

# 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.

County  
City of Caroga  
Town  
Village

STAT  
APR 02 2007  
NOT RECORDED  
& S...

Local Law No. 1 of the year 2007

A local law ~~"To amend the Zoning Ordinance and Zoning Map to add~~  
*(Insert Title)*  
~~a new zoning district to be called "Conservation with~~  
~~an Adult Use Overlay Zone" abbreviated as C (AU)~~  
~~District, to permit Adult Use Businesses."~~

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

County  
City of Caroga as follows:  
Town  
Village  
XXXX SECTION 1: Amendment

ARTICLE #4 Section 4.010 of the Zoning Ordinance, Town of Caroga, is hereby amended so as to add a C (AU) District- Conservation with an Adult Use Overlay Zone, with a reference to see ARTICLE 16. The Zoning Ordinance, Town of Caroga, is hereby amended so as to add ARTICLE 16 thereto which shall provide as follows:

## ARTICLE 16 Adult Use Businesses

### Section 16.010: Findings

Based upon a comprehensive study of the adverse secondary impacts of adult use establishments as documented in accordance with the ruling of the U.S. Supreme Court in the matter of the City of Renton v. Playtime Theaters, Inc. (475 U.S.41) and the ruling of the NYS Court of Appeals in the matter of Stingfellow's of New York, Ltd. V. The City of New York, 91 NY2d 382 (1998) and as commissioned by the Town Board of the Town of Caroga, the Town of Caroga finds that:

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

1. There are adverse secondary impacts associated with the establishment and operation of adult – oriented businesses within a community;
2. Among these adverse secondary impacts are a deterioration in the local quality of life, an adverse effect upon local property values, an adverse effect upon the local economic viability, an imposition, whether intentional or unintentional, of exposure to adult-oriented expression undesired by neighbors, pedestrians and passersby, an increase in traffic, noise, litter and nuisance, criminal and illicit sexual behavior, a threat to the health and safety of children and young adults and an undermining of the established sense of community;
3. These adverse secondary impacts of the establishment and operation of adult-oriented businesses are a threat to the general health, safety and economic viability of the community;
4. The unregulated establishment and operation of adult-oriented businesses would lead to the wide-spread imposition of adverse secondary impacts upon residents, businesses, economic viability, property values, and quality of life of the Town and would, therefore, be detrimental to the general health, safety and economic viability of the community;
5. The U.S. Constitution, and the Constitution and laws of the State of New York grant to the Town of Caroga the power, especially police powers, to enact reasonable legislation and measures to regulate the location and operation of adult-oriented businesses, hereinafter defined, in order to protect the general health, safety and economic viability of the community.

Section 16.020: Statement of Intent

1. It is the express intent of the Town of Caroga in adopting this local law to:
  - a) Ameliorate, mitigate, reduce or prevent the wide-spread and unregulated imposition of the adverse secondary impacts of adult-oriented businesses upon the residents, businesses, economic viability, property values, quality of life and general health, safety and welfare of the community;
  - b) To protect the right of free expression, guaranteed by the U.S Constitution and the State of New York Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.
2. It is not the intent of the Town of Caroga in adopting this local law to:
  - a) Deny any person the right of free expression, guaranteed by the U.S. Constitution and the State of New York Constitution, as may be expressed

and presented in the form of goods and services offered by adult-oriented businesses; or

b) To impose upon any person any additional limitations or restrictions upon the right of free expression, guaranteed by the U.S. Constitution and the State of New York Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the U.S. Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression. These constitutionally protected rights are understood to include the right to sell, distribute and exhibit the legal goods and services offered by adult-oriented businesses; or

c) To impose upon any person any additional limitations or restrictions upon the right to obtain, view or partake of any communications guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the U.S. Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression; or

d) To estimate, decide, determine, resolve, consider, conclude, judge or qualify in any manner or fashion the quality or value of the content, nature, message, form, format, appearance, substance or presentation of the free expression guaranteed by the U.S. Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.

Aware that, according to numerous decisions by both Federal Courts and Courts of the State of New York, the regulation of the location of adult oriented businesses must be based upon a finding of the adverse secondary impact of these businesses upon the community and must be directed solely toward the mitigation of these impacts, not be directed toward any form of speech or expression, be no broader than necessary and must provide alternative locations within the Town for adult use businesses, the Town of Caroga hereby adopts the following amendment to its Zoning Law.

