

# Local Law Filing

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

- County
- City of Martinsburg
- Town
- Village

Local Law No. 3 of the year 20 09

A local law to prevent the proliferation of adult businesses and uses and to regulate the establishment  
(Insert Title)  
of such businesses and uses within close proximity to residentially zoned areas, school,  
playgrounds and churches, so as to minimize the effect on such neighborhoods

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

- County
- City of Martinsburg as follows:
- Town
- Village

Section 1. - Statement of Authority. The Town Board of the Town of Martinsburg, pursuant to the authority granted it under Article 16 of the Town Law and Sections 10 and 20 of the Municipal Home Rule Law, hereby enacts as follows:

Section 2. - Findings and Purpose. The Town Board of the Town of Martinsburg recognizes that adult entertainment businesses and uses, because of their nature, exhibit serious objectionable operational characteristics which can lead to significant adverse impacts on the surrounding community, can be deleterious to the health, welfare and well being of the residents of the Town of Martinsburg and often result in influences on the community which increase the crime rate and undermine the economic, moral and social welfare of the community. The unrestrained proliferation of such businesses and uses is consistent with the existing development and future plans for the Town of Martinsburg and can change the economic, social and moral character of the existing community and adversely affect existing businesses and community and family life. Therefore, the Town Board of the Town of Martinsburg recognizes and determines that special regulation is necessary and desirable of the welfare of the citizens of the Town of Martinsburg to prevent the proliferation of adult businesses and uses and to regulate the establishment of such businesses and uses within close proximity to residentially zoned areas, school, playgrounds and churches, so as to minimize the effect on such neighborhoods.

Section 3. - Enactment. The Town Board of the Town of Martinsburg hereby amends the Town of Martinsburg Development Law as follows:

A. Section 220 of such law is hereby amended to add the following definitions:

(If additional space is needed, attach pages the same size as this sheet, and number each.)

1. Definitions.

a. Adult Entertainment Establishment - Any lot, building, structure or portion thereof in which a minor is not allowed due to the adult entertainment use conducted therein. "Adult Entertainment Establishments" include, but are not limited to adult bookstores, adult theaters (live or motion picture), massage parlors and topless or striptease bars.

b. Adult Bookstore - An adult entertainment establishment used for the sale, whether at retail or wholesale, or rental, whether for viewing on or off premises of books, magazines, periodicals, recordings, films, video tapes/cassettes or other viewing materials distinguished or characterized by an emphasis on the display or depiction of sexual activity or specified anatomical areas.

c. Adult Entertainment Use - Any business or activity for gain, either as a principal or accessory use, which devotes or intends to devote more than twenty-five (25) square feet of net floor area of more than ten percent (10%) of its total net floor area, whichever is less, or more than ten percent (10%) of the volume of its stock to display, exhibit or disseminate material distinguished or characterized by emphasis on the display or depiction of sexual activity or specified anatomical areas, regardless of whether by live entertainment, motion picture, video cassette, photograph, cartoon or the means, in manner unsuitable for the viewing by minors or otherwise prohibited by the statutes of New York State.

d. Adult Theater (Live or Motion Picture) - An adult entertainment establishment used for live performances or motion pictures distinguished or characterized by the display or depiction of sexual activity or specified anatomical areas.

e. Business - Any person, firm, association, partnership, corporation or other entity for profit.

f. Dissemination - The transfer, of possession, custody, control of ownership or of the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual activities or specified anatomical areas.

g. Massage - A method of treating external parts of the human body by rubbing, stroking, kneading, tapping or vibrating with the hand or any instrument.

h. Massage Parlor - An Adult entertainment establishment used for administering massages to the external parts of the human body, including but not limited to rubbing, stroking, kneading, tapping or vibrating thereof with the hand or any instrument. This definition shall not be deemed to include any of the following: a medical care facility, nursing home or

any office of health care practitioner licensed by the State of New York; a barber shop or beauty shop administering massage to the scalp, face, neck or shoulders, a manicure or pedicure shop administering massage to the hands or feet respectively; a volunteer rescue squad; or a community facility or indoor or outdoor recreation facility operated by a governmental agency or nonprofit organization.

i. Massage Technician - Any individual who administers a massage to another individual at a massage establishment. This definition shall not include any health care practitioner duly licensed by the State of New York.

j. Net Floor Area - That portion of the building devoted to display whether for viewing or dissemination of a business's stock-in-trade. This shall not include entry areas, stock rooms, closets, storage areas cash register areas, any area from which the public is excluded, or rest rooms, whether public or private.

k. Sexual Activity - Any act of masturbation, fellatio, cunnilingus, sodomy, sadomasochism, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is female, breasts.

l. Specified Anatomical Areas - Human Male or female genitals; pubic area or, when absent of any opaque covering, buttocks; female breasts with less than a full opaque covering of any portion thereof below the top of the areola; and covered male genitals in a discernibly turgid state.

m. Topless or Striptease Bar - An adult entertainment establishment used for the serving and consumption of alcoholic beverages and featuring topless dancers, waitresses, strippers or other persons displaying sexual activity or specified anatomical areas for the patrons thereof.

B. Section 310 is hereby amended to add a new section called AUO which is Adult Use Overlay as follows.

Area where adult uses shall be allowed. Area to be defined as that portion of the Town of Martinsburg on the south side of Flatrock Road commencing at the intersection of Flatrock Road with Carey Road proceeding east to the intersection with Centerville Road proceeding down Centerville Road south and east to its intersection with Leonard's Lane proceeding along Leonard's Lane south to its intersection with French Road, thence proceeding west along French Road to its intersection with Carey Road, thence north along Carey Road to its intersection with Flatrock Road.

C. Section 410 is hereby amended to add AUO, Adult Use Overlay. Adult Use Overlay shall be in accordance

Lot frontage, lot side setbacks, landscape, screening also being in accordance with the provisions of Section B and in accordance with Section 590 by special use permit.

D. A new Section 590 shall be added as follows:

Adult Use Regulations.

a. Adult entertainment businesses and uses shall be permitted only in the Adult Use Overlay District as depicted by the Adult Use Map contained herein and shall be subject to a special use permit issued by the Planning Board of the town of Martinsburg.

b. Adult entertainment uses shall be a minimum of one thousand feet (1000') from schools, churches, public parks and recreation lands, municipal buildings, municipal boundary lines and other adult entertainment uses. Measurement of distances shall be from the property lines of the use except in the separate from other adult uses, in which case the distance shall be measured from structure to structure.

c. In addition to the other criteria shall be applied to any adult entertainment business or use:

1. Only one sign shall be visible from the exterior of any building which is occupied by an adult entertainment use. Any such signs shall not contain a gross surface area exceed thirty-two (32) square feet. No sign shall consist of any material other than plain lettering. No sign shall have any photographic or artistic representation whatsoever thereon.
2. All building openings, entries, windows and doors shall be located, covered or screen in such manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property.
3. No adult use shall be established in any building of which any part is used for residential purposes.
4. No residential use shall be established in any building which any part is used as an adult establishment.

Section 4. - Severability. If any part of this Chapter shall be found to be void, voidable, or unenforceable for any reason whatsoever, it shall not affect the validity or enforceability of any remaining section or provision of this chapter.

Section 5. - Effective Date. This local law will take effect immediately upon filing with the Secretary of State.