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County

City

Town

Village

of Lyndonville, New York, Orleans County

Local Law No. 1 of the year 1999.

A local law Regulating Adult Businesses in the Village of Lyndonville
(Insert Title)

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

County

City

Town

Village

of Lyndonville, New York, Orleans County as follows:

A LOCAL LAW

REGULATING ADULT BUSINESSES IN THE VILLAGE OF LYNDONVILLE

SECTION 1 - TITLE

A Local Law Regulating Adult Businesses in the Village of Lyndonville.

SECTION 2 - PURPOSE

The purpose of this local law is to promote the health, safety, and general welfare of the residents of the Village of Lyndonville; to provide standards for the safe provision of adult businesses; and to minimize any potential adverse effects which may result from adult businesses by requiring the careful siting of such businesses.

SECTION 3 - DEFINITIONS

For the purpose of this local law, certain terms or words used herein shall be interpreted as follows:

1. **ADULT BUSINESS:** Shall mean and include, Adult Bookstore, Adult Video Store, Adult Novelty Shop, Adult Entertainment Cabaret, and Adult Mini-Motion Picture Theater.

2. SPECIFIED ANATOMICAL AREAS:
 - A. Less than completely and opaquely covered human genitals, pubic region, buttock or breast below a point immediately above the top of the areola.
 - B. Human genitals in a discernible turgid state, even if completely and opaquely covered.
3. SPECIFIED SEXUAL ACTIVITY:
 - A. Human genitals in the state of sexual stimulation or arousal.
 - B. Any act of human masturbation, sexual intercourse or sodomy.
 - C. Fondling or other erotic touching of the human genitals, pubic region, buttock or breasts.
4. ADULT BOOKSTORE, ADULT VIDEOSTORE, AND ADULT NOVELTY STORE: A public or private establishment having a substantial or significant portion of its stock-in-trade books, magazines, marital aids or novelties, films for sale/rent or viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals or materials which are distinguishing or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or an establishment with a segment or section devoted to the sale, rental or display of such material.
5. ADULT ENTERTAINMENT CABARET: A public or private establishment which permits or suffers or allows topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers which display or expose specified anatomical areas.
6. ADULT MINI-MOTION PICTURE THEATER: A public or private establishment in an enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

SECTION 4 - RESTRICTIONS

All adult businesses shall be subject to the following restrictions:

1. Adult businesses shall be permitted only in that portion of the Industrial Zone as defined in the Village of Lyndonville Zoning Ordinance described and more particularly set forth Chapter 240-4C, entitled Industrial Use Districts of the Code of the Village of Lyndonville which is incorporated herein by reference.

2. Adult business shall comply with the following setback, frontage and lot size dimensional requirements:
 - a. All buildings shall be set back not less than one hundred (100) feet from the right-of-way. The one hundred (100) foot set back area shall be landscaped with grass, trees, and shrubs and shall be curbed at the street. No parking will be allowed in this area. Pedestrian circulation, utility facilities, and accessways shall be allowed in this area.
 - b. All buildings shall have side and rear yards being a minimum of fifty (50) feet.
 - c. Minimum lot widths for an adult business shall be two hundred fifty (250) feet, and the building or other structures on the lot shall not cover more than fifty percent (50%) of the gross area of the lot.
 - d. No building shall have a height greater than thirty five (35) feet except light standards.
3. No adult business shall be allowed to occur within five hundred (500) feet of the property boundary of another existing adult business.
4. No building or structure associated with an adult business shall be located within five hundred (500) feet of any boundary of the Residential/Business District as defined in the Village of Lyndonville Zoning Ordinance as contained in the Village Code.
5. No adult business shall be conducted in any manner that permits the observation of any material that depicts, describes, or relates to specified sexual activities or specified anatomical areas from any public right-of-way or from any property not registered as an adult business. This provision shall also apply to any display, decoration, sign, show window, or other opening.
6. One on-site sign shall be permitted. Said sign shall only include the business name and/or hours of operation, and shall be in compliance with all other requirements of Chapter 240 of the Village of Lyndonville Code.
7. Adult businesses shall provide a minimum of one parking space for each 100 square feet of gross floor area, and one parking space for each employee. A parking space shall not be less than 10 x 20 feet. Parking for more than 50 vehicles shall delineate fire lanes.

8. No driveway shall be located less than 50 feet from an intersection, less than 20 feet from a property line, and less than 20 feet in width.
9. Adult businesses shall provide commercial refuse container placed on a concrete slab which is screened from view and is located as to permit safe and easy removal of refuse by hand or truck.
10. No exterior light source shall be erected in excess of 50 feet above the ground and shall be placed so that direct light or glare is not cast upon adjacent properties.
11. Landscaping and/or fencing shall be provided along all side and rear lot lines to minimize visual conflicts with adjacent land uses, and shall be in compliance with all requirements of Chapters 210 and 240 of the Village of Lyndonville Code. Fencing shall be a minimum of six (6) feet in height.
12. No person under the age of 18 shall be permitted within the premises of an adult business.
13. Driveways, accessways, parking lots, and walkways shall be paved with asphalt or concrete and shall be curbed.
14. No adult business shall be located within five hundred (500) feet of any church, school, recreation area, childcare facility, health or senior care facility, or public facility within the Village.

SECTION 5 - PERMIT

No person shall engage in, conduct, or carry on an adult business in the Village of Lyndonville unless a complete application therefore has been submitted, approved, and a permit issued by the Village of Lyndonville Code Enforcement Officer.

Each application for an adult business shall be submitted to the Code Enforcement Officer for review by the Village of Lyndonville Planning Board, containing all the information described below, and be accompanied by a non-refundable application fee of \$500.00.

1. The name, residential street address, and residential mailing address (if different) of the applicant.
2. The street address and mailing address (if different) of the proposed adult business.
3. All other residences of the applicant for the three (3) year period immediately preceding the date of the application.
4. The business, occupation, or employment of the applicant for the three (3) year period immediately preceding the date of the application.
5. Written proof that the applicant is eighteen (18) years of age or older.

6. A complete set of the applicant's fingerprints.
7. A description of the facilities and services to be available on the premises of the proposed adult business.
8. The history of the applicant in the operation of similar establishments or businesses including, but not limited to, whether or not the person, in previously operating in this state or another city or state under license, has had such permit revoked or suspended and the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation.
9. The criminal record, if any, other than traffic violations, of the applicant. If the applicant is an association or partnership, the criminal record of each associate or partner. If the applicant is a corporation, the criminal record of each officer or director of the corporation and each of the stockholders owning more than ten percent (10%) of the stock of the corporation.
10. A scaled site plan in compliance with the Village of Lyndonville site plan review requirements.

Upon receipt of a complete application and fee as provided for above, the Code Enforcement Officer shall make or cause to be made a thorough investigation of the applicant's crime record, and shall within thirty (30) days, submit the application to the Village of Lyndonville Planning Board for review.

SECTION 6 - APPROVAL, DENIAL, SUSPENSION OR REVOCATION OF PERMIT

PERMIT APPROVAL - A permit application may be denied by the Planning Board where it appears that the applicant has [1] been convicted of any offense involving promoting or permitting prostitution; promotion of obscenity; dissemination of indecent materials to minors or public display of offensive sexual material, or [2] has made a false statement on an application for a permit, or [3] has previously owned or operated an adult business which resulted in suspension or revocation of permits or licenses, or [4] has committed an act in violation of this local law. The Planning Board shall give the applicant a written notice specifying the grounds for permit denial. The applicant may, within ten (10) days from the date of such denial, file a written request with the Village Board of Trustees for a public hearing. The hearing shall be conducted by the Village Board of Trustees and held within thirty (30) days after filing the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Village Board of Trustees shall then issue a written finding within five (5) days after the date of the public hearing as to whether the permit application was properly denied. If the Village Board of Trustees determines the permit was unduly denied, the Code Enforcement Officer shall be directed to issue a permit within thirty (30) days of the date of the written finding. A copy of the permit shall be filed in the Office of the Village Clerk.

