

**LOCAL LAW FILING**

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**

17

FEB 22 2001

*Alexander F. D'Amico*  
Secretary of State

**TOWN OF COVERT**

**LOCAL LAW NO. 1 OF THE YEAR 2001**

**A LOCAL LAW to regulate adult entertainment facilities**

**BE IT ENACTED BY THE Town Board as follows:**

**SECTION I.**

**The Town Board of the Town of Covert hereby adopts the local law attached hereto as Adult Use adding a Chapter 2 to the Town Code.**

**SECTION II.**

**All other local laws and ordinances thereof of the Town of Covert inconsistent with the provisions of this local law are hereby repealed.**

**SECTION III.**

**If any of the provisions in this local law shall be declared by a court having jurisdiction to be unconstitutional or invalid, the same shall not affect the validity of the foregoing local law as a whole, or any part thereof, other than the part so decided to be unconstitutional or invalid.**

**SECTION IV.**

**This local law shall take effect upon filing with the Secretary of the State of New York.**

**CHAPTER 2**  
**ADULT USES**

<b>Section 2-1</b>	Title
<b>Section 2-2</b>	Purpose and Intent
<b>Section 2-3</b>	Definitions
<b>Section 2-4</b>	Use Permitted
<b>Section 2-5</b>	Signage
<b>Section 2-6</b>	Inspection Requirement
<b>Section 2-7</b>	Nonconforming Adult Use
<b>Section 2-9</b>	Enforcement
<b>Section 2-10</b>	Application Process & Requirements
<b>Section 2-11</b>	Special Permit Use Renewal

**SECTION 2-1    TITLE**

This Shall be cited as the “Town of Covert Adult Use Law.”

**SECTION 2-2    PURPOSE OF INTENT**

It is the intent of this chapter to regulate sexually oriented business and related activities to promote the health, safety, morals, and general welfare of the citizens of the Town of Covert and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented business within the Town.

The primary purposes of this chapter are as follows:

- A. To preserve the character and quality of life in town neighborhoods and business areas.
- B. To control such documented harmful and adverse secondary effects of adult uses on the surrounding areas: including but not limited to decreased property values, attraction of transients, parking and traffic problems, increased crime, loss of business for surrounding non-adult business, and deterioration of neighborhood.

- C. To protect retail trade.
- D. To restrict minors' access to adult uses.

**SECTION 2-3                      DEFINITIONS**

- (1) **ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, 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 the depicting or describing of a specified sexual activity or specified anatomical areas.
  
- (2) **ADULT BOOKSTORE OR ADULT VIDEO STORE** means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration one or more of the following:
  - A-1. books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
  - A-2. instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.
  
  - B. 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 an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an 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 that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose shall mean more than one-quarter of the business is devoted to the sale, rental, or display of such materials as determined by any of the following:

1. The number of different titles of printed, visual or audio materials of any kind that are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities;
2. The number of copies of printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities;
3. The amount of floor space devoted to the sale and display of printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities;
4. The dollar amount of sales of printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities; or
5. The amount of on-site advertising which can be viewed by passers-by, or the amount or cost of advertising in print or broadcast media devoted to printed, visual or audio materials of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities.

(3) **ADULT CABARETS**

a nightclub, bar, restaurant, or similar commercial establishment that features:

- A. persons who appear in a state of nudity or semi-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 that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

(4) **ADULT MOTEL**

a hotel, motel or similar commercial establishment which:

- A. offers accommodations to the public for any form of consideration; provides patrons with close-circuit television transmission, 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; or
- B. Offers sleeping rooms for rent for a period of time that is less than ten (10) hours; or
- C. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(5) **ADULT MOTION PICTURE THEATER**

a commercial establishment where, for any form of consideration, film, motion pictures, video cassettes, slides or similar photographic reproductions are shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

- (6) **ADULT THEATER**  
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.
- (7) **ADULT USES**  
adult arcades, adult book stores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, adult video stores, escort agencies, nude model studios, and sexual encounters centers.
- (8) **ADULT VIDEO STORE**  
(see ADULT BOOKSTORE)
- (9) **ESCORT**  
a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (10) **ESTABLISHMENT**
- A. the opening or commencement of any adult use as a new business;
  - B. the conversion of an existing business, whether or not an adult use, to any adult use;
  - C. the additions of any adult use to any other existing adult use; or
  - D. the relocation of any adult use.

