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County
City of Port Chester, New York
Town
Village

Local Law No. 9 of the year 2008

A local law amending the CODE OF THE VILLAGE OF PORT CHESTER, by adding a new Chapter, CHAPTER 122 entitled “Adult Entertainment Businesses” and amending CHAPTER 175 entitled “Fees”.

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

County
City of Port Chester, New York as follows:
Town
Village

A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER TO
ADOPT CHAPTER 122: ADULT ENTERTAINMENT BUSINESSES
AND AMENDING CHAPTER 175: FEES

WHEREAS, adult entertainment businesses require special supervision from the public safety agencies of the Village in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Village; and

WHEREAS, the Board of Trustees finds that adult entertainment businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that adult entertainment businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the Board of Trustees desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual novelty devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007) (upholding ban on sexual novelty devices); and

WHEREAS, the Village recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any Local Law, the Village and the Board of Trustees accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and New York Constitutions, New York Code, and the New York Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this Local Law to suppress any speech activities protected by the U.S. Constitution or the New York Constitution, but to enact legislation to further the content-neutral governmental interests of the Village, to wit, the controlling of secondary effects of adult entertainment businesses.

BE IT ENACTED by the Board of Trustees of the Village of Port Chester as follows:

SECTION 1: The Code of the Village of Port Chester is hereby amended by adding a new chapter, Chapter 122, entitled “Adult Entertainment Businesses”, to read as follows:

Chapter 122: Adult Entertainment Businesses

Section

- Preamble
- 122-1. Rationale and Findings.
- 122-2. Definitions.
- 122-3. License Required.
- 122-4. Issuance and Renewal of License.
- 122-5. Fees.
- 122-6. Posting of License.
- 122-7. Manager Required.
- 122-8. License Not Transferable.

- 122-9. Inspection.
- 122-10. Suspension of License.
- 122-11. Revocation of License.
- 122-12. Hearing; License Denial, Suspension, Revocation; Appeal.
- 122-13. Rules and Regulations.
- 122-14. Regulations Pertaining to Exhibition of Sexually Explicit Films on Premises.
- 122-15. Loitering and Exterior Lighting and Monitoring Requirements.
- 122-16. Penalties and Enforcement.
- 122-17. Applicability of Chapter to Existing Businesses.
- 122-18. Prohibited Conduct.
- 122-19. Scierter Required to Prove Violation or Business Licensee Liability.
- 122-20. Severability.
- 122-21. Conflicting Code Provisions.

§ 122-1. Rationale and findings.

A. Purpose. It is the purpose of this Chapter to regulate adult entertainment businesses in order to promote the health, safety, and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult entertainment businesses within the Village. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene material.

B. Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Village Board of Trustees, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

Charette v. Town of Oyster Bay, 2 Fed. Appx. 112 (2d Cir. 2001); *Beal v. Stern*, 184 F.3d 117 (2d Cir. 1999); *Buzzetti v. City of New York*, 140 F.3d 134 (2d Cir. 1998); *Marty's Adult World v. Town of Enfield*, 20 F.3d 512 (2d Cir. 1994); *Hickerson v. City of New York*, 146 F.3d 99 (2d Cir. 1998); *Casanova Entertainment Group, Inc. v. City of New Rochelle*, 165 Fed. Appx. 72 (2d Cir. 2006); *United States v. Kinzler*, 55 F.3d 70 (2d Cir. 1995); *Gold Diggers, LLC v. Town of Berlin*, 469 F. Supp. 2d 43 (D. Conn. 2007); *Centerfolds, Inc. v. Town of Berlin*, 352 F. Supp. 2d 183 (D. Conn. 2004); *Derusso v. City of Albany*, 205 F. Supp. 2d 16 (N.D.N.Y. 2002); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Daytona Grand, Inc. v. City of*

Daytona Beach, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around adult entertainment businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Report - 2006; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

the Board of Trustees finds:

- (1) Adult entertainment businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Each of the foregoing negative secondary effects constitutes a harm which the Village has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Village's rationale for this Chapter, exists independent of any comparative analysis between sexually oriented and non-adult entertainment businesses. Additionally, the Village's interest in regulating adult entertainment businesses extends to preventing future secondary effects of either current or future adult entertainment businesses that may locate in the Village. The Village finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.