PERMIT SUSPENSION - A permit may be suspended by the Code Enforcement Officer where it appears that the permit holder has committed an act in violation of this law. The Code Enforcement Officer shall give the permit holder a written notice which shall: direct the permit holder to immediately cease operation of the business; specify the grounds for suspension; specify the action that the permit holder must undertake to correct the violation; designate a ten (10) day time period from the date of said notice for all violations to be corrected to the satisfaction of the Code Enforcement Officer, specify that if the violations are not adequately corrected within the ten (10) day time period, the permit shall be immediately revoked and an appearance ticket issued to the permit holder. The permit holder may, within ten (10) days from the date of suspension, file a written request with the Village Board of Trustees for a public hearing. The hearing shall be conducted by the Village Board of Trustees and held within thirty (30) days after the date of filing of request for the hearing. If the Village Board of Trustees determines the permit was properly suspended, the adult business shall continue not to operate, and the permit holder shall have ten (10) days from the date of receipt of the written finding to correct the violation(s) to the satisfaction of the Code Enforcement Officer. If the violation(s) are adequately corrected, the Code Enforcement Officer shall immediately reinstate the permit and the adult business shall be allowed to resume operation. If the violation(s) are not adequately corrected, the Code Enforcement Officer shall immediately revoke the permit following the procedures described below.

PERMIT REVOCATION - A permit may be revoked by the Code Enforcement Officer where it appears that the permit holder has not corrected violations pertaining to a previously issued suspension notice, or has committed an act in violation of this local law. A permit shall be automatically revoked if the permit holder receives more than three (3) separate suspensions. The Code Enforcement Officer shall give the permit holder a written notice directing the permit holder to immediately terminate operation of the business and shall specify the grounds for revocation. The permit holder may within ten (10) days from the date of such revocation, file a written request with the Village Board of Trustees for a public hearing.

The hearing shall be conducted by the Village Board of Trustees and held within thirty (30) days after the filing of the request for the hearing, and at which time the permit holder may present evidence bearing upon the question. The Village Board of Trustees shall then issue a written finding within five (5) days after the public hearing as to whether the permit was properly revoked. If the Village Board of Trustees determines the permit was unduly revoked, the permit shall be reinstated and the adult business use shall be allowed to resume operation. If the Village Board of Trustees permit was properly revoked, the adult business shall immediately and permanently cease to operate.

SECTION 7 - PENALTY FOR VIOLATIONS

If an adult business operates without a permit, or unlawfully operates after a permit was properly suspended or revoked, such violation shall be punishable by a fine of \$2000.00 and/or by imprisonment for up to fifteen (15) days. Each day such a violation continues shall constitute a separate offense.

A violation of any other provision of this local law shall constitute a violation, and shall be subject to suspension of the permit and punishable by a fine of \$500.00 for the first suspension; \$1000.00 for a second suspension; and \$2000.00 for a third and final suspension. A permit shall be automatically revoked if the permit holder receives more than three separate suspensions.

(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 1999 of the ~~(County) (City) (Town) (Village)~~ of LYNDONVILLE was duly passed by the Board of Trustees on May 10, 1999, 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 19____ of the (County) (City) (Town) (Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved) (Name of Legislative Body)
(not disapproved) (repassed after disapproval) by the _____ and was deemed (Elective Chief Executive Officer*)
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____ of the (County) (City) (Town) (Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved) (Name of Legislative Body)
(not disapproved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*)
on _____ 19____. 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 _____ 19____, 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 19____ of the (County) (City) (Town) (Village) of _____ was duly passed by the _____ on _____ 19____, and was (Name of Legislative Body)
(approved) (not disapproved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*)
on _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 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 the power to approve or veto local laws or ordinances.

(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 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 _____ 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 1, above.

(Seal)

Debra H. Miller
Clerk of the County legislative body, City, Town or Village Clerk or
officer designated by local legislative body

Date: 5-13-99

(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 ORLEANS

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]
Signature

Village Attorney
Title

~~County~~
~~City~~
~~Town~~
Village

of Lyndonville

Date: 5-13-99

MARTIN BUSCH
Code Enforcement Officer



(716) 798-0770
Fax: (716) 798-0771

Village of Medina Building Department

600 Main Street
Medina, New York 14103

TO: Village of Lyndonville Planning Board Chairman
FROM: Marty Busch, Village of Medina Code Officer
DATE: January 22, 1999
RE: Adult Business Impact Study

I have enclosed a copy of the final draft of the adult business impact study for your use.

You may wish to modify portions of Section V. depending on what documents you attach to the impact study when it is submitted.

If I can provide any other information, please contact me at 798-0770.

Thank you for your cooperation in this matter and I look forward to future joint projects.

WESTERN ORLEANS COUNTY

ADULT BUSINESS STUDY

TOWNS OF SHELBY, RIDGEWAY & YATES

VILLAGES OF MEDINA & LYNDONVILLE

ORLEANS COUNTY, NEW YORK

WESTERN ORLEANS COUNTY
ADULT BUSINESS STUDY
TOWNS OF SHELBY, RIDGEWAY & YATES
VILLAGES OF MEDINA & LYNDONVILLE

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WESTERN ORLEANS COUNTY
ADULT BUSINESS STUDY
TOWNS OF SHELBY, RIDGEWAY & YATES
VILLAGES OF MEDINA & LYNDONVILLE
SEPTEMBER 1998
EXECUTIVE SUMMARY

This study was initiated by the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville to investigate the need for, and if required, recommend land use controls to regulate the establishment of adult entertainment businesses. On August 25, 1998 the Village of Medina Board of Trustees adopted a local law imposing a moratorium on the establishment of adult businesses in the Village. The purposes of the moratorium were:

- a) to give the community the opportunity to evaluate the potential effects from the establishment of adult entertainment uses.
- b) to determine if a regulatory response is necessary.

Adult entertainment businesses provide materials/services of an adult nature. They are a category of establishments that sell or provide materials, entertainment or services that are primarily intended for adult use or entertainment. They included but are not limited to:

- a.) establishments that sell adult books and magazines and adult videos (XXX),
- b.) bars, restaurants, clubs, cabarets and other establishments that feature topless, or nude entertainment or dancing, and/or other services and entertainment of an adult nature, and
- c.) establishments that offer hot oil body rubs, body painting, lingerie modeling, and
- d.) massage parlors.

Adult entertainment businesses tend to define themselves through their signage, advertising and exclusion of minors by reason of age.

Today, the adult entertainment industry is not confined to rundown commercial neighborhoods in large cities. Adult businesses can also be found in affluent urban and suburban neighborhoods and rural communities. Although their "skid row" image is changing, adult businesses frequently cause an outcry of public concern. As the adult entertainment industry spreads, communities may be caught without adequate regulations to control where adult uses can locate or how they can operate and advertise. Communities can no longer depend upon the New York State Liquor Authority to help regulate topless establishments. The recent development of nude juice bars, that may not require a liquor license, pose a new threat in communities with no regulation.

Regulation of adult entertainment businesses has been attempted in various ways. Local approaches to regulate adult entertainment on moral grounds, censorship, pornography, or licensing have failed constitutional (First Amendment) challenges. Today, the approach most successfully used by local governments is to distinguish between the effects of an adult bookstore and conventional bookstore, and between the effects of X-rated movie theaters and standard theaters. By looking at the secondary effects of adult businesses and not at the content of the material it is possible to regulate adult entertainment as a distinct land use category.

Currently, there are no adult businessss in the Towns of Shelby, Ridgeway, Yates and the Villages of Medina and Lyndonville. It was determined at the onset of this investigation that these areas would not be immune to the effects an adult business could have on the residential neighborhoods or the business districts. Therefore, a preemptive approach was taken.

