

SPECIAL AMUSEMENT ORDINANCE AND PERMITS

Enacted September 5, 1978

Revised July 2, 1996

Amended October 1, 2019

SPECIAL AMUSEMENT ORDINANCE AND PERMITS

Section 1. Applicability

This Ordinance amendment applies to al events at all facilities licensed by the State to sell liquor, including trivia, games, karaoke or other music events, pool tables, arcade games or video games.

Section 2. Repeal

All ordinances or parts thereof, inconsistent with the terms and provisions of this Ordinance, are hereby replaced.

Section 3. Authority

This Ordinance is enacted pursuant to Title 28-A, M.R.S.A., Section 1054 and Title 30-A, M.R.S.A., Section 3001.

Section 4. Purpose

The purpose of this Ordinance is to control the issuance of special amusement permits as required by 28-A M.R.S.A., Section 1054, for music, dancing or entertainment of facilities licensed by the state to sell liquor.

Section 5. Severability

If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Definitions

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Entertainment shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional or amateur entertainers, by patrons, or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value including trivia, games, karaoke or other music, pool tables, arcade games or video games.

Exotic Dancing shall mean the appearance of a person or persons, on the licensee's premises, in such a manner or attire as to expose to view any portion of the pubic area, anus, buttocks, vulva or genitals or any simulation thereof, or when any female appears on a licensee's premises in such a manner or attire as to expose to view any portion of the breast referred to as the aureole, nipple or simulation thereof. "Expose to view" shall be interpreted to mean, without limitation, clear, see-through or clothing which is otherwise non-opaque.

Licensee shall include any person, individual, partnership, firm, association, corporation or other legal entity which is the holder of a license for the sale of liquor to be consumed on premises owned by said licensee, or any agent or employee of any such licensee.

Section 7. Penalty

Except as otherwise provided by state law, anyone found guilty of violating any provision of this ordinance shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) to be recovered for the use of the Town of Gorham and shall be subject to such other legal and equitable remedies as may be available to the Town. Each day such violation continues shall be deemed to be a new offense.

Section 8. Application

a) No licensee for the sale of liquor to be consumed on the applicant/applicants licensed premises shall permit on the licensed premises any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the Town Council a special amusement permit.

(b) Applications for all special amusement permits shall be made in writing to the Town Council and shall state:

- (1) The name of the applicant;
- (2) The applicant/applicants resident address;
- (3) The name of the business to be conducted;
- (4) The applicant/applicants business address;
- (5) The nature of the applicant/applicants business;
- (6) The location to be used;
- (7) Whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances; and
- (8) Whether the applicant, including all partners, corporate officers, managers or principal employees has ever been convicted of a felony or a Class A, B or C crime within the past five years and, if so, the applicant shall describe specifically those circumstances; and
- (9) Any additional information as may be required by the Town Council prior to the issuance of the permit, including but not limited to a copy of the applicant's current liquor license.

Section 9. General Requirements

- (a) No special amusement permit shall be issued for any thing or act or premises, if the premises and buildings to be used do not fully comply with all ordinances, codes, and regulations of the Town.
- (b) The application fee for a special amusement permit shall be as set by order of the Town Council and on file in the Town Clerk's office and is nonrefundable and must be paid when application is made for the permit.
- (c) A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee as defined in the Maine Revised Statutes who has been issued a special amusement permit may charge admission in designated areas approved in the permit.

- (d) All music, dancing and/or entertainment subject to regulation under this ordinance, on the premises, shall end no later than 12:00 midnight.
- (e) The maximum permissible sound pressure level produced by any music, dancing and/or entertainment on the premises shall not exceed 50 dB, measured four (4) feet above ground at the property boundary; this measure shall be made by a meter set on the A-weighted response scale, slow response, and the meter shall meet the American National Standards Institute (ANSI S1.4-1961) "American Standard Specification for General Purpose Sound Level Meters".

Section 10. Conduct Constituting Offenses by Licensees

Tumultuous Conduct. The Licensee shall not knowingly allow on any licensed premises any person or persons to disturb, tend to disturb, or aid in disturbing the peace of others of ordinary sensibilities or be disorderly by violent, tumultuous, offensive or obstreperous conduct; or to permit or gather a crowd, or audience, or patrons to witness any entertainment, amusement, or show as to create a dangerous condition because of fire or other risks in derogation of the public health, comfort, convenience, safety, or welfare.

Riots. The Licensee shall not allow on any licensed premises any public entertainment or amusement or show of any kind which tends to or is calculated to cause or promote any riot or disturbance.

Unnecessary Noise. The Licensee shall not allow on any licensed premises the making, creation, or maintenance of excessive, unusually loud noise which disturbs, annoys, injures or prejudices, or endangers the comfort, repose, health, peace, or safety of individuals of ordinary sensibilities or the public in general, or the property rights of others, and which noises affect and are a detriment to public health, comfort, convenience, safety, welfare, or the prosperity of the residents of the municipality.