The Village hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult entertainment businesses, including the judicial opinions and reports related to such secondary effects.

§ 122-2. Definitions.

For purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

ADULT BOOKSTORE or ADULT VIDEO STORE—A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”

A “principal business activity” exists where the commercial establishment:

- (1) has a substantial portion of its displayed merchandise which consists of said items, or
- (2) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
- (3) has a substantial portion of the retail value (defined as the price charged to customers) of its displayed merchandise which consists of said items, or
- (4) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or
- (5) maintains a substantial portion of its interior business space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, or rental of said items); or
- (6) maintains at least five hundred square feet (500 sq. ft.) of its interior business space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, or rental of said items) and limits access to the premises to adults only; or
- (7) offers for sale or rental at least two thousand (2,000) of the foregoing items *and* limits access to the premises to adults only;
- (8) regularly features said items and regularly advertises itself or holds itself out as an establishment that caters to adult sexual interests by using “adult,” “XXX,” “sex,” “erotic,” or substantially similar language; or
- (9) maintains an “adult arcade,” which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-

producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or “specified anatomical areas.”

ADULT CABARET—A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment which regularly features persons who appear semi-nude.

ADULT ENTERTAINMENT BUSINESS—An “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” a “semi-nude model studio,” or a “sexual device shop.”

ADULT MOTION PICTURE THEATER—A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

CHARACTERIZED BY—Describing the essential character or quality of an item. As applied in this Chapter, no business shall be classified as an adult entertainment business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

CHIEF OF POLICE-- The Chief of the Port Chester Police Department.

EMPLOY, EMPLOYEE, and EMPLOYMENT—These words describe and pertain to any person who performs any service on the premises of an adult entertainment business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. Employee does include any security guard employed by an adult entertainment business or whose services are performed on the premises of an adult entertainment business.

ESTABLISH or ESTABLISHMENT—Any of the following:

- (1) The opening or commencement of any adult entertainment business as a new business;
- (2) The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business; or
- (3) The addition of any adult entertainment business to any other existing adult entertainment business.

HEARING OFFICER—An attorney, not employed by the Village other than as a hearing officer, who is licensed to practice law in the State of New York and is retained to serve as an independent tribunal to conduct hearings under this Chapter.

INFLUENTIAL INTEREST—(1) The authority to manage or operate the adult entertainment business or control the operation, management or policies of the adult entertainment business or legal entity which operates the adult entertainment business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult entertainment business.

INTERIOR BUSINESS SPACE—The floor area inside an adult entertainment business that is visible or accessible to patrons for any reason, excluding restrooms.

LICENSEE—A person in whose name a license to operate an adult entertainment business has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment business license. In the case of an “employee,” it shall mean the person in whose name the adult entertainment business employee license has been issued.

MANAGER— Any person on the premises of an adult entertainment business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated an adult entertainment business regardless of whether that person is an owner or part owner of the business or a licensee under this Chapter.

NUDITY or STATE OF NUDITY—The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

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

PREMISES—The real property upon which the adult entertainment business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult entertainment business license.

REGULARLY—The consistent and repeated doing of an act on an ongoing basis.

SECURITY GUARD—A person who has a valid registration card to perform security guard functions in the State of New York issued by the New York State Department of State, Division of Licensing Services, which has not expired or been revoked or suspended.

SEMI-NUDE or STATE OF SEMI-NUDITY—The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO—A place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - (b) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

SEXUAL DEVICE—Any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP—A commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

SPECIFIED ANATOMICAL AREAS—This term means and includes:

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

SPECIFIED CRIMINAL ACTIVITY—Any of the following offenses, for which less than five years have elapsed since the date of conviction of a felony or the date of release from confinement for the conviction of a felony, whichever is the later date, or for which less than two years have elapsed since the date of conviction of a misdemeanor or the date of release from confinement for the conviction of a misdemeanor, whichever is the later date:

- (1) An offense within Sections 120.00 through and including 120.12 of the Penal Law relating to assault;
- (2) An offense within Article 200 of the Penal Law relating to bribery involving public servants;
- (3) An offense within Article 210 of the Penal Law relating to perjury;
- (4) An offense within Article 220 of the Penal Law relating to controlled substances;
- (5) An offense within Article 221 of the Penal Law relating to marihuana;
- (6) An offense within Article 225 of the Penal Law relating to gambling;
- (7) An offense within Article 230 of the Penal Law relating to prostitution;
- (8) An offense within Article 245 of the Penal Law relating to offenses against public sensibilities;
- (9) An offense within Sections 260.20 and 260.21 of the penal law relating to unlawfully dealing with a child;
- (10) An offense within Article 460 of the Penal Law relating to enterprise corruption;
- (11) An offense within Article 470 of the Penal Law relating to money laundering;
- (12) Any other crime committed in violation of the laws of any other jurisdiction which if committed in this state would constitute one of the foregoing offenses;
- (13) Any offense which is a misdemeanor or felony involving the adult entertainment business premises.

