

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231

Local Law Filing

(Use this form to file a local law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
APR 30 2004

**MISCELLANEOUS
& STATE RECORDS**

~~XXXXXX~~
~~XXX~~
~~XXXXXX~~

of Moriah

Town
~~XXXXXX~~
~~XXXXXX~~

Local Law No. 1 of the year 20 04

A local law entitled "Adult Use and Entertainment Establishments Regulation
(Insert Title)
Law"

Be it enacted by the Town Board
(Name of Legislative Body)

~~XXXXXX~~
~~XXX~~
~~XXXXXX~~

of Moriah

Town
~~XXXXXX~~
~~XXXXXX~~

As follows:

(If additional space is needed, attach pages the same size as this sheet, and number each).

Section 1. TITLE

This Local Law shall be known as the "Adult Use and Entertainment Establishments Regulation Law" of the Town of Moriah".

Section 2. LEGISLATIVE

It is the purpose of this law to regulate the creation, opening, commencement and/or operation of Adult Use and Entertainment Establishments, as herein defined, in order to achieve the following:

1. To preserve the character and the quality of life in the Town of Moriah's neighborhoods and business areas.
2. To control such documented harmful and adverse secondary effects of adult uses on the surrounding areas such as: decreased property values; attraction of transients; parking and traffic problems; increased crime; loss of business for surrounding non-adult businesses; and deterioration of neighborhoods.
3. To restrict minors' access to adult uses.
4. To maintain the general welfare and safety for the Town of Moriah's residents.

Section 3. DEFINITION(S)

As used in this law, the following terms shall have the meanings indicated:

ADULT USE AND ENTERTAINMENT ESTABLISHMENTS: A public or private establishment, or any part thereof, which presents any of the following entertainments, exhibitions or services; topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless bar care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both; adult arcade; adult bookstore or adult video stores; adult cabarets; adult motels; adult motion picture theaters; adult theaters; escort agencies; nude model studios and sexual encounter centers. Adult Use and Entertainment Establishments customarily exclude minors by reason of age.

"ADULT" ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing "specified sexual activities" or "specified anatomical areas".

"ADULT" BOOKSTORE OR "ADULT" VIDEO STORE means a commercial establishment which, as one of its principal business purposes, offer for sale or rental for any form of consideration any one or more of the following:

A) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas", or

B) instruments, devices, or paraphernalia which are primarily intended, labeled, designed, advertised or promoted for use in connection with specified sexual activities".

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "ADULT" BOOKSTORE or "ADULT" VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified

sexual activities' or "specified anatomical areas". For purposes of this definition, "principal business purpose" shall mean twenty-five percent (25%) or more of any of the following:

- 1) the number of different titles or kinds of such merchandise;
- 2) the number of copies or pieces of such merchandise;
- 3) the amount of floor space devoted to the sale and/or display of such merchandise; or
- 4) the amount of advertising which is devoted to such merchandise; either in print or broadcast media

"ADULT" CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- A) persons who appear in a state of nudity; or
- B) live performances which are characterized by the exposure of "specified anatomical areas" 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 areas".

"ADULT" MOTEL means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, 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 areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions.

"ADULT" MOTION PICTURE THEATRE means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

"ADULT" THEATER means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

ESCORT means a person who, for a fee, tip or other consideration, agrees or offers to act as a date for another person; for consideration, agrees or offers to privately model lingerie for another person; for consideration, agrees or offers to privately perform a striptease for another person; or, for consideration but without a license granted by the State of New York, agrees to provide a massage for another person.

ESCORT AGENCY means a person or business association who furnishes, or offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration

NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.

NUDITY or a STATE OF NUDITY means the appearance of "specified anatomical areas".

PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

SEMI-NUDE a state of dress in which covers no more than the "specified anatomical areas" as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary purposes offers for any form of consideration, activities between

persons one or more of the persons is in a state of nudity or semi-nudity.

SPECIFIED ANATOMICAL AREAS means (a) unless completely opaquely covered, human genitals, pubic region, buttocks, or breasts below a point immediately above the top of the areola; and (b) even if completely opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or Sodomy;
- C) masturbation, actual or simulated; or
- D) excretory functions.

Section 4. ALLOWED DISTRICTS

All Adult Use and Entertainment Establishments as defined herein may be created, opened, commenced or operated only within the Allowed Districts as herein defined and only upon the approval of a special authorization of the Town Board after consideration of general standards for such use within the allowed district and in conformation with regulation herein contained. The Adult Use Allowed District consists of two tracts within the Town of Moriah and are referred to as AU-1 and AU-2 and defined as follows: Tract AU-1 being 400' feet measured from centerline of Ensign Road on north or south side of said road commencing at the westerly bounds of Great lot 364 of the Paradox Tract and continuing along said road to a point being west bounds of Town of Moriah tax map parcel 96.03-1-57. Tract AU-2 commences at the west bounds of Great lot 38 of North River Head Tract in Town of Moriah, Essex County and being 400' north and south of the centerline of the Tracy Road and continues along the Tracy Road to a point on the Tracy Road said Point being the west bounds of Town of Moriah tax map parcel 86.03-1-23.2.

General Standard for such use within the Allowed District:

Compatibility: The character, appearance, location, size, height, intensity, nature and site layout of the proposed use, buildings, structures and outdoor signs shall be in harmony with the character and appearance of the surrounding neighborhood and shall not cause a significant adverse impact upon nearby property by reason of noise, flashing lights, neon lights, litter or traffic.