#### Section 16.030: Definitions

For the purpose of this Town Law, an adult use business shall be defined as any business which:

- i. is the use of land, structures or location for an "adult use business" or as an "adult physical contact establishment" as herein defined;
- ii. is the use of land, structure or location which, by the provision of the Penal Law, is required to restrict the access thereto by minors;
- iii. is an establishment, location, building or structure which features topless

dancers, nude dancers or strippers, male or female; or

iv. is a location, building or structure used for presenting, lending or selling motion picture films, video cassettes, cable television or any other visual media, or used for presenting, lending or selling books, magazines, publications, photographs or any other written materials distinguished or characterized by an emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below.

v. Adult Use Businesses

Adult use businesses, including adult book stores, adult video stores, adult motion picture theaters, adult mini-motion picture theaters, adult cabarets, and adult drive-in theaters shall be defined as follows;

1) An adult book store is defined as an establishment having 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, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below.

2) An adult video store is defined as an establishment having as a substantial or significant portion of its stock in trade films, video cassettes or other formats of electronic media for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below.

3) An adult motion picture theater is defined as a building with a capacity of fifty (50) persons or more used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to "specific sexual activities' or 'specific anatomical areas' as defined below for the observation of patrons therein;

4) An adult mini-motion picture theater is defined as an enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below for the observation of patrons therein;

5) An adult cabaret is defined as an establishment which features live go-go dancers , exotic dancers, strippers, male or female, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity;

6) An adult drive-in theater is a drive-in theater utilized for the presentation of materials distinguished or characterized by their emphasis on matter depicting or describing or relating to 'specific sexual activities' or 'specific anatomical areas' as defined below for the observation of patrons therein;

7) An adult physical contact establishment is defined as any establishment, which offers or purports to offer massage or other physical contact to patrons of either gender by employees or staff of either gender. Medical offices, offices of persons licensed or authorized under Educational Law to practice massage therapy, offices of persons licensed or otherwise authorized under Education Law as a physical therapist or physical therapist assistant and electrolysis karate, judo and dance studios are not to be considered adult physical contact establishments under this section.

8) As used hereinabove, the words "having substantial or significant portion of its stock in trade" shall mean that such establishment devotes more than twenty-five (25%) percent of its business to the sale, rental or display of adult materials as determined by **any** of the following;

- a. the number of different titles of adult materials or
- b. the number of different copies of adult materials, or
- c. the amount of floor space devoted to adult materials, or
- d. the amount of on-site advertising or cost of other advertising of adult materials.
- e. as used above, the words "adult materials" shall include any things referred to or labeled as sex toys or sexual novelty items.

vi Specified sexual activities

- 1) human genitals in a state of sexual stimulation or arousal; or
- 2) acts of human masturbation, sexual intercourse or sodomy; or
- 3) fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

vii Specified anatomical areas

- 1) less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola; or
- 2) human male genitals in a discernible turgid state, even if completely or opaquely covered.

Section 16.040: C (AU) District – Conservation with an Adult Use Overlay Zone

An overlay zone is hereby established for adult use businesses on two Town-owned parcels of Conservation District land on Lane Road. The two parcels are Parcel A – Tax Map Number 115.-1-48.1 (having 50.0 acres); and Parcel B -Tax Map Number 115.-1-66 (having 98.16 acres). This overlay zone shall be known as C (AU) District (Conservation with an Adult Use Overlay Zone). The attached (Appendix A) is a map of the C (AU) District. This map is hereby incorporated into and made a part of this Local Law by reference thereto.

Adult use businesses are allowed in the C (AU) District by the issuance of a Special Permit by the Town Planning Board. No other form of development is allowed in this district.

1. Procedure for obtaining the Special Permit for the C (AU) District is:

a) The first step is to complete a *plan* for lot ownership. The Town of Caroga is the current owner of the parcels in the C (AU) District. An AU Business applicant gains title to a lot in the district through a land swap. The applicant shall come before the Planning Board with a proposal for the swap. The applicant must either own or have an option to buy a vacant parcel of land in the Town having any zoning except "Conservation". The swap shall be restricted to parcels within the same APA land use areas, in accordance with provisions of the Adirondack Park Agency Act. The Planning Board shall have the right to approve or disapprove the applicant's lot based on its suitability for conservation land. The land area of the parcel shall be as large as or larger than the land needed for the AU business in the overlay zone. The applicant's parcel shall be deeded over to the Town with a deed restriction "for conservation use only". In return, the AU applicant shall be given title to the parcel needed for his business within the overlay zone. The deed to this parcel shall have a deed restriction "for AU use only". Both deed restrictions shall be written to "follow the land" (as opposed to applying to just the current owners). The zoning for the applicant's lot shall remain as it was before the swap. The zoning for the AU business lot shall remain C (AU) District. Once provisions for the land swap are completed to the satisfaction of the Planning Board, the applicant shall proceed to the second step below. The preparation, execution, and filing of the deeds for the lot swap shall not occur in this step of the procedure.

b) The second step is to obtain Planning Board Approval for a two-lot subdivision in accordance with Article 15 of the Zoning Ordinance, Town of Caroga. All provisions of that Article shall apply. This action creates the parcel needed for the AU business.

c) The third step is to obtain Planning Board Approval for Site Plan Review in accordance with Article 5 of the Zoning Ordinance, Town of Caroga. All provisions of that Article shall apply. The proposed site development plan for the AU business is the subject of this Site Plan Review.

d) The fourth step is the preparation, execution, and filing of the land swap deeds. Once the deeds are properly recorded with the county clerk, the Planning Board shall issue the Special Permit.

