

## **Chapter 41**

### **ADULT USES**

**[HISTORY: Adopted by the Town Board of the Town of Canadice 7-10-2000 by L.L. No. 2-2000. Amendments noted where applicable.]**

#### **GENERAL REFERENCES**

Land use — See Ch. 77.

Site plan review — See Ch. 95.

#### **§ 41-1. Title.**

This chapter shall be known as the "Adult Use Business Regulation Law of the Town of Canadice," and shall amend the Canadice Land Use Law, Chapter 77, and Canadice Site Plan Review Law, Chapter 95 of the Code of the Town of Canadice.

#### **§ 41-2. Findings.**

Based upon a comprehensive study of the adverse secondary impacts of adult use establishments as documented in accordance with the ruling of the United States Supreme Court in the matter of City of Renton v. Playtime Theaters, Inc. [475 U.S. 41 (1986)] and commissioned by the Town Board of the Town of Canadice, the Town of Canadice finds that:

- A. There are adverse secondary impacts associated with the establishment and operation of adult-oriented businesses within a community.
- B. Among these adverse secondary impacts are a deterioration in the local quality of life, property values, 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.
- C. These adverse secondary impacts resulting from the establishment and operation of adult-oriented businesses are a threat to the general health, safety and economic viability of the community.
- D. The unregulated establishment and operation of adult-oriented businesses would lead to the wide-spread imposition of adverse secondary impacts upon the 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.

#### **§ 41-3. Statement of intent.**

- A. It is the express intent of the Town of Canadice in adopting this chapter to:
- (1) 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.
  - (2) To protect the right of free expression, guaranteed by the United States 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.
- B. It is not the intent of the Town of Canadice in adopting this chapter to:
- (1) Deny any person the right of free expression, guaranteed by the United States 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.
  - (2) To impose upon any person any additional limitations or restrictions upon the right of free expression, guaranteed by the United States 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 United States 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.
  - (3) To impose upon any person any additional limitations or restrictions upon the right to obtain, view or partake of any communications guaranteed by the United States 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 United States 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.
  - (4) 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 United States 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.

**§ 41-4. Authorization.**

Numerous decisions by both federal and State of New York courts regarding the regulation of adult use 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 and be no broader than necessary; and must provide alternative locations within the town for adult use businesses. Therefore, the Town of Canadice hereby adopts the following amendments to

Chapters 77 and 95 of the Code of the Town of Canadice.

**§ 41-5. Definitions.**

These definitions also appear in § 77-6 of the Code of the Town of Canadice:

**ADULT BOOK STORE** — 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 herein.

**ADULT CABARET** — 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.

**ADULT DRIVE-IN THEATER** — A drive-in theater utilized for the presentation of materials distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

**ADULT MINI-MOTION-PICTURE THEATER** — An enclosed building with a capacity of less than 50 used for presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

**ADULT MOTION-PICTURE THEATER** — A building with a capacity of 50 persons or more used for presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

**ADULT PHYSICAL CONTACT ESTABLISHMENT** — 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 the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the 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.

**ADULT USE BUSINESS** — Any business which:

- A. Uses the land, structure, establishment or location for an adult entertainment business or as an adult physical contact establishment as herein defined; and
- B. Uses the land, structure, establishment or location and, by the provisions of the Penal Law, restricts access thereto from minors; and
- C. Uses the land, structure, establishment or location to feature topless dancers, nude dancers or strippers, male or female; and
- D. Uses the land, structure, establishment or location for presenting, lending or selling motion-picture films, videocassettes, cable television or any other such visual media, or the selling of books, magazines, publications, photographs or any other written

materials distinguished or characterized by an emphasis or matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined herein.

- E. Includes adult book stores, adult video stores, adult motion picture theaters, adult mini-motion-picture theaters, adult cabarets and adult drive-in theaters.

**ADULT VIDEO STORE** — An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes or other films 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 herein.

**SPECIFIED ANATOMICAL AREAS** — Are:

- A. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; or
- B. Human male genitals in a discernably turgid state, even if completely or opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES** — Are:

- A. Human genitals in a state of sexual stimulation or arousal; or
- B. Acts of human masturbation, sexual intercourse or sodomy; or
- C. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

**§ 41-6. Restrictions.**

- A. No adult use business shall be established within 750 feet of the property line of any residential use property or within 1,500 feet of the sites of the Canadice Corners Church/Canadice Methodist Church and Canadice Cemetery, the Tibbals Cemetery, the Bald Hill Cemetery, the Canadice Valley Cemetery, the Goetzmann Family Cemetery, the First Baptist Church of Penfield Camp, the Harriet Hollister Spencer State Park and any other county or town recreational facilities such as exist or may be created.
- B. An adult use business may not be established within 2,500 feet of any establishment selling alcoholic beverages, and should a new or existing establishment seek an alcoholic beverage license, it is not to be located within 2,500 feet of an established adult use business.
- C. Any structures intended for adult uses shall be set back at least 75 feet from any public roadway and be landscaped as follows:
  - (1) The preservation of natural and scenic resources in Canadice will be maintained through the use of plants, earth berms and varying textures to improve the appearance of the site and provide screening from the surrounding area.
  - (2) When possible, existing vegetation shall be retained and incorporated into the landscaping plan; this is especially true if large trees or other significant plants and vegetation can be salvaged.