Vehicular Access: Proposed vehicular access points shall be adjacent from a public highway, not excessive in number, and shall be adequate in grade, width alignment and visibility; not located too near street corners and meet similar safety consideration for access on state roads as to sight distance at entry and exits. Such access shall be designed so that minimum safe sight distances and other standards set forth in N.Y. State Policy and Standards for Entrance to State Highway, N.Y.S.D.C.T., be measured from point of entry on to a public road. Said distance shall also take into consideration safe braking distance for traffic along the public road.

Circulation & Parking: Adequate provision for safe and accessible off road parking & loading spaces shall be provided.

Landscaping and Screening: All parking & loading areas shall be reasonably screened at all seasons of the year from the view of adjacent residential properties, lots and streets. The general landscaping of the site shall be in character with the generally prevailing in the neighborhood. Such landscaping shall include presentation of existing trees over 6 inches in diameter to the maximum extent possible. Adequate landscaping shall be provided to create a visual and sound buffer between such uses and adjacent occupied lands.

Drainage & Erosion Control: Adequate provision shall be made for drainage of the site to ensure storm water runoff does not create an adverse impact upon nearby lands, waterways, or drainage courses. Appropriate erosion control measures shall be taken to prevent soil erosion & sedimentation of waterways.

Utilities & Municipal Service: Adequate provision shall be made for water supply and sewage disposal; electric service and solid waste disposal. The proposed use shall not create a burden on municipal services.

Buildings: All Adult Uses shall be limited to the interior building. No uses shall be demonstrated, occurring or otherwise allowed other than the interior of a building. All windows shall limit & obstruct view into the demonstration or performance areas.

Section 5. LOCATION WITHIN "ALLOWED DISTRICTS"

Any Adult Use and Entertainment Establishment shall be allowed only in the allowed district as set forth in Section 4 hereof, and, within such a district, provided same shall not be allowed:

- a) within five hundred (500) feet of the property of a parcel used for residential purposes in the Town;
- b) within five hundred (500) feet of the property line of a parcel containing a church, synagogue, other place of worship, library, school, day-care facility, park, or playground, within the Town;
- c) on the same parcel as another Adult Use and Entertainment Establishment; or;
- d) within one thousand (1000) feet of the property line of another Adult Use and Entertainment, whether or not such other establishment is located in the Town.

The above distances of separation shall be measured from the nearest exterior wall of the portion of the structure containing the Adult Use and Entertainment Establishment.

Section 6. DISPLAY PROHIBITED

All adult uses and entertainment establishments shall be conducted only within an enclosed building.

Section 7. SEVERABILITY

It is hereby declared to be the intent of the Moriah Town Board that:

- A. If a court of competent jurisdiction finds the application of any provisions of this law invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of the law shall continue to be separately and fully effective.
- B. If a court of competent jurisdiction finds the application of any provision of this law to any building, other structure or tract or land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property, or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.

Section 8. WHEN EFFECTIVE

This local law shall take effect upon its adoption and filing with the Secretary of State in accordance with the provisions of Section 27 of the Municipal Home Rule Law.

Section 9. PENALTIES FOR OFFENSES

- A. Any person, firm, corporation or entity found to be violating

any provisions of this local law shall be served with a written notice by the Code Enforcement Officer of his designee, stating the nature of the violation and providing for immediate correction thereof. Such notice shall be served by one (1) of the following methods:

- 1) By personal service;
- 2) By certified mail, return receipt requested, addressed to his or their last known address as shown on the latest completed assessment roll of the Town of Beekmantown or
- 3) By posting of such notice in a conspicuous place upon the premises affected, and a copy thereof mailed, addressed to his or their last known address as shown on the latest completed assessment roll of the Town of Moriah.

B. Any person, firm, corporation or entity who shall violate any portion of this local law shall be guilty of a violation and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars (\$500) for each violation. The continuation of a violation of the provisions of this law shall constitute, for each day the violation is continued, a separate and distinct offense hereunder.

C. The owner and/or any occupant and/or any tenant and/or general agent of a building, premises or part thereof where such a violation has been committed or does exist shall be guilty of such an offense.

D. Any person, firm, corporation or entity violating any of the provisions of this local law shall become liable to the town for any expense or loss of damage occasioned the Town by reason of such violation.

E. The imposition of penalties herein prescribed shall not preclude the Town of any person from instituting appropriate legal action or proceedings to prevent a violation of this Local Law, or to restrain or enjoin the use or occupancy of a building, premises or part thereof in Violation of this Local Law.

(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. 1 of 2004 of the (County) (City) (Town) (Village) of Town of Moriah was duly passed by the Town of Moriah Town Board on April 16 2004, in accordance with the applicable provisions of law.

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 disapproval by the _____ and was deemed duly adopted on _____ 20 _____, 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 disapproval by the _____ 20 _____.

Such local law was submitted 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 disapproval by the _____ and was deemed duly adopted on _____ 20 _____. Such local law was subject to 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 to 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 or 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.

Elizabeth C. Tedesco

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: April 16, 2004

(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 Essex *Clinton*

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.

Carl J. Madonna
Signature Carl J. Madonna

Special Counsel
Title

County

City

of

Town

Village

Date: 4/29/04