The current zoning regulations in the Towns and Villages do not define or regulate adult businesses any differently than other book, tape stores or bars. An adult bookstore could open in a vacant retail store or a topless bar could replace an existing bar today with little review by the Towns and Villages.

In New York State, the Court of Appeals has said that a municipality needs to conduct a study examining possible secondary effects before adopting regulations of adult uses. In this study, reference has been made to studies of other communities in order to document what secondary impacts can be expected. This was done because there are no existing adult businesses in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville to examine.

The potential secondary effects examined relate to economic impacts, property values, fear of crime, and the negative impact on community character. There is now increased emphasis in all the towns and villages on attracting recreational tourism to the area. Developed areas, including designated historic districts, surround gateway transportation routes. Negative impacts on these areas could have county wide economic impacts.

It has been determined that the land use control best suited to regulating the location of adult businesses exists in municipalities' authority to implement zoning. However, adult entertainment businesses can not be entirely prohibited through local zoning and still withstand legal challenge. Nor can a municipality base its regulations on a content of materials sold or the nature of the entertainment provided. In order for a zoning law to be effective, adult uses need to be defined in a manner that differentiates them from traditional bookstores and bars. One method has been to use their exclusion of minors as part of the definition.

Local regulations should attempt to minimize secondary impacts to the community from an adult use rather than completely prohibit them. This study has identified the land uses most sensitive to the adverse effects of adult uses. Residential properties, business districts, churches, child care facilities, parks, playgrounds, and civic facilities were identified. Limiting adult businesses to certain districts where they will have the least effect on the most sensitive land uses is the most acceptable method of control. Adult uses can be required to first obtain a special use permit or be subject to Planning Board Review. Within any criteria established to receive such permit key requirements can include:

- a) buffers to other land uses identified as being most susceptible to the negative impacts of adult uses
- b) dispersion through minimum distances between two adult uses,
- c) limits on the number of establishments per property
- d) requirements for screening and limiting signage.

This study concludes that the possible secondary effects from adult entertainment uses to the residential neighborhoods and central business districts pose a significant enough threat that zoning amendments should be adopted in order to define districts and disperse them.

I. INTRODUCTION

A. PURPOSE OF ADULT BUSINESS STUDY

The purpose of this study is to investigate the need for, and if required, recommend land use controls to regulate the establishment businesses in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville. It is the intent that this work give the Towns and Villages guidance on how to best protect residential neighborhoods, the business districts, and the community in general from negative impacts that may result from uncontrolled development of adult entertainment businesses. The focus of this special study is on the secondary effects to the neighbors and community and not on the content of material provided or the nature of the entertainment offered at adult entertainment businesses.

In the context of this study, the terms "adult uses", "adult entertainment businesses", "adult businesses" and "adult entertainment" are used interchangeably. They are characterized as a category of establishments that sell or provide materials, entertainment and/or services that are primarily intended for adult use or entertainment. They include but are not limited to a) establishments that sell adult books and magazines and adult videos (XXX), b) bars, restaurants, clubs, cabarets and other establishments that feature topless, bottomless or nude entertainment, c) establishments that offer hot oil body rubs, body painting, lingerie modeling, and d) massage parlors. Adult entertainment businesses define themselves a) through their advertising, b) by primarily dealing in materials/services of an adult nature, and c) by excluding minors by reason of age.

This study describes the status and trends in regulating the adult entertainment industry in New York State by reference to other communities' studies and regulations. It describes the potential problems that may be expected in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville, from the establishment of adult businesses. Draft amendments to the zoning regulations of the Towns and Villages regulating adult businesses are offered for the legislative boards' consideration.

B. THE WESTERN ORLEANS COUNTY SITUATION

The Towns of Shelby, Ridgeway, Yates and the Villages of Medina and Lyndonville in rural western New York feature residential and business areas of varying density. The towns for the most part see the greatest intensity of use centered in hamlet districts and along commercial corridors. The villages tend to have the greatest intensity of use centered around a central business district and in the Village of Medina also along a rapidly developing commercial corridor on a shared boundary line with the Town of Shelby.

The Villages and Towns are actively seeking to promote the western Orleans County area as a destination for tourists and sportsmen. Fishing derbys, bicycle and hiking events, motorcycle racing and golf events annually attract many visitors to the area. Streams, waterways and lakes provide almost unlimited opportunities for outdoor recreation. There are many recreational programs for children including a Girl Scout Camp and summer parks programs. Historic sites including homes, preserved business districts and the Erie Canal are also prime attractions.

Annual events such as the Lyndonville Fourth of July celebration, the Medina Summer Sampler, the 4H fair, and numerous church socials have sought to preserve a small town family atmosphere. The area has increasingly become the residence of choice for families leaving nearby urban areas seeking a more relaxed and wholesome place to live. Many family farms exist in the area with farm markets and roadside stands providing fresh produce for visitors to the scenic lake plains area.

Certainly the continued development and economic viability of the western Orleans County area is dependent on the atmosphere, aesthetic features and events listed above. A prime objective of efforts in planning and zoning has been to protect the physical character of the communities. This has been accomplished through vigorous efforts to enact and enforce land use controls such as zoning, subdivision regulations, sign control regulations and architectural design guidelines.

The relationship between economic vitality and a strong municipal commitment can also be seen in the partnering work of the Chamber of Commerce and other service oriented organizations. These groups recognize the potential threat adult businesses could pose to the success of the area and therefore support regulation of adult uses.

C. A PREEMPTIVE APPROACH

At this time there are no adult businesses in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville. The current Zoning Ordinances lack definitions, districting, or regulations specifically related to adult uses. However, zoning documents do allow book (and tapes) stores, bars/restaurants and indoor entertainments throughout various zoning districts in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville. Therefore, under these current regulations, an adult entertainment use could open with little or no examination by the Towns or Villages. For example, an adult bookstore could open within any vacant retail commercial establishment without any discretionary approval from the Planning Boards. Likewise, an existing bar or restaurant could change its theme and offer topless entertainment without additional approvals required from the Towns or Villages. This realization led to concern for maintaining the character of the communities as family oriented, and subsequently to the interest in developing a preemptive response.

It was determined that the communities would take these early steps in order to head off future problems before an adult entertainment business was established. These preemptive steps include 1) enacting temporary moratoriums on establishing adult uses while, 2) preparing a joint study investigating the possible effects on the communities from adult entertainment businesses and, 3) preparation of proposed zoning text amendments to regulate where and how adult uses could be allowed in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville in the future.

II. REGULATORY CONTEXT

A. MORATORIUM

In the Village of Medina on August 25, 1998 the Village Board passed a local law imposing a temporary moratorium on granting approvals establishing adult businesses. The purpose of the moratorium was; a) to give the community an opportunity to evaluate perceived threats from the establishment of such uses, b) to determine if a regulatory response was necessary, and c) if stronger land use controls were warranted to draft the regulatory changes for the legislative board's consideration.

A moratorium and study were deemed necessary due to the controversial nature of the issue in light of free speech and constitutional challenges to similar regulatory efforts by other communities in New York State and elsewhere in the United States.

B. LIMITED ABILITY TO REGULATE

Adult entertainment businesses can not be entirely prohibited through local zoning and still withstand legal challenge. Early attempts to regulate or license adult uses were generally not upheld by the courts. Approaches that ran contrary to the spirit and intent of the First Amendment to the U.S. Constitution were struck down as unconstitutional. It has been established through various court decisions, including Young v. American Mini Theaters, Inc. 427 U.S.50 (1976), that the most defensible course of action is to draft regulations that minimize the secondary impacts to a community resulting from the location of adult uses. In order to show that regulating the establishment of adult uses is meant to minimize secondary impacts rather than to regulate speech (content), a special study evaluating such impacts is required.