**(11) NUDE MODEL STUDIO**

any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

**(12) NUDITY**

the appearance of a human bare buttocks, anus, genitals, or full female breast.

**(13) PERSON**

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

**(14) SEMI-NUDITY**

a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

**(15) SEXUAL ENCOUNTER CENTER**

a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration;

A. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

B. activities between male and female persons and /or persons of the same sex when one or more of the persons is in state of nudity or semi-nudity.

**(16) SPECIFIED ANATOMICAL AREAS**

the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

**(17) SPECIFIED SEXUAL ACTIVITIES**

any of the following:

- A. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast;
- B. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- C. masturbation, actual or simulated; or
- D. excretory functions as part of or in connection with any of the activities set forth in A, B, and C above.

**(18) STATE OF NUDITY**

(see NUDITY)

**(19) TRANSFER OF OWNERSHIP OR CONTROL**

means and includes any of the following:

- A. the sale, lease, or sublease of an adult use;
- B. the transfer of securities which constitute a controlling interest in an adult use, whether by sale, exchange, or similar means; or
- C. the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of an adult use, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**SECTION 2-4 USE PERMITTED**

Adult uses shall be a permitted use provided that:

- A. an adult use may not be operated within five hundred (500) feet of:
  - 1. a church, synagogue, or regular place of worship;



2. a public or private elementary, secondary school or licensed child day care center;
  3. a boundary of any residence;
  4. a public park;
  5. any establishment licensed to sell alcoholic beverages;
  6. any public establishment which allows use of tobacco on premises;
- B. no minor shall be permitted onto the premises of any adult oriented business.
- C. an adult use may not be operated within one thousand (1,000) feet of another adult use, or on the same lot or parcel of land as another adult use.
- D. an adult use may not be operated in the same building, structure, or portion thereof, containing another adult use or where the consumption of alcohol or use of tobacco is permitted.
- E. for the purposes of this chapter, measurement shall be made in a straight line, without regard to intervening structures objects, from the nearest portion of the building of structure used as part of the premises where an adult use is conducted, to the nearest property line of the premises of a church or public or private elementary, secondary school or licensed child day care center, or to the nearest boundary of an affected public park, or residential lot.
- F. for the purpose of this chapter, the distance between any two adult uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

- G. all adult uses shall be conducted in an enclosed building. Regardless of location of distance, no one who is passing by an enclosed building having a use governed by this chapter shall be able to visually see any specified anatomical area or any specified sexual activity by virtue of any display that depicts or shows said area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.

## **SECTION 2-5 SIGNAGE**

- A. Notwithstanding any other town ordinance, code, or regulation to the contrary, it shall be unlawful for the owner of operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than one (1) primary sign and one (1) secondary sign, as provided herein.
- B. Primary signs shall have no more that two (2) display surfaces. Each such display surface shall:
- (1) not contain any flashing lights;
  - (2) be a flat plane, rectangular in shape;
  - (3) not exceed seventy-five (75) square feet in area; and
  - (4) not exceed ten (10) feet in height or ten (10) feet in length
  - (5) not project at a right angle from the building.
- C. Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the names of the enterprise.
- D. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such be of a uniform and solid color.
- E. Secondary signs shall have only one (1) display surface. Such display surface shall:
- (1) be a flat plane, rectangular in shape;

- (2) not exceed twenty (20) square feet in area;
- (3) not exceed five (5) feet in height and four (4) feet in width; and
- (4) be affixed or attached to any wall or door of the enterprise;

F. The provisions of item (1) of subsection (B) and subsection (C) and (D) shall also apply to secondary signs.

## **SECTION 2-6 INSPECTION REQUIREMENT**

- A. A person may operate an adult use business in the Town of Covert only in accordance with the provision of this Local Law
- B. Prior to the commencement of any adult use or upon any transfer of ownership or control, the premises must be inspected and found to be in compliance with all laws, ordinances, rules and regulations applicable to the use and occupancy for an adult use and compliance with this Local Law.
- C. All code enforcement officials, including the Town Code Enforcement Officer, shall complete their certification that the premises is in compliance, or not in compliance, within twenty (20) days of the inspection of the premises by such officials.
- D. Any owner and/or operator, employee of the owner and/or operator or agent of the owner/operator shall permit representative of the Seneca County Sheriff's office, the New York State Police, County or State Health Department, Town Code Enforcement Officer, or other Town, County or State department or agencies that has permitting authority regarding the use and/or premises, to inspect the premises of an adult use for the purpose of insuring compliance with this chapter, at any time it is occupied or open for business.