SPECIFIED SEXUAL ACTIVITY—Any of the following:

- (1) intercourse, oral copulation, masturbation or sodomy; or
- (2) excretory functions as a part of or in connection with any of the activities described in (1) above.

SUBSTANTIAL—At least thirty-five percent (35%) of the item(s) so modified.

TRANSFER OF OWNERSHIP OR CONTROL—Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

VIEWING ROOM—The room, booth, or area where a patron of an adult entertainment business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

VILLAGE—The Village of Port Chester, New York.

§ 122-3. License required.

- A. *Business License.* It shall be unlawful for any person to operate an adult entertainment business in the Village without a valid adult entertainment business license.
- B. *Employee License.* It shall be unlawful for any person to be an “employee,” as defined in this Chapter, of an adult entertainment business in the Village without a valid adult entertainment business employee license, except that a person who is a licensee under a valid adult entertainment business license shall not be required to also obtain an adult entertainment business employee license.
- C. *Application.* An applicant for an adult entertainment business license or an adult entertainment business employee license shall file in person at the office of the Chief of Police a complete application made on a form provided by the Village Clerk. An adult entertainment business may designate an individual with an influential interest in the business to file its application for an adult entertainment business license in person on behalf of the business. The application shall be signed as required by subsection (D) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (C), accompanied by the appropriate licensing fee:

- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) A set of fingerprint impressions of the fingers and thumbs on both hands taken by the Police Department of the Village. The Police Department shall provide this service, upon payment of the nominal fee for such service, on business days between 9:00 a.m. and 5:00 p.m. upon request. The Police Department is authorized to forward the said fingerprints to the New York State Division of Criminal Justice Services for a criminal convictions investigation. The Police Department shall secure from the applicant the required fee for said investigation in the form of a check or money order made payable to the New York State Division of Criminal Justice Services and shall forward said payment together with the fingerprints to the said agency. The information secured as a result of said investigation shall be reviewed by a member of the Police Department designated by the Chief of Police who shall thereafter make his or her report to the Chief of Police.
- (5) If the application is for an adult entertainment business license, the business name, street address, legal description, mailing address, and phone number of the adult entertainment business, as well as the name of the legal entity(ies) intending to operate the adult entertainment business and the doing business as name of the adult entertainment business.
- (6) If the application is for an adult entertainment business license, the name and business address of the statutory agent or other agent authorized to receive service of process for the operator of the adult entertainment business.
- (7) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable. If an applicant has been convicted of, or has pled nolo contendere to, a specified criminal activity as defined in this Chapter, the applicant shall include a statement of whether the conviction or plea is subject to a certificate of relief from disability or a certificate of good conduct pursuant to New York State Correction Law §§ 701-703-b.
- (8) A statement of whether any cabaret, dance hall, nightclub, or adult entertainment business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (a) been declared by a court of law to be a nuisance; or

- (b) been subject to a court order of closure or padlocking.
- (9) A statement whether an applicant may perform security guard functions on the adult entertainment business premises, and if so, a legible copy of the applicant's valid registration card to perform security guard functions issued by the New York State Department of State, Division of Licensing Services which has not expired or been revoked or suspended.
- (10) An application for an adult entertainment business license shall be accompanied by a legal description of the property where the business is located and a schematic, certified as accurate by a professional engineer or architect, showing the configuration of the premises, including a statement of total floor space occupied by the business. The schematic shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.
- (11) An application for an adult entertainment business license shall be accompanied by written documentation that the adult entertainment business has a current comprehensive general liability insurance policy, issued by a company with an AM Best rating of A- or higher, with coverage equal to or in excess of two million dollars (\$2,000,000.00), per occurrence and in the aggregate, for bodily injury, personal injury, and property damage.
- (12) An application for an adult entertainment business license shall set forth the name and phone number(s) of an individual who shall provide Village officials access to the floor area of the adult entertainment business premises during business hours, for the limited purpose of verifying compliance with the specific standards set forth in this Chapter.
- D. *Signature.* A person who seeks an adult entertainment business employee license under this section shall sign the application for a license. If a person who seeks an adult entertainment business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult entertainment business license is other than an individual, each person with an influential interest in the adult entertainment business or in a legal entity that controls the adult entertainment business shall sign the application for a license as applicant. Each applicant must be qualified under this Chapter and each applicant shall be considered a licensee if a license is granted.
- E. The information provided pursuant to this section shall be supplemented in writing to the Chief of Police within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete. The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the Chief of Police on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order.