At the Federal level, the U.S. Supreme Court found in Renton v. Playtime Theaters, Inc. 475 U.S.41 (1986) that a municipality may rely on other communities' studies. However, there is an apparent conflict because in 1989 the New York State Court of Appeals (in Town of Islip v. Caviglia, 73 N.Y.2d544) reiterated that municipalities could regulate the location of SOB's [Sexually Oriented Businesses] and needed a study to prove secondary effects. It upheld the Town of Islip law because Islip did an individual study. Therefore, at this

point in time in New York State, the courts have not yet recognized that you can rely on studies from other municipalities and should conduct [your] own study.

The intent of regulations on adult businesses should not be to regulate the content of material or nature of entertainment provided by a business but rather to protect neighborhoods from unfavorable changes in regards to safety character of the community and land values. Local regulations can limit adult uses in two ways. First, local regulations can limit where adult businesses locate via zoning districts. Secondly, municipalities can require that adult businesses obtain a special use permit allowing enhanced review and enabling the municipality to place conditions upon its approval.

Zoning regulations need to define adult entertainment businesses clearly and then require that a proposed adult business apply for a special use permit from the municipal board given the authority to issue them. typically planning boards are authorized to grant conditional use approvals [special use permits]. The benefit of this approach is that planning boards can address specific problems by placing conditions on the special use permits. Therefore, by treating them as conditional uses, more control can be exerted over adult businesses, resulting in better protection to the neighbors from adverse effects. Some of these methods can include establishing minimum separation distances to residential uses, churches, schools and public facilities. The use of buffers was upheld by Young v. American Mini Theaters, Inc. 427 U.S.50 (1976) and Cupid's Video Boutique v. Roth, 203 A.D.2d 70, 610 N.Y.S.2d 24 (1st Dept. 19940). Limiting both exterior advertising and the proximity of adult uses to each other can also temper their impact on neighborhoods and reduce the "skid row effect" identified in a 1962 Detroit, Michigan ordinance.

In summary, while the authority for municipalities to regulate adult uses has been upheld in the courts, that authority is also limited in its scope. First, while municipalities can not prohibit adult entertainment businesses throughout the entire municipality they can be restricted to certain zoning districts. In addition, a study addressing the possible secondary effects to the community must be done. Emphasis of any subsequent regulations should be placed on the attempt to limit secondary effects without regulating the content of materials sold or nature of entertainment or services provided.

Municipalities can require special use permits and may apply enhanced requirements such as buffer zones.

C. A REGULATORY ALTERNATIVE

If specific regulations on adult entertainment businesses are enacted, the most appropriate method would be for the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville to each adopt amendments to their respective zoning regulations. Zoning definitions will require revision. The zoning district(s) where adult uses will be allowed as conditional uses must be identified. Specific standards can also be applied through the Conditional Use review process.

Appended to this study are proposed amendments to the zoning ordinances of:

- a) The Town of Shelby
- b) The Town of Ridgeway
- c) The Town of Yates
- d) The Village of Lyndonville
- e) The Village of Medina

III. ADULT ENTERTAINMENT INDUSTRY

A. GROWTH AND EXPANSION

The adult entertainment industry is no longer confined to the rundown commercial neighborhoods of large cities. Today adult entertainment establishments locate in urban, suburban and rural communities. Although their "skid row" image is changing, they typically still cause an outcry of public concern. In New York City, there are more topless bars than previously, due to a proliferation of topless bars affecting an "upscale" image. Adult bookstores locate in suburban neighborhoods as well. When adult entertainment businesses open in communities that do not have zoning provisions regulating them, local officials are forced to re-act under pressure from the general public. After an adult bookstore opened in Amherst, New York, town officials began to review the adult use issue. A local law was subsequently adopted and the offending bookstore would have one year to come into compliance. Amortization was used in the Town of Islip, New York because local controls were not in place before several adult entertainment uses were established. In a more rural setting, an adult bookstore recently opened in the Village of Delavan, Town of Yorkshire, bringing the realization that "it can happen here".

As the adult entertainment industry spreads, communities can be caught without the proper controls over where adult uses can locate or how they can operate and advertise. In addition, with the advent of nude juice bars, communities can not depend upon the New York State Liquor Authority to help regulate topless bars. Various communities have approached these issues differently. For the most part, local regulation has been shaped by case law resulting from challenges to earlier attempts to regulate.

B. PREVIOUS STUDIES

Because there are no adult entertainment businesses currently operating in western Orleans County, potential secondary effects have to be assessed by looking at what has happened in other communities. Many communities in New York, and nation-wide have prepared special studies addressing the secondary effects of adult entertainment establishments. Combined these studies provide an analysis otherwise unavailable to communities that do not have existing adult entertainment establishments.

This study relies on the findings of other adult entertainment studies both in New York State and nationwide. In preparing this study, those documents and their corresponding regulations were reviewed for similarities to the western Orleans County situation. This was done in order to develop an appropriate strategy for addressing adult uses in the western Orleans County area. While some of the Communities reviewed differ greatly from those of western Orleans County in size and urban development, the potential effects from adult uses at the neighborhood level is still applicable.

NEW YORK CITY, NY. In New York City, several studies have identified impacts associated with adult entertainment establishments. Due to its size, New York City has a large enough number establishments to track trends in type and location of new adult businesses. In New York City, the number of adult book and video establishments grew from 29 to 86 between 1984 and 1993. The number of topless and nude bars also grew from 54 to 68 during the same period. In terms of their location, adult entertainment uses have a tendency to concentrate in specific areas. In 1994, surveys done in various business districts were compared. Differences between areas with and without high concentrations of adult entertainment establishments were identified. The Overall Findings and Conclusions of the 1994 NYC Adult Entertainment Study are summarized as follows:

- Adult entertainment uses tend to concentrate; they cluster in central locations.
- In the areas where adult uses have concentrated, the study identified numerous secondary effects. Owners of other types of businesses overwhelmingly believed that their businesses had been adversely effected. A substantially higher incidence of criminal activity was also found in the areas where adult uses were most concentrated.
- Areas with less dense concentrations of adult use found fewer impacts than the areas with the higher concentrations. However, the community leaders still expressed fear of the results of proliferation.
- The strongest negative reactions came from residents living near adult entertainment uses.
- In the areas where adult entertainment uses were isolated other businesses typically reported that the adult uses had not yet been adversely effected their neighborhoods.
- Real estate brokers reported that adult entertainment establishments were perceived to negatively affect nearby property taxes.

-Adult entertainment accessory business signs were found to be generally larger, more often illuminated, and graphic (sexually-oriented) compared with the signs of other nearby commercial uses. Community residents viewed this signage as out of keeping with neighborhood character and were concerned about the exposure to minors to graphic sexual images.

The concensus among those expressing opposition to the operation of adult uses is that adult entertainment establishments have a negative impact on communities in which they are located. These impacts include: inappropriate exposure of children and teenagers to graphic sexual images, increased crime, diminishing property values, adverse effects upon the climate for other types of commercial activities, and overall negative influences upon community character.

ISLIP, NY. The study completed by the Town of Islip in 1980 was initiated in part by the public concern when a new adult book store/peep show opened. A case study, including an examination of public resentment through newspaper accounts, and an inventory of other existing adult entertainment businesses were conducted. Similar to New York City study, the Town of Islip was able to look at the effects from existing adult uses. The case study could then be used to determine what location factors were responsible for the outpouring of neighborhood residential opposition. The inventory of 15 existing adult entertainment uses examined zoning conformance, neighboring land use, value (assessed) and building condition. An individual site analysis was prepared for each business. The Islip study encouraged the limitation of adult uses to industrial districts in order to prevent skid row effects in the Historic Downtowns of Islip.

HYDE PARK, NY. In Hyde Park and adult use study was prepared in 1996 for the Town Board by Green Plan, Inc. Of the studies reviewed for New York communities, the work in Hyde Park is most applicable to the situation in western Orleans County because a) it is smaller in size than New York City or Islip,

b) both have strong tourism industries, and c) neither community had an active adult entertainment business when regulations were proposed. The Hyde Park study concluded that it is appropriate for the Town of Hyde Park to regulate adult businesses differently from other commercial establishments.

