

*This chapter is a new chapter in the General Code.*

## **Village of Coxsackie**

### **Chapter 27. ADULT ENTERTAINMENT**

#### **ARTICLE I Location**

##### **§ 27-1. Findings and legislative intent.**

- A. It is recommended that there are some uses, which, because of their very nature, have serious objectionable operational characteristics under certain circumstances, which produce a deleterious effect upon adjacent areas. Special regulation of these uses is necessary to ensure that adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The Village Board of the Village of Coxsackie finds it in the public interest to enact these regulations. The purpose of these regulations is to prevent or lessen the secondary effects of adult entertainment uses and not to inhibit freedom of speech.
- B. The unrestrained proliferation and inappropriate location of such businesses is inconsistent with existing development and future plans for the Village of Coxsackie in that they often result in influences on the community which increase the crime rate and undermine the economic and social welfare of the community. The deleterious effects of these businesses change the economic and social character of the existing community and adversely affect existing businesses and community and family life.

##### **§ 27-2. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**ADULT ENTERTAINMENT BUSINESSES OR USES or SEXUALLY ORIENTED BUSINESSES —**

- A. **ADULT BOOK AND/OR VIDEO STORE —** An establishment having as a substantial or significant portion (more than 25% of merchandise in number, value or bulk and/or more than 10% floor area) of its stock in trade books, magazines, periodicals or other printed or digital matter or photographs, films, videos, digitalized compact discs, slides or other visual representations, which are characterized by the exposure or emphasis of specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are

designed for use in connection with specified sexual activities, which are for sale, rental or viewing on or off the premises.

- B. **ADULT ENTERTAINMENT CABARET** — A public or private establishment which regularly presents topless and/or bottomless dancers, strippers, waiters or waitresses, male or female impersonators, lingerie models or exotic dancers, or other similar entertainment or films, motion pictures, digitalized compact discs or videos, slides or other photographic or digital material, or which utilizes employees that as part of their employment, regularly expose patrons to specified sexual activities or specified anatomical areas.
- C. **ADULT THEATER**— A theater, concert hall, auditorium or similar establishment which, for any form of consideration regularly features live performances characterized by the exposure of specified sexual activities or specified anatomical areas.
- D. **ADULT MOTION-PICTURE THEATER**— Any motion-picture theater where, for any form of consideration, films, motion pictures, digitalized compact discs or videocassettes, slides or other photographic or digital reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- E. **MASSAGE ESTABLISHMENT**— Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths or steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist, or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service.
- F. **ADULT MODEL STUDIO** — Any place where a person who appears in a state of nudity or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or any form of consideration, other than models who are paid to model at established art studios.
- G. **PEEP SHOWS** — A theater which presents materials distinguished or characterized by primary emphasis on matters depicting, describing or relating to specified sexual activities or specified sexual anatomical areas, in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged.

H. SPECIFIED ANATOMICAL AREAS —

- (1). Less than completely or opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and
- (2) Human male genital in a discernibly turgid state even if completely and opaquely covered.

I. SPECIFIED SEXUAL ACTIVITIES —

- (1). Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse, oral copulation or sodomy; or
- (3). Fondling or other erotic touching of human genitals, pubic region, buttocks or breasts.

**§ 27-3. Locational restrictions.**

Adult entertainment uses shall be permitted only in the Industrial Zoning District, subject to the following restrictions:

- A. Adult entertainment uses are prohibited within: 500 feet of any zoning district which is zoned to allow residential use; 500 feet of any single-family, two-family, or multiple-family dwelling, including structures devoted to both residential and commercial or business purposes; 750 feet of any public or private school; 500 feet of any church or other religious facility or institution; or 500 feet of any public park, public bike path, playground or playing field, cemetery, civic or recreational facility. (All measured from the lot or district line as set forth in Subsection D.)
- B. No adult entertainment use shall be allowed within 500 feet of another existing adult entertainment use.
- C. No more than one adult entertainment use shall be located on any lot.
- D. The distances provided hereinabove 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 of property or the land use district boundary line from which the adult entertainment use is to be separated. All distances provided hereinabove shall be measured from the lot or property line of the particular parcel or district and not from the structures located thereon.