§ 122-4. Issuance and renewal of license.

- A. An applicant may obtain an annual adult entertainment business license or an annual adult entertainment business employee license, as the case may be, which expires twelve (12) months from the date of issuance. An annual license may be renewed only by making application and payment of a fee as set forth in Village Code § 175-4.
- B. Application for renewal of an annual license should be made no more than sixty (60) days prior to the expiration of the current annual license, and when made less than thirty (30) days before the expiration date, the expiration of the current license will not be affected.
- C. *Business License.* Upon the filing of a complete application for an adult entertainment business license, the Chief of Police shall immediately issue a Temporary License to the applicant if the complete application is from a preexisting adult entertainment business that is lawfully operating in the Village and the complete application, on its face, indicates that the applicant is entitled to an annual adult entertainment business license. The Temporary License shall expire upon the final decision of the Village to deny or grant an annual license. Within twenty (20) days of the filing of a complete adult entertainment business license application, the Chief of Police shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Chief of Police shall issue a license unless:
 - (1) An applicant is less than eighteen (18) years of age.
 - (2) An applicant has failed to provide information required by this Chapter for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The applicant does not possess a current certificate of occupancy to operate the adult entertainment business.
 - (4) The license application fee required by this Chapter has not been paid.
 - (5) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Chapter, provided that a specified criminal activity that is subject to a certificate of relief from disability or a certificate of good conduct pursuant to New York State Correction Law §§ 701-703-b shall not disqualify an applicant from receiving an adult entertainment business license, nor shall an applicant be denied an adult entertainment business license if such a denial would violate New York State Correction Law §§ 751-753.
 - (6) An applicant has suffered or permitted the establishment, through improper or inadequate maintenance and supervision, to be used for the commission of any specified criminal activity as defined in this Chapter.

- (7) Within the prior twenty-four-month period, two or more of any of the following have occurred on the premises of the establishment due to the knowing, reckless, or negligent conduct of an applicant:
- (a) Occupancy limits applicable to the establishment have been exceeded.
 - (b) Exit doors have been locked while the premises are occupied.
 - (c) Exits and/or aisles have been obstructed in violation of the fire code or building code.
 - (d) Centralized fire alarm system or fire hood suppression system as required by the NYS Building and Fire Code have been inoperable or lacking from required locations.
 - (e) Fights, assaults, or other disturbances of a similar nature have occurred on the premises.
 - (f) Violations of the Alcoholic Beverage Control laws of the State of New York.
- (8) Within the prior sixty-month period, any of the following have occurred due to the knowing, reckless, or negligent conduct of an applicant:
- (a) A fire on the adult entertainment business premises resulting in death or serious physical injury, as defined in Penal Law § 10.00, Subdivision 10, where one or more Fire Code violations existed on the premises at the time of the fire.
 - (b) Death or serious physical injury, as defined in Penal Law § 10.00, Subdivision 10, arising out of an incident on the adult entertainment business premises.
 - (c) A riot, as defined in Penal Law § 240.05, taking place upon the premises or arising out of an incident on the premises and taking place, in whole or in part, within 200 feet of the adult entertainment business premises.
- (9) Any cabaret, dance hall, nightclub, or adult entertainment business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
- (a) been declared by a court of law to be a nuisance;
 - (b) been subject to an order of closure or padlocking; or
 - (c) been found to have violated Article 4 of the Labor Law relating to employment of minors.
- (10) The adult entertainment business is not covered by a current liability insurance policy that satisfies the requirements set forth in this Chapter.

