

June 4-26-99

*approved by the
TOWN BOARD*

4-13-99

~~RESOLUTION~~ LOCAL LAW NO. 1 OF 1999
OF THE TOWN OF SHELDON

A local law amending the Zoning Ordinance of the Town of Sheldon, in order to regulate the location and operation of adult uses and establishments.

Be it enacted by the Town Board of the Town of Sheldon as follows:

1. Purpose.

To amend the Town of Sheldon Zoning Ordinance for the purpose of protecting the health, safety and general welfare of the residents of the Town of Sheldon, and for the purpose of preparing and considering legislation regulating adult uses that would bar adult establishments from residential zones and certain other zones that also permit residential development, prohibit adult establishments from being located within specified distances from schools, houses of worship, daycare centers, other adult uses and certain zoning districts where new residential development is allowed, prohibiting more than one adult establishment on a single zoning lot and/or limiting the square feet of useable floor area and cellar space for all adult establishments, consistent with the constitutional limitations on local regulatory power as determined by recent state and federal judicial decisions.

2. Amendments to Zoning Ordinance.

The Town of Sheldon Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance") is amended as follows.

Article II, §II, entitled "Definitions," is amended, following the definition of "Accessory Use" and immediately preceding the definition of "Billboards," to include the following definition:

ADULT USE: A lot, building, facility or establishment in which or on which, in whole or in part, there is regularly featured or devoted a) a substantial portion of the owner's, operator's and/or business's stock in trade, to entertainment

materials, including but not limited to any form of visual depiction such as videotapes, film, photographs or equivalent graphic or electronic visual depiction, that is characterized by an emphasis on "specified anatomical areas" or "specified sexual activities," as defined in this Zoning Ordinance, within the Town of Sheldon, and/or b) employees, independent contractors, dancers, models or other persons who engage in (on such premises) live, in-person modeling, display or performance, that is characterized by an emphasis on "specified anatomical areas" or "specified sexual activities," as defined in this Zoning Ordinance, within the Town of Sheldon.

Article II, §II of the Zoning Ordinance is further amended, following the definition of "Seasonal Cottage Use District", and immediately preceding the definition of "Story," to add the following definitions:

SPECIFIED ANATOMICAL AREAS is defined to include
a) less than completely and opaquely covered human
i) genitals, ii) pubic regions or iii) the female breast below a point immediately above the top of the areola, and b) human male genitalia in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES is defined to include
a) human genitalia in a state of sexual stimulation or arousal;
b) acts of human masturbation, sexual intercourse or sodomy;
and c) the fondling, massaging or other erotic touching of human genitalia, pubic region, buttock or female breast.

Article V, §I (entitled "General Provisions"), subsection 1 (entitled "Prohibited Uses,") is amended to add a paragraph (c), to state:

c. No adult use shall be conducted or permitted in or upon any lands, lots, premises, buildings or structure situated within any zoning district, including the Use Districts now established or that in the future may be established by amendment, under Article IV, unless such use is both a) conducted entirely within the "Business Use District" and/or "Industrial Use District" and b) in conformity with all such districts' regulations that pertain to adult uses.

Article IV, §III (entitled "B Business Use Districts"), subsection A (entitled "Permitted Uses,"), paragraph 1 (entitled "General") is amended to add a subparagraph (f), to state:

f. Notwithstanding the foregoing subparagraphs a through e, adult uses are permitted within the Business Use District if, and only if, they are in conformity in their entirety with the provisions of this subparagraph (f), including the following restrictions:

i. the lot upon which any adult use is situated or conducted must be located more than 500 feet away from the nearest portion of any lot upon which there exists a) any other adult use, b) any playground operated by a municipality, private or public school, daycare center or not-for-profit corporation, c) any church, being a building regularly used for religious worship by a denomination identified in the New York Religious Corporations Law or otherwise entitled to First Amendment protection under the United States Constitution, d) any public or private school, including, but not limited to, those schools providing education and instruction for minors in satisfaction of the requirements of New York State law, and accredited colleges and universities, e) any zoning district, including the Use Districts that are now, or from time to time may be, established under Article IV of this Zoning Ordinance, in which either new single-family or multi-family residential construction (including apartment buildings, condominiums, townhouses and mobile home parks) is principally permitted, f) public parks whether created pursuant to statute or devoted to public park purposes under the common law of the State of New York, g) buildings owned or used (for governmental purposes) by the United States or any subdivision thereof, or the State of New York (or any subdivision thereof, including but not limited to any municipality or county), h) public and private camps and/or recreation areas that provide significant recreational activities, developmental and/or educational benefits to youth or the general public and i) restaurants and establishments licensed to serve alcoholic beverages under licenses issued by the New York State Liquor Authority.

ii. No more than one adult use shall be conducted, operated or permitted on a single lot.

iii. Any building within which an adult use is

conducted, operated or permitted does not exceed 10,000 square feet of useable floor area, including useable cellar space.

Article V, §IV (entitled "Industrial Use District Regulations"), subsection A (entitled "Permitted Uses,") is amended to add a paragraph 7, to state:

7. Notwithstanding the foregoing paragraphs 1 through 6, adult uses are permitted within the Industrial Use District if, and only if, they are in conformity in their entirety with the provisions of this paragraph (7), including the following restrictions:

i. the lot upon which any adult use is situated or conducted must be located more than 500 feet away from the nearest portion of any lot upon which there exists a) any other adult use, b) any playground operated by a municipality, private or public school, daycare center or not-for-profit corporation, c) any church, being a building regularly used for religious worship by a denomination identified in the New York Religious Corporations Law or otherwise entitled to First Amendment protection under the United States Constitution, d) any public or private school, including, but not limited to, those schools providing education and instruction for minors in satisfaction of the requirements of New York State law, and accredited colleges and universities, e) any zoning district, including the Use Districts that are now, or from time to time may be, established under Article IV of this Zoning Ordinance, in which either new single-family or multi-family residential construction (including apartment buildings, condominiums, townhouses and mobile home parks) is principally permitted, f) public parks whether created pursuant to statute or devoted to public park purposes under the common law of the State of New York, g) buildings owned or used (for governmental purposes) by the United States or any subdivision thereof, or the State of New York (or any subdivision thereof, including but not limited to any municipality or county), h) public and private camps and/or recreation areas that provide significant recreational activities, developmental and/or educational benefits to youth or the general public and i) restaurants and establishments licensed to serve alcoholic beverages under licenses issued by the New York State Liquor Authority.

ii. No more than one adult use shall be conducted, operated or permitted on a single lot.

iii. Any building within which an adult use is conducted, operated or permitted does not exceed 10,000 square feet of useable floor area, including useable cellar space.

3. Severability.

If any word, clause, phrase, sentence, paragraph, section, subpart or part of this local law shall be adjudged by a Court of competent jurisdiction to be invalid, said judgment shall not effect the balance of the local law. Nothing herein contained shall be deemed to be a waiver of or restriction of the right of the Town of Sheldon under federal, state, county or town laws, ordinances, rules and regulations or those of any agency having appropriate jurisdiction.

4. Penalties.

If any person (including an individual, firm, partnership, corporation, association or legal representative, acting individually or jointly), should conduct, leases or uses premises upon which there is conducted, or is the owner of premises upon which there is conducted, an adult use that is not in conformity with the provisions of this local law, such shall constitute an offense subject to the remedies and penalties for offenses provided for in Article XII of the Town of Sheldon Zoning Ordinance, and, in addition, shall be subject to the enforcement provisions of §268 of the Town Law of the State of New York.