three hundred (300) feet of any building containing a residential dwelling or rooming unit or to establish any adult bookstore within five hundred (500) feet of any other adult bookstore.

Section 4 Proximity to school and school bus stops: It shall be unlawful to hereafter establish any adult bookstore within five hundred (500) feet of the real property line of a public, private or parochial school or within one hundred fifty (150) feet of a bus stop for the picking up and dropping off of school children.

Section 5 Proximity to libraries, parks and places of worship: It shall be unlawful to hereafter establish any adult bookstore within five hundred (500) feet of the nearest property line of a public or private, library, park or playground and at least five hundred (500) feet from the nearest property line of any church, convent, monastery, synagogue or other place of worship.

Section 6 Penalties for offenses: Any person who violates any of the provisions of this local law shall be guilty of a violation and subject to a fine not to exceed two hundred fifty (\$250.00) dollars. Each day during any portion in which any violation of this local law is committed, permitted or continued shall constitute a separate offense.

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Article 2

Section 7 Unlawful to promote: It shall be unlawful and a misdemeanor, punishable as authorized by state law, for any person to promote or possess with intent to promote any obscene material when knowing of its content and character. Each day that said violation continues may be treated as a separate offense.

Section 8 Presumptive evidence: A person who promotes obscene material or possesses the same with intent to promote it, in the course of his business, is presumed to do so with knowledge of its content and character.

Section 9 Definitions: For the purposes of this local law, the following terms shall have the meaning indicated: Material-anything tangible, capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner. Obscene-any material or performance is "obscene" if the average person, applying contemporary community standards, would find that, considered as a whole, its predominant appeal is to the prurient interest in sex and depicts or describes, in a patently sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals and, as considered as a whole, it lacks serious literary, artistic, political and scientific value. Predominant appeal shall be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audiences. Promote-to manufacture, issue, sell, give, provide, lend, mail, deliver, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to do the same.

Section 10 Presumptions: A) A person who promotes or wholesale promotes obscene material or possesses the same with intent to promote or wholesale promote it, in the course of his business, is presumed to do so with knowledge of its content and character. B) A person who possesses six (6) or more identical or similar obscene articles is presumed to possess them with intent to promote the same.

Section 11 Penalties for offenses: Any person who violates any of the provisions of this local law shall be guilty of a violation and subject to a fine not to exceed two hundred fifty (\$250.00) dollars, Each day during any portion in which any violation of this local law is committed, permitted or continued shall constitute a separate offense.

Article 3 Section 12 Definitions: Harmful to minors-That quality of any description or representation, in whatever form, or nudity, sexual conduct, sexual excitement of sadomasochist abuse when it; A-predominantly appeals to the prurient, shameful or morbid interest of minors. B-Is patently offensive to prevailing

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standards in the adult community as a whole with respect to what is suitable material for minors. C-Is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for minors. Knowingly-having a general knowledge of, or reason to know, or a belief or grounds for belief which warrants further inspection or inquiry or both: A) the character and content of any material described herein which is reasonably susceptible to examination by the defendant; and B) The age of the minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable, bona fide attempt to ascertain the true age of such minor. Minor-A person less than seventeen (17) years of age. Sadomasochistic abuse-actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed. Sexual conduct-actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or if such a female breast. Sexual excitement-the condition of human male or female genitals when in a state of sexual stimulation or arousal. Sexually explicit nudity-a state of undress so as to expose the human male or female genitals, pubic area, buttocks with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

Section 13 Unlawful acts: A) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor: 1) Any picture, photograph, drawing, sculpture, video cassette, motion-picture film or similar visual representation of image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors; or 2) Any book, pamphlet, magazine, or printed matter, however reproduced, or sound recording which contains any manner enumerated in subsection A1 of this section or explicit and detailed verbal description or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to minors. B) It shall be unlawful for any person knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor to any area of premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors or to exhibit any such motion picture at any such area of premises which is not designated to prevent viewing from any public way of such motion picture by minors not admitted to any such area of premises C) It shall be unlawful for any minor falsely to represent to any person mentioned in subsection A or B hereof, or to his agent, that such minor is seventeen (17) years of age or older, with the intent to procure any material set forth in subsection A or with the intent to procure such minor's admission to any motion picture show or other presentation, as set forth in subsection B. D) It shall be

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unlawful for any person knowingly to make a false representation to any person mentioned in subsection A or B hereof, or to his agent, that he is the parent or guardian of any minor or that any minor is seventeen (17) year of age or older with the intent to procure any material set forth in subsection A or with the intent to procure such minors admission to any motion picture show or other presentation, as set forth in subsection B. E) It shall be unlawful for any person knowingly to exhibit, expose or display in public, at newsstands or at any other area of a public or commercial establishment, frequented by minors or where minors are or may be invited as part of the general public: 1) any picture, photograph, drawing, sculpture, motion-picture film or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse which is harmful to minors; or 2) Any book, pamphlet, magazine or printed matter, however reproduced, or sound recording which contains any matter enumerated in subsection E (1) of this section or explicit or detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which taken as a whole is harmful to minors.

Section 14 Exceptions: Nothing contained in this local law shall be construed to apply to: A. The purchase, distribution, exhibition or loan of any work of art, book, magazine or other printed or manuscript material by any accredited museum, library, school or institution of higher learning B. The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum, school or institution of higher learning, either supported by public appropriation of which is an accredited institution supported by private funds. C. Persons who may possess or distribute obscene matter or participate in conduct otherwise prescribed by this local law when such possession, participation, distribution or conduct occurs in the Course of law enforcement activities or in the course of bona fide scientific, educational or comparable research or study or like circumstances of justification.

Section 15 Penalties for offenses: : Any person who violates nay of the provisions of this local law shall be guilty of a violation and subject to a fine not to exceed two hundred fifty (\$250.00) dollars, Each day during any portion in which any violation of this local law is committed, permitted or continued shall constitute a separate offense.

Section 16 Severability Should any section or provision of this local law be declared by any court to be unconstitutional or invalid, such declaration shall not affect the validity of this local law as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 17 Effective date This local law shall become effective immediately upon filing with the New York Secretary of State.