Nuisances. The Licensee shall not allow any licensed premises to be so conducted or operated as to amount to a nuisance in fact under any ordinances, or any sections of any ordinances or rules and regulations of the municipality, or under any statutes of the State of Maine.

Prostitution and Public Indecency. The Licensee shall not allow on any licensed premises or aid in or offer or agree to or allow near such licensed premises any prostitution, or prostitutes, or any public indecency under any or in derogation of any statutes of the State of Maine; or any meretricious display, or lewd act, or act of moral perversion, or knowingly receive, or offer or agree to receive any person on such licensed premises for the purpose of performing a lewd act, or an act of prostitution or moral perversion, or public indecency, or to knowingly permit any person to remain on such licensed premises for any such purpose, or to aid, abet, allow, permit, or participate in the commission of any such acts.

Gambling. The Licensee shall not allow on any licensed premises the use or occupancy thereof for gambling or games of chance as prohibited by the statutes of the State of Maine.

Obscenity. The Licensee, on any licensed premises, shall not:

- A. *Material.* Knowingly disseminate, distribute or make available to the public any obscene material; or
- B. *Performance.* Knowingly make available to the public any obscene performance; or
- C. *Commercial Activity.* Knowingly engage in commerce and/or for commercial gain with materials depicting and describing explicit sexual conduct, nudity, or excretion utilizing displays, circulars, advertisements, or any other public sales efforts that promote such commerce primarily on the basis of their prurient appeal; or
- D. *Exposure.* Provide service to patrons in such a manner as to expose to public view:

- (1) The Licensee's or any of his agent's or employee's genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
 - (2) Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - (3) Any portion of the female breast at or below the aureole thereof; or
- E. *Promotion.* Knowingly promotes the commission of any of the above-listed acts of this Section.
- F. *Definitions.* For the purpose of this Section, "obscene" means that to the average person applying contemporary community standards the predominant appeal of the matter or act taken as a whole, is to prurient interest, and the matter or act depicts or describes in a patently offensive manner sexual conduct or lewd exhibition of the genitals or other body parts mentioned in this Section above, and the matter or act or performance considered as a whole lacks serious literary, artistic, political, or scientific value; or any matter or acts or performance which are prohibited by the statutes of the State of Maine. "Material" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statute or other figure, or any recording, transcription or mechanical, chemical, or electrical reproduction or any other articles, equipment or machines. "Disseminate" means to transfer possession of, with or without consideration. "Knowingly" means being aware of the character and the content of the material. "Performance" means any preview, play, show, skit, film, dance, or other exhibition, or entertainment performed before an audience. "Available to the public" means that the matter or performance or act may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance or act, or available merely by being a patron of or present in an establishment that is licensed to sell liquor. "Service to patrons" means the provision of services to customers, patrons, or any other persons present in establishments providing food and beverages, including but not limited to hostessing, hat-checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing, and entertainment. For the purposes of this Section and any other section of this Article, unless specified otherwise, "promote" means to cause, permit, procure, counsel or assist.

Section 11. Regulations for exotic dancing.

The following regulations apply to the performances of exotic dancers in establishments holding a special amusement permit:

- (1) No dancer shall dance in the establishment except on a platform raised at least two (2) feet from the floor.
- (2) No dancer shall dance closer than ten (10) feet from any patron.
- (3) There shall be no fondling, mingling or caressing in the establishment between any patron and any dancer with the intent to sexually arouse or excite a patron's sexual desire.
- (4) No patron shall directly pay or give any gratuity to any dancer, and no dancer shall solicit any pay or gratuity from any patron.
- (5) The licensee shall provide on the premises a separate dressing room and toilet facilities for use by dancers only.
- (6) Dancers on the premises who remove any outer garments shall not toss or throw those outer garments at or in the direction of the patrons.
- (7) The licensee shall, at his own expense, post a licensed security guard or an individual authorized to act as a law enforcement officer (whether full-time or part-time and whether on-duty or off-duty) at each entrance and exit to the premises during each performance by dancers on the premises and for one hour after each such performance.
- (8) No one under twenty-one (21) years of age shall be permitted on the premises or portion of the premises where a performance by dancers is conducted during any such performance.
- (9) Any premises upon which entertainment including a dancer or dancers is proposed to be conducted shall be located at least one thousand (1,000) feet from any church; school; park; other facility holding a special amusement license under this Ordinance and which provides "dancers" as defined in this Ordinance; or any area for which residential uses are either a permitted use or a conditional use under the Zoning Ordinance of the Town of Gorham, Maine (in each of the above instances, the distance shall be measured from property line to property line).
- (10) There shall be no graphic evidence on the exterior of any facility licensed under this Ordinance of the dancers, either live or simulated, requiring the licensee, if necessary, to black out windows or install curtains to prevent viewing of the dancers from the outside; provided, nothing in this paragraph shall prohibit the establishment from advertising by words the nature of the entertainment.