**§ 27-4. Other restrictions.**

- A. No adult entertainment use shall be conducted in any manner that allows the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not containing an adult entertainment use. This provision shall apply to any display, decoration, sign, show, window or other opening.
- B. There shall be no outdoor sign, display, or advertising of any kind other than one identification sign limited to only the name of the establishment which would violate Subsection A.
- C. Adult entertainment uses shall obtain approval from the Planning Board in accordance with Chapter 155, Zoning, of the Code of the Village of Coxsackie and also the licensing law to regulate the operation of sexually oriented businesses and this Code.
- D. Adult entertainment uses shall meet all other regulations of the Village of Coxsackie, including but not limited to district lot and bulk regulations, parking regulations and signage.
- E. It shall be unlawful to operate an adult entertainment use between the hours of 12:00 midnight and 8:00 a.m. or on Sundays.
- F. In the event that any establishment has as part of its business the sale or rental of any adult books and/or videos, within 90 days of the effective date of this article, it shall permit the Code Enforcement Officer access to its premises to determine whether or not its establishment falls under the definitions provided for herein. If it falls within the definition of an adult entertainment use, it will need to comply with this article. In the event that any portion of its business is for the rental or sale of adult books or videos, shall it be required to separate that portion of its establishment where the videos or books are displayed from the general public in the following manner: These videos and/or books shall be located in a separate room in the establishment.

**§ 27-5. Enforcement; penalties for offenses.**

- A. Enforcement. This article shall be enforced by the Code Enforcement Officer of the Village of Coxsackie as the Code of the Village of Coxsackie. All enforcement powers of the Code Enforcement Officer are deemed wholly incorporated herein by reference and shall apply to all matters in this article. Enforcement shall be in accordance with Article XIII of the Village of Coxsackie Zoning Ordinance.

- B. Penalties. If there are any specific penalties for a violation of this section or any other law relating to the regulation of sexually oriented businesses, they shall apply to this article. If none shall apply, then the penalties set forth in Chapter 155, Zoning, are incorporated herein and shall apply.

## **ARTICLE II Licensing**

### **§ 27-6. Title.**

This article shall be known and may be cited as the "Sexually Oriented Business or Adult Entertainment Businesses or Uses Licensing Law of the Village of Coxsackie."

### **§ 27-7. Purpose.**

The purpose of this article is to regulate the location and operation of sexually oriented businesses, aka adult use businesses, within the Village of Coxsackie. The restrictions, regulations and provisions contained in this article are enacted by the Village Board for the protection, health, welfare and safety of the people of the Village of Coxsackie.

### **§ 27-8. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**ADULT BOOK AND/OR VIDEO STORE** — An establishment having a substantial or significant portion (more than 25% of merchandise in number, value or bulk and/or more than 10% floor area) of its stock in trade books, magazines, periodicals or other printed or digital matter or photographs, films, videos, slides or other visual representations, which are characterized by the exposure or emphasis of specified sexual activities or specified anatomical areas or instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities, which are for sale, rental or viewing on or off the premises.

**ADULT ENTERTAINMENT CABARET**— A public or private establishment which regularly presents topless and/or bottomless dancers, strippers, waiters or waitresses, male or female impersonators, lingerie models or exotic dancers, or other similar entertainment or films. Motion pictures, digitalized compact discs or videos, slides or other photographic material, or which utilizes employees, that as part of their employment, regularly expose patrons to specified sexual activities or specified anatomical areas.

**ADULT MODEL STUDIO** — Any place where a person who appears in a state of nudity or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or

any form of consideration, other than an accredited art studio which shall be exempt from this provision.

**ADULT MOTION-PICTURE THEATER**— Any motion-picture theater where, for any form of consideration, films, motion pictures, digital compact discs or videocassettes, slides or other photographic or digital reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis upon the depiction or description of specified anatomical areas.

**ADULT THEATER** — A theater, concert hall, auditorium or similar establishment which, for any form of consideration, regularly features live performances characterized by the exposure of specified sexual activities or specified anatomical areas.