OTHER COMMUNITIES. Many communities throughout the United States have documented the negative effects from the location of adult entertainment businesses. The Hyde Park study summarizes the results of several of those studies. The detrimental effects identified by those studies frequently related to increased crime, reduced property values, detrimental impacts on commercial areas and negative changes in the character of residential neighborhoods. The studies that identified the secondary effects noted above include those prepared for the State of Minnesota; Phoenix, Arizona; Austin, Texas; Whittier California; Indianapolis, Indiana.

C. REGULATORY RESPONSES

One common conclusion of the studies reviewed has been that the concentration of adult businesses can create a "skid row effect". Communities in New York and throughout the United States have responded to adult uses in various ways. Most often the regulatory response has been to follow the Detroit, Michigan method to disperse adult uses rather than let them concentrate in any particular area. The Detroit "Anti-Skid-Row Ordinance" is based on observations of the types of businesses which have a degrading effect on the surrounding properties. These businesses were identified as being: bars, pawn shops, public lodging houses, and adult entertainment businesses. Today in western Orleans County, local zoning already regulates most of the "skid row" businesses identified in the Detroit ordinance. The one exception is adult entertainment businesses.

Detroit city officials didn't set out to regulate pornographic uses. They were trying mainly to prevent the development of more skid rows. They had two objectives: first to keep typical skid-row uses separate from one another and, second to keep these same uses separate from residential areas of the city. In order to avoid a First Amendment challenge to regulation of adult uses it needs to be shown that the regulation is not predominantly intended to control the content of the material purveyed and is not a purposeful attempt to regulate speech, but rather is intended to control the secondary effects of such uses on the community.

In Islip, new adult uses were prohibited from neighborhood commercial areas because their concentration would cause a "dead zone". It was determined that the location of adult uses in various downtown districts, was contrary to the community efforts to revitalize those areas and attract private investment. The adults-only definition applied in the Islip regulation avoids emphasis on the content of the material, avoiding Constitutional questions based on the First Amendment, and allowing pornographic uses to define themselves. The Islip study looked at each existing adult business establishment and documented the public concerns, resentment and past actions through news articles and letters. In the subsequent zoning ordinance changes, Islip chose to disperse adult uses. It set minimum distance requirements between adult uses and other land uses such as schools, churches, parks and residential districts as well as other adult uses. Non-conforming adult uses were amortized over five years and had to close. The Islip regulations were challenged and upheld by the New York State Court of Appeals in 1989. The Court recognized that the elimination and prevention of adverse effects of adult entertainment uses in a legitimate government interest, subject to land use regulation, provided that the predominant purpose of the regulation is to control adverse impacts, and not to control content or preclude alternative avenues of expression.

The Hyde park regulatory response also was to adopt zoning amendments. The amendments defined "adult use", established a new land use category and restricted them to one zoning district. Hyde Park also established minimum distance requirements, required special use permits and added special provisions for signage. A "waiver" or appeal process was established. Of the studies and regulations reviewed, the method of regulation used in Hyde Park is the most applicable to the situation in western Orleans County.

D. SUMMARY

The review of the various special studies on adult entertainment uses by other communities leads to the conclusion that the location of adult entertainment businesses can cause negative effects on the immediate neighborhood. In particular, those negative effects can include increased crime, decreased market values, public resentment, a general blighting of the commercial district and a negative influence upon community character.

The common regulatory response to mitigate the possible negative effects from adult uses has been through zoning regulations. The result of such regulations to ensure that adult uses can locate in a manner that a) disperses them from each other and b) provides a safe buffer from the most sensitive land uses, such as residences, churches, schools, historic resources and the central business district.

V. POTENTIAL THREAT AND POSSIBLE SECONDARY EFFECTS

At the beginning of this investigation, input was sought locally from various concerned organizations. Discussion was initiated by the Planning Boards of the towns and villages of western Orleans County.

The Town and Village Boards, also expressed concern over adult entertainment businesses. They supported this study's attempt to create a preemptive response. Recommendations were made to the Town and Village legislative boards to establish the temporary moratoriums on the establishment of sexually oriented businesses pending the results of a study to determine their potential impacts on the neighboring community. From its inception, the proposal to regulate adult entertainment uses in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville focused on location issues and the secondary effects those businesses may have on neighborhoods. It has not been concerned with the content of the materials those business might sell or the nature of the entertainment or services they may provide.

The towns and villages of western Orleans County have a long established stake in regulating land uses through zoning. For example, the Village of Medina Zoning Regulations were first adopted in 1956, the Town of Shelby in 1960 and the Town of Yates in 1959. The towns and villages completed master plans in the 1960's and are presently working jointly to update existing master plans and zoning regulations. Master Planning efforts will recognize the importance of new commercial development, tourism, agriculture and preservation of the rural small town character of the area. These items are vital to the economic stability of western Orleans County.

The towns and villages of western Orleans County have worked through the years to maintain and expand existing services. Work to improve and expand infrastructure is on going. Communities have worked, through local enforcement of building and zoning regulations, to maintain housing stock. All these efforts have maintained a good quality of life for residents of the area and provided an excellent opportunity for continued development.

There is also a clear relationship between business and recreational tourism in the area. The retail sector balances the provision of goods and services for general consumption with specialty retail aimed at the recreational visitor in the form of gift shops, sporting goods stores, and restaurants. In planning for the future of western Orleans County, it is important to consider how growth in each of these areas effects the other as well as residential characteristics of the area. One concern of this study is the negative effect adult entertainment businesses could have on the existing retail sector as concluded in the New York City and Islip studies.

A. POTENTIAL FOR ADULT USES IN THE TOWNS OF SHELBY, RIDGEWAY YATES AND VILLAGES OF MEDINA AND LYNDONVILLE.

Over the past two decades the western Orleans County area has seen changes in both the residential and commercial character. Increasingly the towns and villages have become "bedroom communities" for people commuting to jobs in the Buffalo and Rochester area. Restaurant and specialty services formerly available only in the more urban areas are now commonly located throughout western Orleans County. Orleans County is now the fastest growing county in Western New York. Large numbers of recreational and sporting enthusiasts visit the area each year. These factors have led to local concern that adult entertainment businesses will be attracted to the western Orleans County area.

The existing zoning schemes in both the Villages and Towns allow a reasonable mixing of residential and commercial land uses. Many commercial uses are allowed in, or in close proximity to residential districts often with conditional use approval (special use permit) from the Planning Boards. This is especially true in residential areas bordering the business districts.

B. POSSIBLE SECONDARY EFFECTS

Because western Orleans County has increasingly become a "bedroom community" area adding to the agricultural residential population, many service related businesses have established locations here. These new businesses have brought new job opportunities to the area. There is a direct relationship between the health of the local economy and the character of the communities. The character of the communities is partly defined by the business mix and the general ambience of rural small town living. If adult uses were to locate in the western Orleans County area it could counter efforts to maintain an atmosphere that will attract new residents and businesses.

Establishment of adult uses near residential areas could have a disruptive effect on the aesthetic qualities and residential values of established neighborhoods. It is believed that the location of an adult business will make a neighborhood less desirable for both current residents and potential home purchasers alike.