- (11) The adult entertainment business is not in compliance with the minimum interior lighting requirements or the interior configuration requirements of this Chapter.
- (12) The adult entertainment business is not in compliance with the Port Chester Zoning Code.
- (13) The adult entertainment business is in violation of the New York State Uniform Fire Prevention and Building Code.

D. *Employee License.* Upon the filing of a complete application for an adult entertainment business employee license, the Chief of Police shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed adult entertainment business and the complete application, on its face, indicates that the applicant is entitled to an annual adult entertainment business employee license. The Temporary License shall expire upon the final decision of the Village to deny or grant an annual license. Within twenty (20) days of the filing of a complete adult entertainment business employee license application, the Chief of Police shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Chief of Police shall issue a license unless:

- (1) The applicant is less than eighteen (18) years of age.
- (2) The applicant has failed to provide information as required by this Chapter for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The license application fee required by this Chapter has not been paid.
- (4) Any cabaret, dance hall, nightclub, or adult entertainment business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (a) been declared by a court of law to be a nuisance; or
 - (b) been subject to an order of closure or padlocking.
- (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Chapter, provided that a specified criminal activity that is subject to a certificate of relief from disability or a certificate of good conduct pursuant to New York State Correction Law §§ 701-703-b shall not disqualify an applicant from receiving an adult entertainment business employee license, nor shall an applicant be denied an adult entertainment business employee license if such a denial would violate New York State Correction Law §§ 751-753.

E. The Chief of Police shall not issue or renew a license if an applicant has not paid any fine, penalty or judgment duly imposed in connection with or arising from the use, occupation, or

operation of a cabaret, dance hall, nightclub, or adult entertainment business or the applicant's employment at a cabaret, dance hall, nightclub, or adult entertainment business.

- F. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult entertainment business, the address of the adult entertainment business. The adult entertainment business license shall be posted in a conspicuous place at or near the entrance to the adult entertainment business so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult entertainment business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

§ 122-5. Fees.

- A. The application fee for each annual adult entertainment business license is set forth in Village Code § 175-4.
- B. The application fee for each adult entertainment business employee license is set forth in Village Code § 175-4.
- C. The applicable license fee shall be paid upon filing of an application for a license herein prescribed, in order to defray the cost of administering and enforcing this Chapter, and shall not be refundable.

§ 122-6. Posting of license.

Each adult entertainment business license issued under this Chapter shall be posted and prominently displayed at the main entrance of the establishment.

§ 122-7. Manager required.

Adult entertainment business licensees shall provide a manager or other responsible party on the premises when the adult entertainment business is occupied by patrons or is open to the public.

§ 122-8. License not transferable.

No license issued under the provisions of this Chapter shall be transferred or assigned to any person, or used by any person other than the licensee to whom it was issued. No adult entertainment business license shall be used on any location other than the location stated in such adult entertainment business license.

§ 122-9. Inspection.

Adult entertainment businesses and adult entertainment business employees shall permit employees of the Village to inspect, from time to time on an occasional basis, the portions of the adult entertainment business premises where patrons are permitted, for the purpose of ensuring

compliance with the specific regulations of this Chapter, during those times when the adult entertainment business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Village to authorize only reasonable inspections of the licensed premises pursuant to this Chapter.

§ 122-10. Suspension of license.

- A. The Chief of Police shall issue a written notice of intent to suspend an adult entertainment business license for a period not to exceed thirty (30) days if the adult entertainment business licensee has knowingly violated this Chapter or has knowingly allowed an employee or any other person to violate this Chapter.
- B. The Chief of Police shall issue a written notice of intent to suspend an adult entertainment business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly violated this Chapter.

§ 122-11. Revocation of license.

- A. The Chief of Police shall issue a written notice of intent to revoke an adult entertainment business license or an adult entertainment business employee license, as applicable, if the licensee knowingly violates this Chapter or has knowingly allowed an employee or any other person to violate this Chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.
- B. The Chief of Police shall issue a written notice of intent to revoke an adult entertainment business license or an adult entertainment business employee license, as applicable, if:
 - (1) A licensee has knowingly given false information in the application for the adult entertainment business license or the adult entertainment business employee license.
 - (2) A licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult entertainment business;
 - (3) A licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the adult entertainment business;
 - (4) A licensee knowingly or recklessly operated the adult entertainment business during a period of time when the license was suspended;
 - (5) A licensee is convicted of any specified criminal activity as defined in this Chapter;
 - (6) A licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult entertainment business;

(7) A licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the adult entertainment business; or

(8) Any condition(s) exist which would require denial of the license under the standards set forth in section 122-4 (Issuance and renewal of license.).