**ALCOHOL** — Ethyl alcohol or hydrated oxide of ethyl from whatever source or whatever process produced.

**ALCOHOLIC BEVERAGE**— Includes alcohol, spirits, liquor, wine, beer, cider and every liquid or solid containing alcohol, spirits, wine or beer and capable of being consumed by a human being.

**APPLICANT** — The person applying for a license to conduct a sexually oriented business.

**APPLICATION** — The application for a license to operate a sexually oriented business.

**BUILDING CONTAINING LICENSED PREMISES** — The licensed premises and also any part of a building in which such premises is contained and any part of any other building connected with such building by direct access or by a common entrance.

**LICENSE** — A license issued pursuant to this article.

**LICENSEE** — Any person to whom a license is issued pursuant to this article.

**MASSAGE ESTABLISHMENT** — Establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths or steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed physical therapist, or duly licensed massage therapist, or barbershop or beauty salon, athletic club, health club, school, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental accessory service.

**OPERATOR**— The person responsible for the overall operation and supervision of a sexually oriented business.

OWNER— The person who owns a sexually oriented business.

PEEP SHOWS— A theater which presents materials distinguished or characterized by primary emphasis on matters depicting, describing or relating to specified sexual activities or specified sexual anatomical areas, in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged.

PERSON— An individual, partnership, corporation or any other legal entity.

PREMISES — The premises licensed pursuant to this article and on which a sexually oriented business may be operated.

SEXUALLY ORIENTED BUSINESS — Any commercial activity which sells, rents, shows, or exhibits, or makes available for sale, rent, showing or exhibition, any material or entertainment distinguished or characterized by an emphasis on depicting or description of specified anatomical areas or of specified sexual activity and shall include, but not be limited to, adult arcades, adult markets, adult motion-picture theaters, adult theaters, and adult video rental/sale stores. Accredited art galleries or studios which may have nude painting or photos as part of their collection shall be exempted.

SPECIFIED ANATOMICAL AREAS— Less than completely opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola, and human genitals in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES— Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, oral copulation or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttocks or breasts.

**§ 27-9. License required; Planning Board powers.**

- A. No person shall operate a sexually oriented business or adult entertainment business or use within the Village of Coxsackie without obtaining a license therefore. This obligation to obtain a license is separate and apart from any application which may be required for a special use permit from the Village of Coxsackie Planning Board.
- B. The Village Planning Board shall have the following functions, powers and duties:
  - (1) After a public hearing, to issue or refuse to issue an initial or renewal license provided for in this article.
  - (2) To revoke, cancel or suspend any license provided for in this article and/or to impose a civil penalty hereinafter described against a licensee, for cause

and after a public hearing. The Village Board may authorize, by resolution, the Village Court of the Village of Coxsackie to conduct and adjudicate such hearing under this article or as a violation of the Zoning Law of the Village of Coxsackie.

- (3) To inspect or provide for the inspection of any premises upon which a sexually oriented business is operated. The Village Board may delegate, by resolution, this function/power/duty to the Code Enforcement Officer of the Village of Coxsackie or the Village Planning Board. This power to inspect also includes any establishment which sells or rents any sexually oriented products as denned herein. Inspections shall occur at least two times a year.
- (4) To prescribe forms of applications for initial and renewal licenses under this article and of all reports which it deems necessary to be made by any licensee.

**§ 27-10. License application; fee; restrictions.**

- A. Any person may apply to the Village Planning Board for a license to operate a sexually oriented business within the Village of Coxsackie or for a renewal thereof. In the event that a special use permit is also required, the applications can be made simultaneously.
- B. Such license shall contain a description of the licensed premises and in form and substance shall be a license to the person therein specifically designated to operate a sexually oriented business on the premises therein specifically licensed.
- C. Such license shall be valid for a period of one year from the date it is issued.
- D. The annual license fee shall be \$2,500.
- E. No license shall be granted under this article for any premises which are located within a distance of 500 feet of any zoning district which is zoned to allow residential use; 500 feet of any single-family, two-family, or multiple-family dwelling, including structures devoted to both residential and commercial or business purposes; 750 feet of any public or private school; 500 feet of any church or other religious facility or institution; 500 feet of any public park, public bike path, playground or playing field, cemetery, civic or recreational facility; or 500 feet of another existing adult entertainment use. All measurements are from the property line or district line.
- F. No license shall be granted under this article to the following persons:

- (1) A person who is under 21 years of age.
  - (2) A person who has been convicted of a felony.
  - (3) A person who is not a citizen of the United States nor an alien not lawfully admitted for permanent residence in the United States.
  - (4) A partnership or corporation, unless each member of the partnership, or each of the principal officers and directors of the corporation, is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, is not under 21 years of age and has not been convicted of a felony.
  - (5) A person who has been convicted of any violation of this article or who shall have had any license issued under this article revoked for cause, until the expiration of two years from the date of such conviction or revocation.
  - (6) A partnership or corporation, if any partner, officer or director has been convicted of a violation of this article or shall have had any license revoked for cause, until the expiration of two years from the date of such conviction or revocation.
- G. No license shall be granted for any premises unless the applicant shall be the owner thereof or shall be in possession of said premises under a lease, in writing, for a term not less than the license period.

**§ 27-11. License application procedure.**

- A. Such application shall be in writing and verified, and shall contain such information as the Village Planning Board shall require, not limited to but including all owners and partners on the property and business, and shall be submitted on forms provided for that purpose by the Village Planning Board. Such application shall be accompanied by a certified check, bank officer's check or draft, or money order for the amount required by this article for such license and the application filing fee. In case of applications for renewals, the Village Planning Board may dispense with such information as it deems unnecessary in view of the information contained in the application made for the initial license.
- B. The application filing fee for an initial license shall be \$2,500. The application filing fee for a renewal license shall be \$1,000 plus the Village expenses in connection with the renewal application including required inspections.
- C. The application for an initial license or a renewal license must be filed with the Village Planning Board at a regular meeting thereof.

- D. At its regular meeting next following the meeting at which the application for an initial license is filed, the Village Planning Board shall designate a date upon which it will hold a public hearing for the purpose of hearing all interested persons. Said public hearing shall be held not more than 45 days after the meeting of the Village Planning Board at which the date therefore was designated. Notice of said public hearing shall be published in the official newspapers of the Village not less than 15 days prior to the date upon which said public hearing is noticed to be held. Not more than 60 days following the date of said public hearing, the Village Planning Board shall decide to grant or to deny the application. The decision of the Village Planning Board shall be in writing and shall set forth the reasons for its decision and shall be filed with the Village Clerk. The decision of the Village Planning Board may be reviewed under Article 78 of the Civil Practice Law and Rules, provided that the Article 78 proceeding is commenced within 30 days of the date upon which the decision of the Village Planning Board is filed with the Village Clerk.
- E. At its regular meeting next following the meeting at which the application for a renewal license was filed, the Village Planning Board shall decide to grant or to deny the application. The decision of the Board shall be in writing and shall set forth the reasons for its decision and shall be filed with the Village Clerk. The decision of the Board may be reviewed under Article 78 of the Civil Practice Law and Rules, provided that the Article 78 proceeding is commenced within 30 days of the date upon which the decision of the Board is filed with the Village Clerk.
- F. If there be any change, after the granting of any license, in any of the facts required to be set forth in the application therefore, a supplemental statement giving notice of such change, duly verified, shall be filed with the Village Planning Board within 10 days after such change. Failure to do so shall, if willful and deliberate, shall be cause for revocation of the license and the imposition of a civil penalty hereinafter described against the licensee. In giving any notice or taking any action in reference to a licensee or licensed premises, the Village Board may rely upon the information furnished in such application and in any supplemental statement connected therewith, and such information may be presumed to be correct and shall be binding upon a licensee or licensed premises as if correct. All information required to be furnished in such application or supplemental statements shall be deemed material in any prosecution for perjury.

**§ 27-12. Licensee prohibitions.**

- A. No licensee shall sell, deliver or give away, or cause or permit or procure to be sold, delivered or given away, any alcohol beverage for consumption on or off the licensed premises.