2. Administrative Requirements for the C (AU) District

All provisions (pertaining to Building Permits, Public Hearings, Certificates of Occupancy, etc.) of ARTICLE 12 – Administrative Provisions of the Zoning Ordinance, Town of Caroga apply to the C (AU) District.

3. Dimensional Requirements for the C (AU) District:

- a) Minimum/Maximum lot sizes – 1 acre/ 3 acres. Subject to Planning Board discretion based on special site constraints such as topography, etc.
- b) Minimum Front Yard Dimension – 50 feet.
- c) Minimum Side Yard Dimension – 30 feet.
- d) Minimum Rear Yard Dimension – 30 feet
- e) Minimum Lot Width – Subject to Site Plan Review
- f) Maximum % of Lot to be Covered – Subject to Site Plan Review
- g) Maximum Building Height – 35 feet
- h) On-site parking requirements shall be based on building occupancy. No on-street parking shall be allowed.

Section 16.050: Adult Use Businesses – Locational Requirements

1. Any private booths or areas within such Adult Use Businesses, either for the viewing of motion pictures or live performances, shall be subject to the following requirements:

- a) any and all such booths, cubicles, studios, studies and rooms for the private viewing of adult motion pictures and/or live performances or areas shall be open to public view from the common areas of the establishments and that there shall not be any doors, curtains, blinds or other structures or devices that shall obstruct observation of the viewing areas from the common area of the establishment;
- b) that such private viewing areas be well lighted and readily accessible at all times and shall continuously be open to view.
- c) lighting throughout the adult establishment shall be sufficient to illuminate every area which patrons are permitted access.

2. All Adult Use Businesses shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window, or by means of depiction or decoration or to allow to be displayed or exhibited, any specified anatomical areas or specified sexual activities.

3. The exterior appearance of any building containing an adult use business shall be consistent with the character of surrounding structures and shall not detract from the appearance of the neighborhood.

4. Adult Use Businesses shall conform to all existing applicable sign regulations in addition to the following specific requirements:

- a) Signs which are illuminated in neon or which contain flashing lights shall be prohibited.

- b) Exterior signs, displays or other advertisements which contain nude, semi-nude or provocative pictures or silhouettes shall be prohibited.
- c) Interior signs, displays, posters or other advertisements which contain nude, semi-nude or provocative pictures shall be located a minimum of six (6) feet away from any window or door, and shall not be visible from the exterior of the establishment.
- d) Permanent and/or temporary window and door signs shall not occupy more than twenty percent (20%) of each window or door.

5. Adult Use Businesses shall be required to meet all zoning and construction standards and requirements of the laws of the Town of Caroga, including, but not limited to, lot and bulk regulations, parking requirements, signage, façade and screening regulations.

#### Section 16.060: Violations

Any violation of this Article shall be treated in the same manner as provided in ARTICLE 13 - Enforcement of the Zoning Ordinance, Town of Caroga.

#### **SECTION 2: Severability**

Should any section or provision of this Article be declared to be unconstitutional or invalid by the Courts, such decision shall not affect the validity of the balance of this Article.

#### **SECTION 3: Effective Date**

This local law shall take effect upon the filing thereof in the office of the Secretary of State of the State of New York.



R-10

R-8.5

137

FUTMAN RD

BEECH RIDGE RD

MUSSEY RD

EVERSON RD

R-8.5

R-3

LANDS OF NEW YORK STATE

PARCEL A

PARCEL B

LANDS OF NEW YORK STATE

LANE RD

R-3

R-8.5

NORTH BUSH RD

# APPENDIX A

Town of Johnstown



0 1,000 2,000 4,000

Scale in Feet

Map of the  
C(AU) DISTRICT  
Conservation with an Adult Use Overlay Zone

Parcel A - Tax Map No. 115.-1-48.1 (50 Ac)  
Parcel B - Tax Map No. 115.-1-66 (98.2 Ac)

Town of Caroga January 2007

(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 2007 of the ~~(County)~~(City)(Town)(Village) of Caroga was duly passed by the ~~Town Board~~ on ~~March 14,~~ 2007 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.  
(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.

**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.

\* 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.

*Linda M. Gilbert*

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

(Seal)

Date: March 29, 2007

(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

*[Signature]*

Town Attorney  
Title

COUNTY  
City of Caroga  
Town \_\_\_\_\_  
Village ~~XXXX~~

Date: March 29, 2007