Section 12. Classes and Fees

- (a) The fee for a special amusement permit shall entitle the applicant to one (1) of the following classes of permits:
 - (1) *Class I.* Permit for live performances of music, provided nevertheless that the Class I permit shall limit the holder of same to three (3) live musicians or singers performing within the restaurant structure. No dancing or floor show entertainment shall be allowed on the premises holding a Class I permit.

- (2) *Class II.* All of the privileges allowed in a Class I permit plus dancing within the restaurant structure to recorded or live music with no limitation upon the number of live musicians or singers.
- (3) *Class III.* All of the privileges allowed in Class I and Class II permits plus a floor show type of entertainment within the restaurant structure.
- (b) The entertainment allowed under any class of permit provided for herein shall be conducted at a level which complies with the provisions of Section 9(e) of this ordinance. Permits issued hereunder shall specify the hours during which permitted entertainment may be provided.
- (c) An applicant may apply for any of the above three (3) classes of permit.

Section 13. Hearing.

- (a) The Town Council shall, prior to granting a special amusement permit and after reasonable notice to the town residents and the applicant, hold a public hearing within thirty (30) days of receipt of a completed application, at which hearing the testimony of the applicant and that of any interested members of the public shall be taken.
- (b) Prior to obtaining a permit, the applicant must show at the public hearing required in this section that:
 - (1) The issuance of the requested permit will not be detrimental to the public health, safety, or welfare;
 - (2) The proposed activity to be licensed will not create a traffic hazard;
 - (3) The applicant has ample parking to accommodate the proposed activity;
 - (4) The proposed activity will not, either by reason of its scope or noise, adversely affect surrounding or abutting property and that it will not unreasonably interfere with the use, enjoyment and value of surrounding and/or abutting property;
 - (5) The applicant is in conformance with all provisions of the town zoning ordinance, all applicable health codes, and other applicable municipal, state and federal codes, ordinances, regulations and statutes;
 - (6) In the case of a facility located in a residential zone, that the activities will not tend to change the residential character of the neighborhood.
 - (7) Neither applicant nor its officers, agents, or principle employees has been convicted of a felony or Class A, B, or C crime within the past five years.
- (c) In making the determination of whether the applicant has satisfied the criteria set forth in (b) above, the Town Council shall consider, but shall not be bound by, neighborhood opinion and sentiment.

Section 14. Term of Permit

A special amusement permit shall be valid only for the license year of the applicant's existing liquor license.

Section 15. Inspections

- (a) Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a special amusement permit are approved for or required by ordinance or state law or are reasonably necessary to secure compliance with any town ordinance, code or regulation or state law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the town authorized to make the inspection at any reasonable time that admission is requested.
- (b) Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with any ordinance provision or detect violations thereof, it shall be the duty of the licensee, or person in charge of such premises, to give any authorized officer, official or employee of the Town requesting the same, sufficient samples of such material or commodity for such analysis or investigation upon request.
- (c) In addition to any penalty which may be provided, the Town Council may revoke the special amusement permit of any licensee who refuses to permit any such officer, official or employee to make an inspection or who interferes with such officer, official or employee while in the performance of his duty, provided that no license or special amusement permit shall be revoked unless written demand for the inspection is made upon the licensee or person in charge of the premises at the time it is sought to make the inspection.

Section 16. Suspension or Revocation

The Town Council may, after a public hearing preceded by notice to interested parties, suspend or revoke any special amusement permit which has been issued under this ordinance on the grounds that the music, dancing, or entertainment permitted constitutes a detriment to the public health, safety or welfare or violates any town regulations, ordinances, or rules or determines that the application was false or misleading in a fashion material to the approval.

Section 17. Appeals

- (a) Any licensee requesting a special amusement permit from the Town Council shall be notified in writing of their decision no later than thirty (30) days from the date his application was received. In the event that a licensee is denied a permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a permit within thirty (30) days after an application for a permit has been denied.
- (b) Any licensee who has requested a permit and has been denied or whose permit has been revoked or suspended may, within thirty (30) days from the date of the denial, suspension or revocation, appeal the decision to the Board of Appeals.

Section 18. Rules and Regulations for Special Use Permits

The Town Council is hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension and revocation of special amusement permits; the classes of permits; the music, dancing or entertainment permitted under each class; and other limitations on these activities required to protect the public health, safety and welfare. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises and the hours during which the permitted activities are permitted. Such rules and regulations shall be additional to and consistent with all sections of this division.