

TOWN OF MAYFIELD LOCAL LAW NO. 2 OF THE YEAR 2003

A local law entitled “Adult Use Moratorium”

Be it enacted by the Town Board of the Town of Mayfield as follows:

Section 1 Purpose. The purpose of this local law is to protect the public health, safety, and welfare and the tranquility in the Town of Mayfield while developing adequate regulations which may be uniformly developed to prevent any deleterious secondary effects and public nuisances associated with Adult Uses.

Section 2 Legislative Findings.

- A. The Town of Perth, which immediately adjoins the Town of Mayfield, currently contains an establishment which offers several different forms of Adult Use entertainment which serves as an outlet for free expression in the Town of Mayfield area.
- B. Currently, there do not exist adequate regulatory standards controlling the time, place and manner in which Adult Uses are conducted. Such standards are intended to be addressed by the Town’s Planning Board and Zoning Commission in formulating the Town’s proposed Zoning Law.
- C. Adult uses, by their very nature, are recognized as having serious objectionable operational characteristics, and under certain circumstances, when concentrated in an area, have been demonstrated to have deleterious secondary effects on the surrounding neighborhoods. This is especially true since the Town of Mayfield is a rural community and its resources would be severely strained to adequately address the potential increased demand for crime prevention, degradation of community’s small retail area, the potential decline in property values and overall quality of the neighborhood that the proliferation of such uses could dangerously affect.
- D. The Town of Mayfield has determined to conduct necessary studies to examine the extent of deleterious secondary effects upon the community and determine what special regulations, if any, need to be adopted to accomplish the primary purpose of preventing a concentration of the uses in any one area, restricting the accessibility of the uses to minors and prevent the deleterious secondary effects upon areas in the Town of Mayfield. Local legislation by the Town Board is needed to prevent the occurrence of deleterious secondary effects associated with such use and to prevent a race of diligence by applicants seeking to establish such uses until proper regulations have been put into place.
- E. This action is an exempt action under SEQRA, pursuant to § 6 NYCRR Section 617.2(0) (6), as an action which is “immediately necessary on a limited emergency basis for the protection and preservation of life, health, property or natural resources”.

Section 3 Definitions

ADULT USE-The use of any building, structure or land, or portion thereof, for any purpose involving activities that are not open to the public generally but exclude, or are required by law to exclude, any minor by reason of age, including but not limited to, the establishments defined below:

ADULT BOOKSTORE OR VIDEO STORE-An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, other periodicals, films, photographs, slides and/or video tapes, a substantial portion of which establishment is customarily not open to the public generally but excludes, or is required by law to exclude, any minor by reason of age. In determining whether a substantial portion of such establishment or stock is devoted to such materials or use, the following factors should be considered:

- i. the proportion of floor area allocated to such use that is not available to the general public in comparison to the floor area that is available to customers without restriction by reason of age;
- ii. the proportion of such materials maintained in space that is not available to the general public in comparison to the floor area that is available to customers without restriction by reason of age; and
- iii. the total amount of floor space allocated to use that is not available to the general public but which is restricted by reason of age.

ADULT ENTERTAINMENT CABARET-A public or private establishment which presents topless or nude dancers, strippers, male or female impersonators or exotic dancers, or other similar entertainments, and which establishment is customarily not open to the public generally but excludes, or is required to exclude, any minor by reason of age.

ADULT MOTEL/HOTEL-A motel/hotel which is not open to the public generally but excludes minors by reason of age, or which makes available to its patrons in their rooms films, slide shows or videotapes, which if presented in a public movie theater would not be open to the public generally but would exclude, or be required by law to exclude, any minor by reason of age.

ADULT THEATER-A theater that customarily presents motion pictures, films, videotapes, slide shows, that are not open to the public generally but excludes, or is required by law to exclude, any minor by reason of age.

MASSAGE ESTABLISHMENT-Any establishment having a fixed place of business where massages are administered, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the lawfully established office of a duly licensed health care professional, such as a physician, surgeon, chiropractor, osteopath, or physical therapist, or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude

health clubs which have facilities for exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

PEEP SHOWS-The use of a building or a portion of a building to present material in the form of live shows, films or videotapes viewed from an individual room or similar enclosure which is not open to the public generally and which excludes, or is required by law to exclude, any minor by reason of age.

Section 4 Moratorium Imposed

- A. For a period of 18 months following the date of adoption of this local law, no site plans shall be approved, whether by action of the Planning Board or by default, no other approvals, permits, or certificates of occupancy be granted by any board or officer of the Town, nor shall any establishment devoted to Adult Uses be operated. This local Law shall be binding on the Building Inspector, Planning Board, Board of Appeals, and any applicant or property owner in the Town.
- B. This moratorium may be extended by two additional periods of up to three (3) months each by resolution of the Town Board upon a finding and a necessity for such extension.
- C. During the period of the moratorium, the Town shall endeavor to complete a comprehensive set of regulations for Adult Uses.
- D. The Building Inspector shall make an initial determination whether any proposed use is an Adult Use as herein defined. Such determination may be appealed to the Town's Board of Appeals.

Section 5 Applications for Relief. Whenever there is a showing by persons whose premises are affected by this moratorium that relief therefrom is necessary to avoid unnecessary financial hardship or a taking of private property beyond what is permissible by valid regulation, the Town Board, upon petition may grant appropriate relief from this local law subject to whatever conditions are deemed necessary to protect the public. Applications for such relief shall be by verified petition to the Town Board and shall be supported by competent financial evidence in dollars and cents form. The Town Board shall hold a hearing on any such petition within thirty (30) days and decide such applications within fifteen (15) days after the closing of such hearing. The default of the Town board in acting on such application shall not result in a default granting of such relief but shall permit the applicant to seek such relief pursuant to Article 78 of the CPLR.

Section 6 Violation. Any person who shall operate an establishment devoted to Adult Uses during the term of this moratorium except as provided in Sections 4 and 5 hereof shall be guilty of a violation and subject to a fine not exceeding \$1,000.00 of fifteen (15) days in jail or both. Each week a violation continues shall be considered a separate violation.

Section 7 Supersession.

- A. Town Law §274-a is hereby amended and superseded in its application to the Town of Mayfield by restricting the authority of the Planning Board to review and approve site plans.
- B. Town Law §274-5 is hereby amended and superseded in its application to the Town of Mayfield by restricting the authority of the Planning Board to grant Special Use permits.
- C. Town Law §267-6 is hereby amended and superseded in its application to the Town of Mayfield by restricting the authority of the Town's Board of Appeals to grant use variances.
- E. This local law is intended to supercede any inconsistent provision of the Town Law.

Section 8 Severability.

If any provision of this law or the application of any other provision to any item in this law is held invalid, the invalidity of that provision or application shall not affect any of the other provisions or the application of those provisions to other items in this chapter or law.

Section 9 This local law shall take effect immediately.