

## PART II – GENERAL LEGISLATION

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### Chapter 31 – Adult Entertainment Uses

[Adopted as Local Law # 4 of 1989, Amended and Adopted, December 27, 2012, as Chapter 31 of the Code]

#### Article I – Regulations

#### Section 1 – Section 6

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#### Article I – Regulations

**Section 1 – Purpose and Intent** – It is declared to be the purpose and intent of this Law to protect the public health, safety, welfare and morals of the Village of Marcellus, to promote the stability of property values, and impose restrictions upon those activities which promote gross sexuality in a manner that would detract from the neighborhood, adversely affect property values, increase crime and violence, and be repugnant to the morals of the majority of the community. In recognition of the protections afforded under the First and Fourteenth Amendments of the United States Constitution, it is not the intent of this Law to inhibit freedom of speech or the press, but rather to reasonably permit such activities and reasonably regulate them by limitation of time, place and manner

**Section 2 – Distance prohibition, where permitted** – Adult Entertainment Uses are permitted within the Village Center District; however, such uses are prohibited within said District within

- a) three hundred (300) feet of any single family, two-family or multiple-family dwelling, including structures devoted to both residential and commercial or business purpose, or

- b) five hundred (500) feet of any church or other religious facility or institution.

**Section 3 – Measurement of prohibiting distance** – The distances provided in this Chapter shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the Adult Entertainment Use is to be located to the nearest point of the parcel or property boundary line from which the Adult Entertainment business is to be separated.

**Section 4 – Definitions** – For the purpose of this Chapter only, the following terms or words, which are also listed in Article II of Chapter 250, shall be interpreted or defined as follows:

- a) **Adult Arcade:** An establishment where, for any form of consideration, one or more still or motion picture projectors, slides projectors, or similar machines, or other image producing machines, for viewing for five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

b) Adult Bookstore or Video Store: A business that derives 25% or more of its gross income from the sale, or rental of, or utilizes 25% or more of its retail selling area for books, magazines, periodicals, films, motion pictures, videocassettes, slides, compact discs and/or computer generation or other visual representations which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

c) Adult Cabaret: A nightclub, bar, restaurant, bottle club, juice bar, club or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear nude or 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; or films, motion pictures, video-cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

d) Adult Live Entertainment: A business where an adult male or female exposes parts of his/her body identified in Specified Anatomical Areas.

e) Adult Motel: A hotel, motel or similar business that offers public accommodations, for any form of consideration, which provide patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or offers a sleeping room for rent for a period of time less than 10 hours; or allows a tenant or occupant to sub-rent the sleeping room for a period of time less than 10 hours.

e) Adult Motion Picture Theater: An enclosed or unenclosed building or structure or portion of a building or structure or drive-in theater used for presenting materials having, as a dominant theme, material distinguished or characterized by an emphasis on matter depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas for observations by patrons therein.

f) Adult Novelty Store: A business which derives 25% or more of its gross income from the sale, or rental of, or utilizes 25% or more of its retail selling area for any form of consideration, instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sado-machistic use or abuse of themselves or others.

g) Adult Use: Any business involved in the dissemination of material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, including but not limited to adult arcades, adult bookstores or video stores, adult cabarets, adult live entertainment, adult motels, adult motion picture theaters, adult novelty stores, and massage establishments."

h) Person: Any person, firm, corporation, association, partnership, legal representative, or other entity, acting individually or jointly.

i) Specified Anatomical Areas – Less than the completely and opaquely covered human genitals, pubic region, pubic hair or buttocks or female breast or breasts below a point immediately above the top of the areola or human male genitals in a discernible turgid state even if completely and opaquely covered.

j) Specified Sexual Activities

- 1) Human genitals in a state of sexual stimulation or arousal.
- 2) Acts of actual or simulated human masturbation, sexual intercourse, oral copulation or sodomy.
- 3) Fondling or other intentional erotic touching of human genitals, pubic region, buttocks, anus or female breasts.
- 4) Excretory functions as part of or in connection with any of the activities set forth in 1) through 3).

**Section 5 – Penalty** – The violation of this Chapter shall be a Class A misdemeanor. In addition, any person violating this Chapter shall be liable to a civil penalty of five hundred dollars (\$500.00) to be recovered by the Village of Marcellus in a civil action or special proceeding. Each day such violation continues, shall constitute a separate violation of this Chapter. The Village of Marcellus may also maintain an action or special proceeding for an injunction or other equitable relief to compel compliance with, or to restrain the violation of, this Chapter. The use of any remedy shall not prevent the use of any other remedy hereunder. The listing of remedies herein shall not deprive the Village of Marcellus of the use of any other remedies provided by other provisions of law.

**Section 6 – Severability** – Should any section or provision of this Chapter be declared to be unconstitutional or invalid by a court of appropriate jurisdiction, such decision, order or judgment shall not affect the validity of the balance of this Chapter.

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