The typical brash signage utilized by the adult entertainment industry would not be consistent with the character of the Villages and Towns. Also, it would not be consistent with the intent of the existing local laws regarding signs
(Village of Medina Code Section: 198-1 A & B.)
(Village of Lyndonville Article VII Section: 240-19)
(Town of Shelby Article 6 Section: 600-601)
(Town of Yates Section: 601)

C. SENSITIVE LAND USES

Previous studies have shown that adult businesses should be segregated from certain other land uses which are sensitive to the potential negative effects from adult uses. Adult uses should be dispersed and or segregated in order to protect a) the existing character of the community, b) the quality of life within existing neighborhoods and, c) the economic stability of existing businesses. In the Towns of Shelby, Ridgeway, Yates and the Villages of Medina and Lyndonville the land uses and places most sensitive to the adverse impacts of having an adult business as a neighbor include:

1. a) The Village of Medina Historic Business District
- b) The Village of Lyndonville Main Street Business Area
- c) Ridgeway, Shelby and Yates Hamlet Areas
- d) The Maple Ridge Corridor Area
- e) The Lake Ontario Shore Area
- f) The Historic Erie Canalways
- g) Gateway & Historic Routes and Trails

2. Churches

Village of Medina:

- a) Calvary Tabernacle - 324 Catherine St.
- b) First Baptist - 203 West Center St.
- c) Glad Tidings Baptist - 404 West Oak Orchard St.
- d) Grace Baptist - 120 Park Ave.
- e) Medina Branch LDS Church - 229 West Center St.
- f) St. John's Episcopal - 200 East Center St.
- g) Grace Covenant - 442 Main St.
- h) St. Peter Evangelical Lutheran - 1357 West Ave.
- i) Trinity Lutheran - 1212 West Ave.
- j) First Presbyterian - 522 Main St.
- k) Sacred Heart Roman Catholic - 208 Ann St.
- l) St. Mary's Roman Catholic - 211 Eagle St.
- m) United Methodist - 222 West Center St.

Village of Lyndonville & Town of Yates:

- a) Ashwood Wesleyan - 12540 Platten Rd.
- b) County Line United Methodist - 1385 County Line Rd.
- c) Presbyterian Church - 107 North Main St.
- d) St John's Lutheran - 10213 Roosevelt Hwy.
- e) St. Joseph's Roman Catholic - 38 Lake Ave.
- f) United Methodist - 102 North Main St.
- g) Yates Baptist - 11365 East Yates Center Rd.

Town of Ridgeway:

Town of Shelby:

- a) Alabama Full Gospel Fellowship - 5329 South Gravel Road
- b) East Shelby Community Bible Church - 5278 E. Shelby Rd.
- c) Millville United Methodist Church - 12373 Maple Ridge
- d) New Life Alliance - 4140 Shelby Basin Road
- e) Second Church True Deciples Of Christ - 4669 Alabama Rd

3. Schools

Medina Central Schools:

High School - 11235 Maple Ridge Road

Middle School - 1016 Gwinn St.

Oak Orchard Elementary - 335 West Oak Orchard St.

Towne Elementary - 181 Bates Road

Many children within the Village of Medina limits walk to the various schools. There is presently no zoning or other land use regulation that would prohibit an adult entertainment business from locating in commercial districts in the vicinity of the schools.

The Lyndonville Central School is located approximately in the center of the Village on Route 63. All children kindergarden thru high school within the Village limits walk to and from school. There is presently no zoning or other land use regulation that would prohibit an adult entertainment business from locating in the near vicinity.

Town of Shelby Schools:

- a) Orleans Niagara BOCES - 4232 Shelby Basin Road
- b) Orleans Academy - Salt Works Road

4. Child Care.

Village of Medina:

- Head Start - 123 Ensign Ave.
- Toddler's Inn - 5 Brown Ave.

There is one licensed child care facility within the Village of Lyndonville located at 106 South Main St.

Town of Shelby:

- Orleans Niagara BOCES - 4232 Shelby Basin Road

5. Recreation Areas, Parks and Play Grounds and Public/ Civic Facilities:

Village of Medina:

- a) Gulf St. Park
- b) State St. Park
- c) John E. Butts Memorial Park
- d) Veterans Memorial Park
- e) Gwinn St. Park
- f) Pine St Park
- g) Rotary Park
- h) Erie Canal Basin
- i) Erie Canal Loop Trail
- j) Lake Plains YMCA

Village of Lyndonville:

- a) Veterans Park
- b) Lake Avenue Baseball Fields
- c) Sportsmen's Park

Town of Shelby:

- a) Mill Race Park - Shelby Center
- b) East Shelby Ball Park - East Shelby Road
- c) West Shelby Ball Park - West Shelby Road

Town of Ridgeway:

- a) Culvert Road Canal Tunnel
- b) Glenwood Lake
- c) Fisher Price Park - Salt Works Road

6. Residential and Agricultural Districts:

The Village of Medina districts that are designated primarily for residential use include the Residential and Multiple Dwelling Use Districts. Residential uses are also allowed in the various business and industrial use districts. Residential use areas virtually surround the central Main Street Business District and many of the industrial use areas. Vacant land available for residential development is currently zoned for such use.

The Village of Lyndonville is approximately one (1) square mile, therefore making most of the area residential. There is a small commercial district along Main Street, and an industrial area on West Avenue at the Northwest corner of the Village.

The Town of Shelby has population density areas centered in the following hamlets; Shelby Center, West Shelby, East Shelby and Millville. Shelby Center and Millville have small commercial areas within the residential hamlets and also are located on gateway routes for the county.

The Town of Yates has population density areas centered in the following hamlets: Yates Center, Millers and Countyline.

In the Town of Ridgeway most of the land is zoned Rural/Agricultural or Rural/Residential with the primary use being farming. Housing in the town is predominately single family with some dwellings having accessory apartments or home retail businesses. These areas are low in population density. There are also several hamlets including; Knowlesville, Oak Orchard, Ridgeway and Jeddo. The hamlets are mostly residential with a few businesses. Population density is low to medium with distinct streets and developments.

In the Towns, the majority of the land area is in the Agricultural-Residential Districts. Limited commercial uses including restaurants and bars are allowed in A-R Districts.

In the Villages, residential neighborhoods can be easily defined. There are distinctive residential streets and developments. However, since the majority of the area in the townships is rural in nature with low density housing on large lots along town roads neighborhoods are harder to define. Therefore, the residential sensitivity should be expressed in terms of residential property and not neighborhoods.

7. Health and Senior Care & Residence Facilities:

Village of Medina:

- a) Medina Memorial Hospital - 200 Ohio Street
- b) Applegate Manor - 400 Ohio Street
- c) Sandstone Village - 100 Bernzomatic Drive
- d) The Willows - 459 East Oak Orchard Street
- e) Orchard Manor - 600 Bates Road

D. PROPOSED DISTRICTS AND SEPARATION DISTANCES

In order to locate adult uses in areas where their effect on adjoining neighbors will be minimized they should be limited to the industrial districts where there are the least number of residences or retail commercial establishments.

In addition to being limited to industrially zoned areas the Towns and Villages can further control where an adult use can locate. Minimum separation distances can be established in order to provide an appropriate buffer between adult uses and those land uses determined to be sensitive to the possible negative secondary effects of adult uses. Minimum separation distances also prevent concentrations of adult uses.

V. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS:

The adult entertainment industry is growing and spreading geographically.

At this time the existing land use regulations in the Towns and Villages do not address adult uses. They are not defined, restricted by district, or prohibited. Currently, it would be possible for an adult entertainment business to open wherever a retail commercial establishment or restaurant is now allowed.

Because existing zoning allows a great deal of commercial/residential mixing there is an increased potential for conflicts between adult entertainment and residential land uses.

Previous studies by other municipalities have documented that secondary effects from adult entertainment establishments may include increased crime, decreased property values, negative impact upon other commercial businesses and a deterioration of residential neighborhoods. A common conclusion of those studies has been that if adult entertainment uses are not regulated (with districting and separation distances) the adjoining neighborhoods may decline.

Both the New York State Court of Appeals and the United States Supreme Court have affirmed the right of a community to regulate the location of adult uses based on these secondary effects.

Municipalities can regulate adult entertainment businesses by limiting them to certain zoning districts or neighborhoods where the secondary impacts are minimized. The regulations must leave some reasonable alternatives to where they can locate.

There are certain land uses that are more susceptible to the impacts from an adult entertainment neighbor. They include, but are not limited to, residential neighborhoods, schools, churches, public facilities, parks and playgrounds and historic resources.