## **SECTION 2-7 NONCOMFORMING ADULT USE**

- A. Any adult use lawfully operating on the effective date of this chapter that is in violation of the location or structural configuration requirements of this law shall be deemed a nonconforming use. The

continuation of the same use of substantially the same character and intensity shall be allowed. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. If two or more adult use businesses are within one thousand (1,000) feet of one another and otherwise in a permissible location, the adult use that was first established and continually operating at a particular location is the conforming use and the later-established business (es) is nonconforming.

B. An adult use business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the operation of the adult use business, of a church, public or private elementary or secondary school, public park, or a residential lot within five hundred (500) feet of the adult use business.

## **SECTION 2-8 VIOLATIONS**

It shall be deemed a violation of this chapter if the owner and/or operator, and employee of the owner and/or operator or an agent of the owner/operator has:

1. violated or is not in compliance with any section of this chapter;
2. refused to allow an inspection of the adult use business premises as authorized by this chapter;
3. had gambling occur on the adult use business premises;
4. had the possession, use, or sale of a controlled substance occur on the premises;
5. had prostitution occur on the premises;
6. had any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur on the premises;

7. Any violation of this Law shall result in the withdrawal of the permit and a fine of five hundred dollars (\$500.00). Each day the business is in violation of this Local Law shall constitute a separate violation. Any person who operates an adult entertainment business in violation of this Law shall be subject to a fine or penalty as herein provided.

## **SECTION 2-9 ENFORCEMENT**

The provisions of this Law shall be enforced by the Town of Covert's Code Enforcement Officer and/or any law enforcement agency having jurisdiction in the Town of Covert.

## **SECTION 2-10 APPLICATION PROCESS AND REQUIREMENTS**

- A. An application for an adult-oriented business Special Use Permit shall be made to the Town Clerk of the Town of Covert and shall be accompanied by a non-refundable fee of two thousand dollars (\$2,000.00). The application materials shall then be submitted to the Town Board not less than ten (10) days prior to their next regularly scheduled meeting.
- B. The applications shall include, at the applicant's expense, copies of the following:
  1. All appropriate building permits and plat plans, filled out completely and according to all local, county and state laws.
  2. A clear and concise description of proposed use.
- C. All property owners within five hundred (500) feet of the property lines of the proposed adult entertainment establishment shall be notified by first class mail not less than ten (10) days before the scheduled meeting of the Town of Covert Town Board at which the application will be received.

- D. **Criminal Record Check:** The applicant shall provide a list of owners, operators and managers including names, addresses and social security numbers, to the Town Board which shall cause an investigation to be made as to the character of the applicant and of the officers of the club, society or corporation and of the person who is to have general management of the business. If found to have been convicted of any crime, except traffic offenses, or of violating any ordinance regulating, controlling or in any way related to the construction use or operation of any establishments included in this section which evidences a flagrant disregard for the safety or welfare of either patrons, employees or persons residing or doing business nearby, the Town Board of the Town of Covert may refuse to issue a permit.
- E. Any expense incurred in making the required legal notices and criminal background check shall be paid from the two thousand dollars (\$2,000.00) application fee.
- F. Prior to issuance of a Special Use Permit, the premises housing the adult-oriented business shall be inspected and found to be in compliance with all applicable laws, rules and regulations. No permit shall be granted without a certificate of compliance of the Seneca County Health Department, Fire Chief, and Town Code Enforcement Officer. All pertinent inspections must be requested within fifteen days (15) of the filing of the application, and all inspection reports shall be filed with the Town Board within thirty (30) days thereafter.

