

LOCAL LAW FILING

New York State Department of State
162 Washington Avenue, Albany, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underling to indicate new matter.

Town of Dunkirk

Local Law No. 3 of the year 2003.

ADULT ENTERTAINMENT FACILITIES MORATORIUM LAW

A local law imposing a six-month moratorium on the issuance of zoning and land use permits in the Town of Dunkirk for adult entertainment facilities.

Be it enacted by the Town Board of the

Town of Dunkirk as follows:

Section One - Purpose:

Pursuant to the statutory powers vested in the Town Board of the Town of Dunkirk to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Dunkirk hereby declares a six month moratorium on the issuance of any zoning or land use permits or the establishment, placement, construction, enlargement of any adult entertainment facility in the Town.

The Town Board has been made aware of the problems that adult entertainment facilities, if unregulated, can cause. The Town Board is also aware that surrounding towns have passed certain zoning restrictions on adult entertainment facilities. The Town Board is aware that the Town of Dunkirk is predominately rural, agricultural and residential and desires to address this problem in a careful

manner using the regulatory powers entrusted to it by the State Enabling Acts.

Section Two – Definitions

Adult Book/Video/Media Store—An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined herein, or an establishment with a segment or section devoted to the sale or display of such material.

Adult Entertainment Facilities—Means and refers to “adult news-racks”, “adult book stores”, “adult motion picture theaters” and “exotic cabarets”.

Adult Motion Picture/Video Theater—An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting describing or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by persons within the use.

Adult News rack—Any machine or device, whether coin operated or not, which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the “specified sexual activities” or “specified anatomical areas” defined herein.

Exotic Cabaret—A nightclub, bar or restaurant or similar commercial establishment which regularly features 1) persons who appear nude or semi-nude; or 2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities” or 3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”.

Specified Sexual Activities—a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Specified Anatomical Areas—a) less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately above the areola; b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Section Three – Prohibitions

During the effective period of this Local Law the Code Enforcement Officer of the Town of Dunkirk shall not issue any building permit or land use permit or zoning permit for the establishment, placement, construction or enlargement of any adult entertainment facility.

The Planning Board shall not grant any preliminary or final approval to any site plan, special use permit or other permit, which would have as a result the establishment, placement, construction or enlargement of any adult entertainment facility.

The Zoning Board of Appeals shall not grant any variance or other permit for any use, which would result in the establishment, placement, construction or enlargement of any adult entertainment facility.

The Town Board of the Town of Dunkirk reserves the right to direct the Building Inspector/Code Enforcement Officer to revoke or rescind any building permit or certificate of occupancy issued in violation of this Local Law.

It shall be unlawful to operate any adult entertainment facility in the Town of Dunkirk during the effective period of this Local Law.

Section Four

No application for construction affected by this law for approvals of site plan, subdivision, variance, special use permit or other permit shall be considered by any board or officer of the Town of Dunkirk while the moratorium imposed by this Local Law is in effect.

Section Five – Term

The moratorium imposed by this Local Law shall be in effect for a period of six months from the effective date of this Local Law.

Section Six – Penalties

Any person, firm or corporation that shall establish, place, construct, enlarge or erect any adult entertainment facility in violation of the provisions of this Local Law or shall otherwise violate any provision of this Local Law shall be subject to the penalties as may provided by the Zoning Law of the

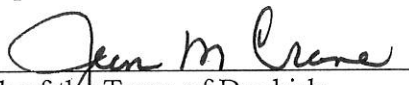
Town of Dunkirk and any injunctive relief in favor of the Town as may be determined by an application for same to State Supreme Court.

Section Seven – Effective Date

This Local Law shall take effect immediately when it is filed in the office of the Secretary of State of the State of New York.

1. I hereby certify that the local law annexed hereto, designated as Local Law No 3 of the Town of Dunkirk was duly passed by the Town Board of the Town of Dunkirk on December 30th, 2003 in accordance with the applicable provisions of law.

(Seal)


Clerk of the Town of Dunkirk

Date: December 31, 2003

(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 CHAUTAUQUA

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.


Albert W. Foley, Esq., Attorney

Town of Dunkirk

Date: December 31, 2003