

Local Law Filing

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

(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 24 2006

MISCELLANEOUS
& STATE RECORDS

~~County~~
~~City~~ of Caroga
Town
~~Village~~

Local Law No. 1 of the year 2006

A local law entitled "Adult Use Moratorium"
(Insert Title)

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

~~County~~
~~City~~ of Caroga as follows:
Town
~~Village~~

Section 1. Purpose.

The purpose of this local law is to protect the public health, safety and welfare and the tranquility in the Town of Caroga while developing adequate regulations, which may be uniformly developed to prevent any deleterious secondary effects and public nuisances associated with Adult Uses.

Section 2. Legislative Findings.

- A. Fulton County Communities currently contain establishments, which offer several different forms of Adult Use entertainment, which serve as outlets for free expression in the area.
- B. Currently, there do not exist adequate regulatory standards controlling the time, place, and manner in which Adult Uses are conducted. Such standards are intended to be addressed by the Town Board and Town Planning Board.
- C. Adult Uses, by their very nature, are recognized as having serious objectionable operational characteristics, and under certain circumstances, when concentrated in an area, have been demonstrated to have deleterious secondary effects on the surrounding neighborhoods. This is especially true since the Town of Caroga is a rural community and its resources would be severely strained to adequately address the potential increased demand for crime prevention, degradation of community's small retail area, the potential decline in property values and overall quality of the neighborhood that the proliferation of such uses could dangerously affect.

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

- D. The Town of Caroga has determined to conduct necessary studies to examine the extent of deleterious secondary effects upon the community and determine what special regulations, if any, need to be adopted to accomplish the primary purpose of preventing a concentration of the uses in any one area, restricting the accessibility of the uses to minors and prevent the deleterious secondary effect upon areas in the Town of Caroga. Local legislation by the Town Board is needed to prevent the occurrence of deleterious secondary effects associated with such use and to prevent a race of diligence by applicants seeking to establish such uses until proper regulations have been put into place.
- E. This action is an exempt action under SEQRA, pursuant to 6 NYCRR Section 617.2(0) (6), as an action which is "immediately necessary on a limited emergency basis for the protection and preservation of life, health, property or natural resources."

Section 3. Definitions:

ADULT USE - The use of any building, structure or land, or portion thereof, for any purpose involving activities that are not open to the public generally but exclude, or are required by law to exclude, any minor by reason of age, including but not limited to, the establishments defined below:

ADULT BOOK OR VIDEO STORE - An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, other periodicals, films, photographs, slides and /or media. A substantial portion of which establishment is customarily not open to the public generally but excludes, or is required by law to exclude, any minor by reason of age. In determining whether a substantial portion of such establishment of stock is devoted to such materials or use, the following factors shall be considered:

- i. The proportion of floor area allocated to such use that is not available to the general public in comparison to the floor area that is available to customers without restriction by reason of age;
- ii. The proportion of such materials maintained in space that is not available to the general public in comparison to the floor areas that is available to customers without restriction by reason of age; and
- iii. The total amount of floor space allocated to use that is not available to the general public but which is restricted by reason of age.

ADULT ENTERTAINMENT CABARET - A public or private establishment which present topless or nude dancers, strippers, male or female impersonators or exotic dancers, or other similar entertainments, and which establishment is customarily not open to the public generally but excludes, or is required by law to exclude, any minor by reason of age.

ADULT MOTEL/HOTEL or BED AND BREAKFAST – A motel/hotel or Bed and Breakfast which is not open to the public generally but excludes minors by reason of age, or which makes available to its patrons in their rooms films, slide shows or media, which if presented in a public movie theater would not be open to the public generally but would exclude, or be required by law to exclude, any minor by reason of age.

ADULT THEATER – A theater that customarily presents motion pictures, films, media, slide shows, that are not open to the public generally but excludes, or is required by law to exclude, any minor by reason of age.