**SPECIAL USE PERMIT TERMS:**

- A. **Special Use Permit Terms:** The permit year will begin on January 1 of each year, and shall run for two (2) years, terminating at midnight on December 31. Original permits issued for the balance of the permit period will be at full permit fee.
- B. If any adult oriented business establishment has closed - for any reason - for a continuous period of six (6) months, then any Special Use Permit issued pursuant to this Local Law shall

lapse and terminate unless, before the expiration of the six (6) month period, the owner or operator of that business has applied to the Town Board and received an extension of the permit for a fixed period beyond the six (6) months. Such extension may be granted only for good cause which is beyond the reasonable control of the owner or operator.

## **SECTION 2-11 SPECIAL USE PERMIT RENEWAL**

- A. Any person or entity who owns or operates an adult-oriented business pursuant to a special permit issued under this Local Law may make application for renewal of that special permit by application to the Town Board.
- B. An application for renewal of a special permit shall be made no more than six (6) months, nor less than three (3) months, before the expiration of the existing special permit.
- C. An application for renewal of a special permit shall not be approved unless the Town Board finds that the adult-oriented business is in compliance with all pertinent laws, ordinances and regulations.
- D. An application for renewal of a special permit can be made upon the applicant's original application for approval, with notations as to which aspects of those application materials remain unchanged, and which aspects of those application materials have changed. All changes in the application for renewal information shall be high-lighted and detailed by the applicant.
- E. All inspections required by Section 2-6 (c) of this Law shall be completed prior to submission of the application and attached thereto.
- F. The Application for renewal of a special permit must be accompanied by a nonrefundable filing/permit fee of five hundred dollars (\$500.00).

(Complete the certification in the paragraph which applies to the filing of this local law and strike out the matter therein 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 2001  
of the ~~County~~ Town of Covert was duly passed by the Town Board  
~~Village~~ (Name of Legislative Body)  
on February 12 2001 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval or no disapproval by Elective Chief Executive Officer,\* or repassage after disapproval.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_  
County  
of the ~~City~~ Town of \_\_\_\_\_ was duly passed by the \_\_\_\_\_  
~~Village~~ (Name of Legislative Body)  
on \_\_\_\_\_ 19\_\_\_\_\_. ~~not disapproved~~ and was approved \_\_\_\_\_ by the \_\_\_\_\_  
repassed after disapproval Elective Chief Executive Officer \*  
and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_\_, 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 19\_\_\_\_\_  
County  
of the ~~City~~ Town of \_\_\_\_\_ was duly passed by the \_\_\_\_\_  
~~Village~~ (Name of Legislative Body)  
on \_\_\_\_\_ 19\_\_\_\_\_. ~~not disapproved~~ and was approved \_\_\_\_\_ by the \_\_\_\_\_  
repassed after disapproval Elective Chief Executive Officer \*  
on \_\_\_\_\_ 19\_\_\_\_\_. Such local law was submitted to the people by reason of a  
mandatory referendum, and received the affirmative vote of a majority of the qualified electors voting  
permissive general  
thereon at the special election held on \_\_\_\_\_ 19\_\_\_\_\_, in accordance with the appli-  
annual  
cable provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_\_  
County  
of the ~~City~~ Town of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_  
~~Village~~ (Name of Legislative Body)  
\_\_\_\_\_ 19\_\_\_\_\_. ~~not disapproved~~ and was approved \_\_\_\_\_ by the \_\_\_\_\_ on \_\_\_\_\_  
repassed after disapproval Elective Chief Executive Officer \*  
\_\_\_\_\_ 19\_\_\_\_\_. Such local law being subject to a permissive referendum and no  
valid petition requesting such referendum having been filed, said local law was deemed duly adopted on  
\_\_\_\_\_ 19\_\_\_\_\_, 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 chairman of the county legislative body, the mayor of a city or village or the supervisor of a town, where such officer is vested with 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 19..... of the City of ..... having been submitted to referendum pursuant to the provisions of § 36 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 election held on ..... 19..... 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 19..... of the County of ....., State of New York, having been submitted to the Electors at the General Election of November ....., 19 ....., 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 of 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.

Judith M. Boyer, Clerk
Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: February 14, 2001

(Seal)

(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 .....

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]
ATTORNEY FOR TOWN OF COVERT
Title

Date: February 15, 2001

Clerk of
City of COVERT
Town
Village