C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

D. When, after the notice and hearing procedure described in this Chapter, the Village revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult entertainment business license or adult entertainment business employee license for one (1) year from the date revocation becomes effective.

§ 122-12. Hearing; license denial, suspension, revocation; appeal.

A. When the Chief of Police issues a written notice of intent to deny, suspend, or revoke a license, the Chief of Police shall immediately send such notice, which shall include the specific grounds under this Chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Chief of Police for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the Chief of Police, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the Chief of Police's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (B) of this Section.

If the respondent does make a written request for a hearing within said ten (10) days, then the Chief of Police shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The County shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Chief of Police's witnesses. The Chief of Police shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Chapter, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Chief of Police to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Chief of Police shall contemporaneously therewith issue the license to the applicant.

- B. If any court action challenging a licensing decision is initiated, the Village shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The Village shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult entertainment business that is lawfully operating as an adult entertainment business, or any adult entertainment business employee that is lawfully employed as an adult entertainment business employee, on the date on which the complete business or employee application, as applicable, is filed with the Chief of Police: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Village's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the Chief of Police shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the adult entertainment business or to continue employment as an adult entertainment business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Village's enforcement.

§ 122-13. Rules and regulations.

- A. *Menu.* Upon request of a patron of an adult entertainment business that sells any food or drink, such patron shall be furnished with a clearly printed menu or other written list that itemizes the prices charged for food and drink sold before he or she is served, or, in the alternative, one or more signs reciting such itemized prices may be placed in conspicuous locations within the premises so as to be readily observable to all patrons.
- B. *Liability insurance.* An adult entertainment business shall maintain a liability insurance policy with coverage equal to or in excess of \$500,000.00 per occurrence and that obligates the insurer to notify the Village Clerk if the policy is canceled or if the insured fails to renew thirty (30) days prior to the expiration of the policy.
- C. *Security guards.*
- (1) An adult entertainment business shall maintain at least one security guard on premises at all times when the business is occupied by patrons or is open to the public. An adult entertainment business shall maintain at least two security guards on premises when 75 to

149 patrons are present at the same time. An adult entertainment business shall maintain at least one additional security guard for every additional set of 75 patrons (or portion thereof) on the premises at the same time. An adult entertainment business shall not admit any additional patron to the premises if doing so would cause the business to violate this requirement. The following chart demonstrates the application of this requirement:

Number of Patrons Present	Minimum Number of Security Guards Required
0-74	1
75-149	2
150-224	3
225-299	4
300-374	5
375-449	6
450-524	7
525-599	8
[for every 1 to 75 additional patrons]	[at least 1 additional security guard]

(2) When employing or retaining the services of a security guard, an adult entertainment business shall comply with the provisions of article 7-A of the general business law. An adult entertainment business shall retain on the premises a copy of the current registration card issued pursuant to article 7-A of the general business law to each security guard on duty at such establishment and shall make the copy of each license available on demand for inspection by any person authorized to enforce this Chapter.

D. *Hours of operation.* No adult entertainment business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

E. *Minimum interior lighting.* The interior premises of an adult entertainment business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the manager, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or is open for business.

F. It shall be the duty of the manager, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the adult entertainment business premises.

G. It shall be the duty of the manager to ensure that each employee present on the premises has a valid adult entertainment business employee license on the premises of the adult entertainment business.

§ 122-14. Regulations pertaining to exhibition of sexually explicit films on premises.

A. A person who operates or causes to be operated an adult entertainment business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic

image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

- (1) Each application for an adult entertainment business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) It shall be the duty of the manager, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the manager, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the manager, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- (5) It shall be the duty of the manager to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - (a) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - (b) That specified sexual activity on the premises is prohibited.
 - (c) That the making of openings between viewing rooms is prohibited.
 - (d) That violators will be required to leave the premises.
 - (e) That violations of these regulations are unlawful.
- (6) It shall be the duty of the manager to enforce the regulations articulated in (5)(a) through (d) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the manager to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the manager, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the manager to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

- B. It shall be unlawful for a person having a duty under subsections (A)(1) through (A)(8) to knowingly fail to fulfill that duty.
- C. No patron shall knowingly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other person.
- D. No patron shall knowingly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
- E. No person shall knowingly make any hole or opening between viewing rooms.

