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NEW YORK STATE DEPARTMENT OF STATE

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VILLAGE OF PENN YAN

Proposed LOCAL LAW D OF THE YEAR 2004

A LOCAL LAW AMENDING THE "ZONING LAW OF THE VILLAGE OF PENN YAN, NEW YORK" in the Village Code, providing for the addition of special use procedures, manufactured homes regulations, adult use establishment regulations and corresponding definitions.

Be it enacted by the Village Board of the Village of Penn Yan as follows:

Section 1: Short Title.

This local law shall hereafter be known as the "Zoning Law of the Village of Penn Yan, New York Amendment No. 3 of 2004".

Section 2: Legislative Intent.

The purpose of this local law is to amend the Zoning Law of the Village of Penn Yan, New York in the Village Code by providing for the addition of special use procedures, manufactured homes regulations, adult use establishment regulations and corresponding definitions.

Section 3: Legislative Authority.

This local law is enacted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 7 of the Village Law of the State of New York.

Section 4: Provisions.

§202-6. Definitions.

The following words or phrases as used in this chapter are defined as follows:

ACCESSORY STRUCTURE - A structure subordinate to a principal structure on the same lot and used for purposes customarily incidental to those of the principal structure. Accessory structures include but are not limited to portable, demountable or permanent enclosures, shade structures, carports, swimming pools, garages and storage sheds.

ACCESSORY USE - A use customarily incidental and subordinate to the principal use or occupancy of a building and located on the same lot with such principal use or building.

ADULT ARCADE - Any place to which the public is permitted or invited wherein electrically, or mechanically controlled still or motion-picture machines, projectors, computers, 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.

ADULT BOOK STORE or ADULT VIDEO STORE -

A. A Commercial establishment which, as one of its principal business purposes, offers for sale, rental or for any form of consideration any of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, DVD or video reproductions, slides or other visual representations, or other technology which depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that 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 offering for sale or rental for compensation of the specified materials that depict or describe specified sexual activities or specified anatomical areas. A " principal business purpose" shall mean that more than one-quarter (1/4) 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; and/or
- (5) The amount of on-site advertising which can be viewed by passersby, 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.

ADULT CABARET - A public or private establishment, which serves food and/or alcoholic or non-alcoholic beverages, that features:

- A. Persons who appear in a state of nudity or semi-nudity; or
- B. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, videocassettes, DVDs, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

ADULT MASSAGE PARLOR - A public or private establishment which is used for the provision of the service of stroking, kneading, tapping or vibrating the human body with the hands or other devices, with or without the aid of oils or other lubricants, except by those licensed to perform said activity under Education Law §7802.

ADULT MOTEL - A hotel, motel or similar commercial establishment that:

- A. Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, DVDs, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and has signs visible from the public right of way that advertises the availability of such closed-circuit television transmissions, films, motion pictures, videocassettes, DVDs, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas, this adult type of photographic reproductions;
or
- B. Offers sleeping rooms for rent for a period of time that is less than 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 10 hours.

ADULT MOTION-PICTURE THEATER - A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, DVDs, slides or reproductions are shown that are characterized by the depiction or description of specified anatomical areas or by specified sexual activities.

ADULT THEATER - A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

ADULT USES - Adult arcades, adult bookstores, adult cabarets, adult motels, adult motion-picture theaters, adult theaters, adult video stores, escort agencies, nude model studios, sexual encounter centers and other sexually oriented uses.

AGRICULTURAL USE - The raising of agricultural products, including livestock, poultry, dairy products, farm crops, fruit, vegetables and nursery stock, whether for gain or otherwise. This term does not include livery or boarding stables or manufacturing or processing of agricultural products as the principal use.

ALLEY - A narrow supplementary thoroughfare for the public use of vehicles affording access

to abutting property.

ALTERATION - As applied to a building or structure, a change or rearrangement in the structural parts or in exit facilities of such building or structure or any enlargement thereof, whether by extension on any side or by any increase in height or the moving of such building or structure from one location to another.

AMUSEMENT GAME CENTER - A continuous commercial use in which four (4) or more mechanical, electrical or electronic machines or devices are used or designed to be operated for entertainment or as a game, and either activated by the insertion of a coin, token, etc., or a use for which a charge is made-

APARTMENT - See "dwelling unit."

APPROVED - Approved by the Village Code Enforcement Officer under the regulations of this chapter or approved by an authority designated by this chapter.

AREA, BUILDING - The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of terraces and uncovered steps. All dimensions shall be measured between the exterior faces of walls.

AREA, LOT - The total area within the lot boundary lines, excluding any area included in a public street right-of-way.

ATTIC - That space of a building which is between the top of the uppermost floor construction immediately below and wholly or partly within the roof framing and that is not finished as habitable space. (See "story, half.")

BAR - A business establishment licensed by the State of New York to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

BASEMENT - Any space of a building which is partly below finished grade, but having more than one-half (1/2) of its height measured from floor to ceiling above average finished grade. (See also "cellar.")

BED-AND-BREAKFAST - A building containing a single dwelling unit in which at least one (1) but not more than four (4) sleeping rooms are provided by the owner/occupant as overnight lodging facilities for the accommodation of transient guests.

BOARDING HOUSE - A building, other than a hotel, containing a general kitchen and a general dining room, in which at least three (3) but no more than six (6) sleeping rooms are offered for rent, with or without meals to nontransient guests. A lodging house or rooming house shall be deemed a "boardinghouse."

BUFFER YARD - An area of land forming a visual and/or physical separation or barrier between two (2) uses. In the case of a visual barrier, the land shall be covered with natural plantings or man-made material to provide a continuous physical screen preventing visual access and reducing noise.

BUILDING - Any structure which is wholly or partially enclosed within exterior walls, is permanently affixed to the land, has one (1) or more floors and a roof and is intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING, ACCESSORY - See "accessory structure."

BUILDING, DETACHED - A building surrounded by open space on the same lot

BUILDING GROUP - A group of two (2) or more principal buildings and any buildings accessory thereto, occupying a lot in one (1) ownership and having any yard in common.

BUILDING HEIGHT - The vertical distance measured from the average elevation of the proposed or existing finished grade to the highest point of the roof for flat roofs, to the deck of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

BUILDING LINE - The line, established by statute, local law or ordinance, beyond which the exterior surface of a building on any side shall not extend, as specifically provided by law. In the instance of a cantilevered section of a building or projected roof or porch, said line shall coincide with the most projected surface-

BUILDING, PRINCIPAL - A building in which is conducted the main or principal use of the lot on which said building is situated.

BUILDING, SEMIDETACHED - A building attached by a party wall to another building normally of the same type on another lot, but having one (1) side yard.

CAR WASH - A building, premises or portions thereof where automobiles are washed either by the patron or others using machinery and mechanical devices specifically designed for this purpose.

CELLAR - Any space in a building the structural ceiling level of which is less than four (4) feet above average finished grade where such grade meets the exterior walls of the building. (See also "basement.")

CERTIFICATE OF COMPLIANCE - A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said

"certificate" shall acknowledge compliance with all the requirements of this chapter and such adjustments thereto granted by the Board of Appeals.

CHILD-CARE FACILITY - Any licensed building or structure operated for the purpose of providing daytime care and instruction for two (2) or more children on a regular schedule and also known as a "day-care center."

CHURCH or PLACE OF WORSHIP - A building or premises used for regular public worship by members or representatives of a religious sect or organization as defined by state statute.

CLUB, MEMBERSHIP - An organization catering exclusively to members and their guests or