Separation distances or buffers can be utilized to mitigate impacts to those most sensitive land uses identified.

Additional control is available by placing adult entertainment businesses in a land use category that requires review and approval of a special use permit.

It is the conclusion of this study that the regulation of adult entertainment uses in the Towns of Shelby, Ridgeway, Yates, and Village of Medina and Lyndonville is appropriate and necessary. Having regulations in place will ensure that if and when an adult entertainment business proposes to open in these communities, there will be appropriate locations set aside where it will be allowed. The proposed regulations will also protect to the greatest extent possible, neighbors, and community in general from possible negative secondary effects that may occur resulting from the establishment of an adult entertainment use.

B. RECOMMENDATIONS

Following adoption of this study, which includes the review of adult entertainment studies and zoning regulations of various communities as well as an evaluation of their applicability to the situation in the Towns of Shelby, Ridgeway, Yates and Villages of Medina and Lyndonville, it is recommended that the following actions be undertaken in order to avoid adverse secondary effects from the location of adult entertainment businesses:

1. The Towns and Villages should each adopt amendments to their zoning regulations to define, create a new land use category, district and regulate the establishment of adult use.
2. Due to the limited number of commercial districts and their proximity to existing residential development the most appropriate zoning districts to allow adult uses are: the Industrial Zones.
3. In order to give the Towns and Villages the greatest opportunity to review specific proposals, the establishment of adult entertainment businesses should be considered Conditional Uses (special use/site plan) just as any other retail commercial or restaurant is treated under the current zoning.
4. Outdoor advertising and signage should be limited in order to protect the community character.

5. Minimal separation distances should be established in order to provide an appropriate buffer between adult entertainment businesses and adjoining land uses.

C. PROPOSED ZONING AMENDMENTS.

Draft amendments to the Towns Zoning Ordinances and Villages Zoning Local Laws are presented for the Towns and Village's consideration in Appendix A.

VI. APPENDIX

A. PROPOSED ZONING TEXT AMENDMENTS:

- Village of Medina
- Village of Lyndonville
- Town of Ridgeway
- Town of Shelby
- Town of Yates

B. STATE ENVIRONMENTAL QUALITY REVIEW - Environmental Assessment Forms:

- Village of Medina
- Village of Lyndonville
- Town of Ridgeway
- Town of Shelby
- Town of Yates

C. TABLE 1. LANDS IN INDUSTRIAL ZONES

- Village of Medina
- Village of Lyndonville
- Town of Ridgeway
- Town of Shelby
- Town of Yates

D. PUBLIC HEARING COMMENTS AND MINUTES

- Village of Medina
- Village of Lyndonville
- Town of Ridgeway
- Town of Shelby
- Town of Yates

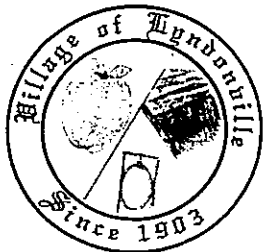
RECENT JUDICIAL OPINIONS

ted a report to the board concluding that no increase was warranted. After additional hearings, the board adopted the advisors' conclusions and denied the application on the grounds that the corporation had recovered its capital costs and had received payments from other developers which decreased the corporation's rate base. The court noted that, in a previous rate increase application proceeding, the Appellate Division had held that the corporation established that it had not recovered its capital costs through unit sales (189 AD2d 816, 592 NYS2d 439). The court here held the town, therefore, was collaterally estopped from making a contrary determination in the present proceeding. The court also held that the corporation was denied its right to an impartial review of its rate application, noting that the board's actions under section 121 are administrative, rather than legislative. The court found that the town board, by retaining as its own special counsel the attorney who had prepared a report and had argued on behalf of the chief opponent to the increase, had clearly indicated that the application was not going to be reviewed impartially. The rate application was remitted to the town board for reconsideration of the rate application. *In the Matter of Heritage Hills Sewage Works Corporation v Town Board of the Town of Somers*, 245 AD2d 450, 666 NYS2d 648.

ZONING AND PLANNING

Restrictive Zoning

Location of adult establishments. — A city amended a zoning ordinance to exclude adult establishments from districts which are zoned for manufacturing and commercial but also permit residential uses, and to prohibit the location of adult uses within 500 feet of schools, houses of worship, and daycare centers. The amendments also limited the size of such establishments and the size, placement and illumination of accessory business signs. Prior to the adoption of the zoning amendments, the city council considered several studies, including a city agency report which found evidence that adult businesses often have such adverse impacts as increased crime rates and depreciated property values. The Court of Appeals upheld the constitutionality of the zoning ordinance amendments by relying on the standards of *Matter of Town of Islip v Caviglia*, 73 NY2d 544, 542 NYS2d 139, 540 NE2d 215, for balancing community needs and free expression. The Court cited the extensive legislative record for finding that the only goal of the amendments was to ameliorate the negative social consequences of proliferating adult uses. The Court held that the ordinance was not an impermissible attempt to regulate the content of expression, but rather was aimed at the negative secondary effects caused by adult uses, a legitimate governmental purpose. The Court also held that the amendments are no broader than necessary, protecting only those communities and community institutions that are most vulnerable to the adverse impacts, and that there would be sufficient alternative site locations after the re-zoning. Finally, the Court rejected plaintiffs' arguments that enforcement of the ordinance will lead to an unconstitutional taking and that the ordinance is unconstitutionally vague. *Stringfellow's of New York, Ltd. v City of New York*, 91 NY2d 382, 671 NYS2d 406.



Village of Lyndonville

2 SOUTH MAIN STREET
P.O. BOX 270
LYNDONVILLE, NEW YORK 14098-0270

*In the Heart of the Lake Ontario Fruit Belt
Municipal Water System with Filtered Water from Lake Ontario*

PLEASANT

PROSPEROUS

PROGRESSIVE

Debra D. Miller
Clerk Treasurer

VILLAGE OFFICE
Phone: 716-765-9385
Fax: 716-765-2394

Roger L. Woodworth
Supt. of Public Works

PUBLIC WORKS
716-765-9312

David C. Schubel
Attorney
Phone: 798-2250
Fax: 798-0776

May 13, 1999

Ms. Debra D. Miller
Village of Lyndonville
2 South Main Street
P.O. Box 270
Lyndonville, NY 14098

Re: Local Law No. 1 of the Year 1999

Dear Debra:

Please find enclosed two certified copies of the above-referenced Local Law. It is my understanding that you will be forwarding a copy to the Orleans County Planning Board.

Thank you for your assistance.

Very truly yours,

David C. Schubel
Village of Lyndonville Attorney

DCS/cw
Enclosures

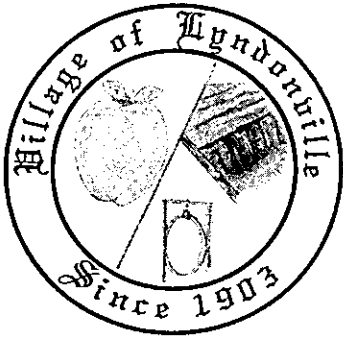
Robert M. Harrold
Mayor

Marc F. Scarr
Deputy Mayor

Gerald W. Albone
Trustee

John A. Eppolito
Trustee

Stephen C. M
Trustee



Village of Lyndonville

2 SOUTH MAIN STREET

P.O. BOX 270

LYNDONVILLE, NEW YORK 14098-0270

In the Heart of the Lake Ontario Fruit Belt

Municipal Water System with Filtered Water from Lake Ontario

PLEASANT

PROSPEROUS

PROGRESSIVE

Debra D. Miller
Clerk - Treasurer

VILLAGE OFFICE

Phone 716-765-9385

Fax 716-765-2394

Roger L. Woodworth
Supt. of Public Works

PUBLIC WORKS

716-765-9312

May 13, 1999

Orleans County Planning & Development Department
14016 Route 31 West
Albion, NY 14411

Re: 99-15 Lyndonville Adoption of New Local Law regulating adult businesses

Dear Members:

After review of your recommendations the Village of Lyndonville Adopted the Local Law regulating adult businesses as follows:

1. The Village Board will be involved in the final decision of all applications. It was felt that this is best, as they are the elected officials who must report back to the community.
2. The following sentence was added to the ordinance. Any business 50 persons or over will fall under the New York State uniform Code, and must follow those rules.
3. Correction in spelling. "Public region to pubic region.
4. No change, this is to be determined by the Code Enforcement Officer. Rather than establish a percentage.
5. Discrepancy in Section 4, Paragraph 4 that is to be five hundred (500) feet.