§ 122-15. Loitering and exterior lighting and monitoring requirements.

- A. It shall be the duty of the manager of an adult entertainment business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises (at least one such sign must be posted outside the structure containing the adult entertainment business); (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

- B. No adult entertainment business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- C. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

§ 122-16. Penalties and enforcement.

- A. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be guilty of a violation, and, upon conviction, be subject to fine no less than \$750 nor greater than \$900 for each offense. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- B. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter and who has been convicted of a violation of this Chapter within the preceding twenty-four (24) months shall be guilty of a violation, and, upon conviction, be subject to a term of imprisonment not in excess of fifteen (15) days, a fine no less than \$900 nor greater than \$1,500, or both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- C. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter and who has been convicted of a violation of this Chapter within the preceding twelve (12) months shall be guilty of an unclassified misdemeanor, and, upon conviction, be subject to a term of imprisonment in excess of fifteen (15) days but not in excess of one (1) year, a fine no less than \$1,500 nor greater than \$2,500, or both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- D. The Village Attorney is hereby authorized to institute civil and criminal proceedings, as allowed by law, necessary for the enforcement of this Chapter to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the Village, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Chapter, or any of the laws in force in the Village or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

§ 122-17. Applicability of Chapter to existing businesses.

All preexisting adult entertainment businesses lawfully operating in the Village in compliance with all state and local laws prior to the effective date of this Chapter, and all adult entertainment business employees working in the Village prior to the effective date of this Chapter, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this Chapter. By the end of said ninety (90) days,

all adult entertainment businesses and adult entertainment business employees must conform to and abide by the requirements of this Chapter.

§ 122-18. Prohibited conduct.

- A. No patron, employee, or any other person shall knowingly or intentionally, in an adult entertainment business, appear in a state of nudity or engage in a specified sexual activity.
- B. No person shall knowingly or intentionally, in an adult entertainment business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- C. No employee who regularly appears semi-nude in an adult entertainment business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult entertainment business.
- D. No employee shall knowingly or intentionally touch or make physical contact with the clothed or unclothed buttocks, breast, lap, groin area, or pubic area of a patron on the premises of an adult entertainment business.
- E. No patron of an adult entertainment business shall knowingly or intentionally touch or make physical contact with the clothed or unclothed buttocks, breast, lap, groin area, or pubic area of an employee on the premises of an adult entertainment business.
- F. No person shall sell, use, or consume alcoholic beverages on the premises of an adult entertainment business.
- G. No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult entertainment business.
- H. No manager or licensee of an adult entertainment business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.
- I. A sign in a form to be prescribed by the Chief of Police, and summarizing the provisions of subsections (A), (B), (C), (D), (E), (F), and (G) shall be posted near the entrance of the adult entertainment business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

§ 122-19. Scienter required to prove violation or business licensee liability.

This Chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Chapter. Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or

revocation of that employee’s license shall be imputed to the adult entertainment business licensee for purposes of finding a violation of this Chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

§ 122-20. Severability.

This Chapter and each section and provision of said Chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Chapter.

§ 122-21. Conflicting code provisions.

Any provision(s) in the Village code, including the provisions of Chapter 206 (Licensed Occupations), specifically in conflict with any provision in this Chapter is hereby deemed inoperative as to adult entertainment business licenses and adult entertainment business employee licenses.

SECTION 2. The Code of the Village of Port Chester, Chapter 175, § 175-4, is hereby amended to add language as follows:

Chapter 122, Adult Entertainment Businesses

License or Activity	Code Reference	Annual Fee
Annual adult entertainment business license	§ 122-4A	\$750.00 (1-74 occupancy) \$900.00 (75-299 occupancy) \$1200.00 (300-599 occupancy) \$1500.00 (600+ occupancy)
Annual adult entertainment business employee license	§ 122-4A	\$50.00

SECTION 3: Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State, as provided by law.

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF PORT CHESTER, NEW YORK
DENNIS PILLA, Mayor
JOAN MANCUSO, Deputy Village Clerk

Adopted: September 2, 2008