MASSAGE ESTABLISHMENT – Any establishment having a fixed place of business where massages are administered, including but not limited to massage parlors, saunas baths, and steam baths. This definition shall not be constructed to include a hospital, nursing home, or medical clinic or the lawfully established office of a duly licensed health care professional, such as a physician, surgeon, chiropractor, osteopath, or physical therapist, or barbershops or beauty salons in which messages are administered only to the scalp, face, neck, or shoulders. This definition shall also exclude health clubs which have facilities for exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

PEEP SHOWS – The use of a building or portion of a building to present material in the form of live shows, films or media viewed from an individual room or similar enclosure which is not open to the public generally and which excludes, or is required by law to exclude, any minor by reason of age.

Section 4. – Moratorium Imposed.

- A. For a period of 6 months following the date of adoption of this local law, no site plans shall be approved, whether by action of the Planning Board or by default, no other approvals, permits, or certificates of occupancy be granted by any board or officer of the Town, nor shall any establishment devoted to Adult Uses be operated. This local law shall be binding on the Code Enforcement Officer, Planning Board, Zoning Board of Appeals, and any applicant or property owner in the Town.
- B. This moratorium may be extended by two additional periods of up to three (3) months each by resolution of the Town Board upon a finding and a necessity for such extension.
- C. During the period of the moratorium, the Town shall endeavor to complete a comprehensive set of regulation for Adult Use.
- D. The Code Enforcement Officer shall make an initial determination whether any proposed use is an Adult Use as herein defined. Such determination may be appealed to the Town's Zoning Board of Appeals.

Section 5. Applications for Relief.

Whenever there is a showing by persons whose premises are affected by this moratorium that relief there from is necessary to avoid unnecessary financial hardship or a taking of private property beyond what is permissible by valid regulation, the town board, upon petition may grant appropriate relief from this local law subject to whatever conditions are deemed necessary to protect the public. Applications for such relief shall be by verified petition other Town Board and shall be supported by competent financial evidence in dollars and cents form. The Town Board shall hold a hearing on any such petition within thirty (30) days and decide such application within fifteen (15) days after the closing of such hearing. The default of the Town Board in action on such application shall not result in a default granting of such relief but shall permit the applicant to seek such relief pursuant to Article 78 of the CPLR.

Section 6. Violation.

Any person who shall operate an establishment devoted to Adult Uses during the term of this moratorium except as provided in Sections 4 and 5 hereof shall be guilty of a violation and subject to a fine not exceeding \$1,000.00 or fifteen (15) days in jail or both. Each week a violation continues shall be considered a separate violation.

Section 7. Supersession.

- A. Town Law 274 -a is hereby amended and superseded in its application to the Town of Caroga by restricting the authority of the Planning board to review and approve site plans.
- B. Town Law 274-5 is hereby amended and superseded in its application to the Town of Caroga by restricting the authority of the Planning board to review and approve site plans.
- C. Town Law 267-6 is hereby amended and superseded in its application to the Town of Caroga by restricting the authority of the Planning board to review and approve site plans.
- D. This local law is intended to supercede any inconsistent provision of the Town Law and Zoning Ordinance.

Section 8. Severability.

If any provision of this law or the application of any other provision to any item in this law is held invalid, the invalidity of that provision or application shall not affect any of the other provisions or the application of those provisions to other items in this chapter or law.

Section 9. – This Local Law shall take effect immediately upon filing in the office of Secretary of State.

(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 2006 of the ~~(County)~~(City)(Town)(Village) of Caroga was duly passed by the ~~Town Board~~ on April 12, 2006, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

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 _____ on _____ 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.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

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 _____ 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.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

* 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 veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

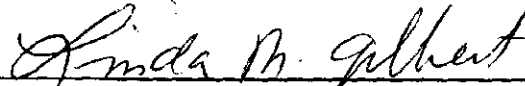
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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 of 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 _____, above.



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

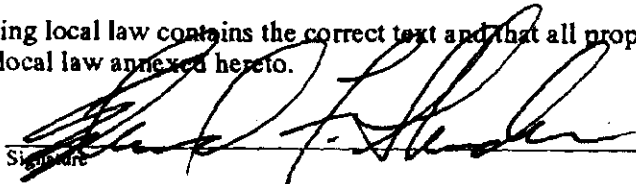
(Seal)

Date: April 20, 2006

(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 Fulton

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.



Town Attorney

Title

County
City of Caroga
Town
~~Village~~

Date: April 20, 2006