Thank you for your recommendations in this matter.

Sincerely,

Debra D. Miller
Clerk-Treasurer

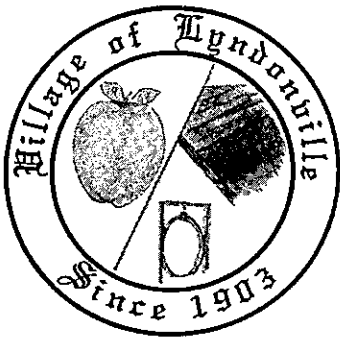
Marc F. Scarr
Mayor

Stephen McAvoy
Deputy Mayor

Gerald Albone
Trustee

John Eppolito
Trustee

William Scribner
Trustee



Village of Lyndonville

2 SOUTH MAIN STREET

P.O. BOX 270

LYNDONVILLE, NEW YORK 14098-0270

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Clerk - Treasurer

VILLAGE OFFICE

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Fax 716-765-2394

Roger L. Woodworth
Supt. of Public Works

PUBLIC WORKS

716-765-9312

May 27, 1998

Mr. James Whipple
30 N. Main Street
Lyndonville, NY 14098

Re: Local Law Regulating Adult Businesses

Dear Jim:

In accordance with our recent telephone conversation, please find enclosed a sample Local Law regulating adult businesses in the Village of Medina. Norris and I have been discussing Local Laws regulating adult businesses, and the enclosed sample is one that is currently under consideration by the Village of Medina Planning Board and Village Board.

I am also enclosing an article from the New York State Conference of Mayors bulletin on the same subject. The NYCOM article is a good summary of a recent case decided by the Court of Appeals with respect to New York City. As indicated by the author of the article, it appears that the decision confirms the authority of all municipalities in New York State to regulate adult businesses through zoning. However, while a municipality can regulate such businesses through zoning, such businesses cannot be entirely prohibited.

I am also enclosing a copy of a Local Law on the subject which was enacted by the Town of Ashland. This Local Law was the discussion piece at a continuing education program that Norris and I recently attended. Given the demographics of Western Orleans County, Norris and I were more comfortable with the language which is in the proposed Village of Medina Local Law.

Robert M. Harrold
Mayor

James L. Oakes
Deputy Mayor

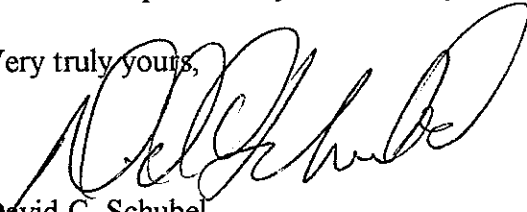
Marc F. Scarr
Trustee

John A. Eppolito
Trustee

Gerald W. Albone
Trustee

After you have had an opportunity to review this correspondence and the enclosures, please feel free to contact me, and I would be pleased to speak with you more fully.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Schubel', written over the closing 'Very truly yours,'.

David C. Schubel
Village Attorney
Village of Lyndonville

DCS/cw
Enclosure

Orleans County Planning Board
Planning and Zoning Referrals

99-15 LYNDONVILLE Adoption of New Local Law regulating adult businesses.

Municipal development plans and policies:

The Village of Lyndonville worked jointly with surrounding communities to prepare a study that would establish the justification for adult business regulation. The study is necessitated due to lengthy case law in New York State and elsewhere that protects adult uses as Constitutionally-protected free speech. Consequently, municipal controls on adult business must address secondary impacts and not the free speech itself.

The proposed regulation would restrict explicitly-defined adult uses to the Industrial Zone. As is the case of Shelby (see referral 99-10), there would be a 500 ft. displacement requirement from another adult business; lots must have 250 ft. of frontage, with a front setback of 100 ft., and side and rear setbacks of 50 ft. Fines for violations increase as violations increase in frequency.

RECOMMENDATION: APPROVAL WITH the following CONDITIONS:

1. The regulation is intended to provide an appellate role for the Zoning Board of Appeals, inasmuch as the local law is the functional equivalent of zoning.
- ob 2. Based on Section 3, Paragraph 6 (Adult Mini-Motion Picture Theater), that there be clarification as to what regulation, if any, would apply to an enclosed building with a capacity of 50 or more persons. -- *Anything 50 persons or over will fall under N.Y.S. Code Univ Code.*
- ob 3. In Section 3, Paragraph 2.A., the Village considers whether it intended to mean "pubic region" instead of "public region" as written.
4. *no change* Referring to Section 3, Paragraph 4, that there be clarification as to the magnitude of adult books, magazines, marital aids or novelties, films for sale or rental, et al before they constitute "a substantial or significant portion" and whether there is any intended distinction between that and a subsequent passage identifying "a segment or section".
- ob 5. The discrepancy in Section 4, Paragraph 4 "...with ^{five}one hundred (500) feet" be resolved.

Comments: The regulation is timely and appropriate, as rural communities are not immune to requests for this type of use. Adult uses, it is worth restating, cannot be completely banned from municipalities due to U.S. Supreme Court decisions. But they can, and often are, limited to areas away from residential zones.

A local law that functions as zoning is zoning, even if was adopted as a stand-alone measure. There must be a ZBA role to dispense relief for zoning matters. Otherwise, an aggrieved party could claim violation of a due process guarantee.



County of Orleans
Planning Board
14016 Route 31
Albion, New York 14411
(716) 589-7004

March 26, 1999

Debra D. Miller, Village Clerk
Village of Lyndonville
2 South Main Street
Lyndonville, NY 14098

RE: 99-15 LYNDONVILLE Request for Adoption of New Local Law regulating adult businesses.

Dear Ms. Miller:

The Orleans County Planning Board (CPB) held an official meeting on March 25, 1999. At that time, the CPB completed its review of the above-captioned proposal and voted to recommend **APPROVAL SUBJECT TO MEETING STATED CONDITIONS AND/OR MODIFICATIONS**. The stipulations can be found in the enclosed report.

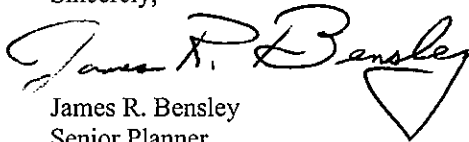
If your Board adopts the CPB recommendation in its entirety, a simple majority vote resolution will approve the action. You must notify the CPB, in writing, of this action within thirty (30) days.

If your local Board does not agree with all, or part, of the CPB's recommendation, it may over-ride that recommendation according to the following procedure:

1. The local Board studies the CPB report and its stipulated conditions and/or modifications.
2. The local Board introduces a resolution stating its reasons for wanting to over-ride the CPB decision and adopts the resolution.
3. The local Board votes on the zoning request and passes it by a majority of plus one.
4. The local Board sends a copy of its final decision and resolution stating its reasons for over-riding the CPB recommendation to the County within thirty (30) days after the date that the decision is reached.

Failure to follow this referral procedure, pursuant to § 239-m of General Municipal Law, may have the effect of invalidating your municipal zoning action.

Sincerely,


James R. Bensley
Senior Planner

JRB:cmc
Enc.

cc: Robert Miller Sr., CPB Representative - Village of Lyndonville