- B. The licensed premises shall not be open for business or operated during the following hours:
  - (1) All Sunday hours.
  - (2) On any other day from 12:00 midnight until 8:00 a.m.
- C. No licensee shall permit or suffer any person under the age of 21 years to enter or remain in the licensed premises.
- D. No licensee shall employ or hire or suffer or permit any person under the age of 21 years to work in the premises.
- E. No licensee shall suffer or permit any gambling in the licensed premises or suffer or permit such premises to become disorderly.
- F. A license issued to any person pursuant to this article for any licensed premises shall not be transferable to any other person or persons or to any other premises or to any other part of the building containing the licensed premises. It shall be available only to the person or persons therein specified and only for the premises licensed and no other.

**§ 27-13. Unlawful acts.**

- A. It shall be unlawful for any female person to appear, work, entertain, act or display herself in any sexually oriented business or any other public place in the Village of Coxsackie, clothed or costumed in such a manner that a portion of her breast below the top of the areola is not covered with a fully opaque covering or in such a manner that her genitals, pubic area or buttocks are not covered with a fully opaque covering.
- B. It shall be unlawful for any male to appear, work, entertain, act or display himself in any sexually oriented business or any other public place in the Village of Coxsackie, clothed or costumed in such a manner that his genitals, pubic area or buttocks are not covered with a fully opaque covering.
- C. It shall be unlawful for any person to knowingly conduct, maintain, own, lease, manage, operate or furnish any sexually oriented facility or any other public place in the Village of Coxsackie where a female or male person is not clothed, costumed or covered as required by Subsections A and B of this section set forth immediately above.
- D. It shall be unlawful to employ or permit any employee or other person to mingle with the patrons while such employee or other person is unclothed or in such attire as described in Subsections A and B set forth above.

- E. It shall be unlawful to encourage or permit any person in or on the premises to touch, caress or fondle the breasts, buttocks or genitals of any other person.
- F. It shall be unlawful to employ or permit any person to wear or use any device or covering exposed to view which simulates the breasts, buttocks or genitals of any other person.
- G. It shall be unlawful to employ or permit any person in or on the premises to perform an act or acts or to simulate the act or acts of:
  - (1) Sexual intercourse, masturbation, sodomy, oral copulation, flagellation or any sexual acts prohibited bylaw.
  - (2) Touching, caressing or fondling of the breasts, buttocks or genitals of another.
- H. It shall be unlawful to employ or permit any person in or on the licensed premises to show motion picture films, television-type cassettes, still pictures or other photographic or digital reproduction depicting any of the acts or any simulation of any of the acts prohibited in Subsections A through G hereof.

**§ 27-14. Bond of licensees.**

The licensee shall file with the Village Planning Board a bond to the Village of Coxsackie issued by a surety company, approved by the New York State Insurance Department and authorized to transact business in New York State, in the penal sum of \$100,000, conditioned that such licensee will not suffer or permit any violation of the provisions of this article and that all fines and penalties which shall accrue during the time the license shall be in effect will be paid, together with all costs taxed or allowed in any action or proceeding brought or instituted for a violation of any of the provisions of this article. A suit to recover on any bond filed pursuant to this article may be brought by the Village of Coxsackie in a court of competent jurisdiction and, in the event that the obligor named in such bond has violated any of the conditions of such bond, recovery for the penal sum of such bond may be had in favor of the Village of Coxsackie.

**§ 27-15. Revocation of licenses for cause.**

Any license issued pursuant to this article may be revoked, canceled or suspended and/or a civil penalty, hereinafter described, may be imposed against the licensee for the following causes:

- A. If the licensee violates any provision of this article.
- B. If the licensee transfers, assigns or hypothecates the license.

- C. If the licensee is convicted of a felony.
- D. If the applicant makes any false statement in the application.

**§ 27-16. Civil penalties.**

In the event a person, corporation, partnership or other entity, regardless of whether such is a licensee or not, is found to have violated any provision of this article, in addition to any other disposition or sanction allowed for find set forth in this article, a civil penalty of up to \$1,000 may be imposed upon and against such person, corporation, partnership or other entity for each violation. Each act which is found to violate any provision of this article shall be deemed a separate violation, and each day any such act occurs shall be deemed to be a separate violation.