

TOWN OF RANDOLPH

SEXUALLY ORIENTED BUSINESSES ORDINANCE

1. Findings.

There is convincing documented evidence that sexually oriented businesses, because of their very nature, have negative secondary effects on surrounding areas. Research and studies of municipalities throughout this country indicate that the presence of sexually oriented businesses is consistently and strongly associated with perceived decreases in value of both residential and commercial properties and the facilitation of illicit and undesirable activities. This evidence is relevant to issues facing the Town. It is recognized that sexually oriented businesses can adversely affect the character and quality of life of a town and can be incompatible with surrounding uses, particularly when the sexually oriented businesses are concentrated within a limited geographic area or are located in proximity to residences, day care centers, schools, houses of worship, public parks or recreational areas, or another sexually oriented business. A police power ordinance is a proper and reasonable means of controlling the negative secondary effects of sexually oriented businesses.

2. Purpose.

The regulations of this Article are not directed at the content of speech, but are directed at the negative secondary effects of sexually oriented businesses. The purpose of this Article is to regulate the time, place and manner of operation of sexually oriented businesses. It is intended to regulate and to annually license sexually oriented businesses; and to prevent their location in proximity to residences, day care centers, schools, houses of worship, public parks or recreational areas, or another sexually oriented business. Regulation of these uses is necessary to insure that the negative secondary effects will not contribute to the blighting or downgrading of the surrounding areas or the Town at large. The purpose of this Article is not to prohibit sexually oriented businesses from operating in the Town, but to regulate their location and manner of operation, while providing a reasonable opportunity for such businesses to exist

3. Definitions.

The following terms as used in this Article and for the purpose of this Article have the meanings ascribed to them below:

- A. "Adult amusement store," means an establishment having as a substantial or significant portion of its sales or stock in trade, sexual devices or printed material including pictures and photographs or films for sale or viewing on premises that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a portion of the premises devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin-operated booths, the exclusion of minors from the establishment's premises, or any other factors showing that the establishment's primary purpose is to purvey such material.

- B. "Adult motion picture theater," means an enclosed building used regularly and routinely for presenting motion picture or video material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities*" or "specified anatomical areas,*" for observation by patrons therein.**
- C. "Adult entertainment cabaret," means a public or private establishment which: (i) features topless dancers, strippers, male or female impersonators, or erotic dancers; (ii) features entertainers who display "specified anatomical areas"; (iii) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or entertainers who engage in, or engage in explicit simulation of, "specified sexual activities;" or (iv) offers Sadoomasochistic acts or bondage and discipline to patrons.**
- D. "Adult spa,"* means an establishment or place primarily in the business of providing a steam bath or sauna, bathing or hot tub services, or "rub-down" or other massage services, and at which (1) a person's specified anatomical areas are not touched, rubbed, massaged or manipulated in any manner by another person with or without the aid of any instrument or device, or (2) a person's specified anatomical areas are exposed while that person touches, rubs, massages or manipulates any part of the body of another person, with or without the aid of any instrument or device, or (3) specified sexual activities are permitted to occur.**
- E. "Sexually oriented business," means Adult amusement stores, Adult movie theaters, Adult entertainment cabarets, or Adult spas, as defined herein, or any business where specified sexual activities are displayed, depicted, described or simulated as a regular and substantial part of its operation.**
- F. "Erotic dance," means a form of dance, which seeks, through one or more dancers, to arouse or excite the sexual desire of a patron or patrons.**
- G. "Residence," means any structure, which is principally used as a dwelling including, without limitation, a single family or multi-family house, an apartment, a condominium, or a mobile home.**
- H. "Sadoomasochistic acts," or "Bondage and discipline," means respectively, flagellation, torture or punishment by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained while so clothed or by a person so clothed.**
- I. "Sexual device" means a device or object the primary purpose of which is to provide direct sexual stimulation to male or female genitals or anus.**
- J. "Specified criminal activity," means a criminal conviction for any of the following offenses: prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor, sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the Maine Criminal Code or statutes of other states, the United States or any other nation or province, and for which;**
- (1) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if**

the conviction is for an offense punishable by a maximum term of imprisonment of less than one year;

- (2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for an offense punishable by a maximum term of imprisonment of one year or more;
- (3) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more offenses or combination of offenses occurring within any twenty-four (24) hour period, and all such offenses are punishable by maximum term of imprisonment of less than one year.

K. "Specified sexual activities," means:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, any sexual act or sexual contact as defined by Maine law, or sodomy;
- (3) Fondling or other touching of human genitals, pubic region, buttock or female breast

L. "Specified anatomical areas," means:

- (1) Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttocks or (c) 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.

4. License required.

A person wishing to operate an sexually oriented business shall obtain an annual license (a) prior to opening the person's establishment, and (b) prior to expiration of the person's current annual license.

5. Application: Investigation and issuance of license.

A. Application. An applicant for sexually oriented business license shall:

- 1) Complete and file an application prescribed by the Board of Selectmen;
- 2) Deposit a license fee of \$250 and a \$50 processing fee in advance with the Town Clerk;
- 3) Submit the completed application to the Town Clerk, together with attested copies of the

articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;

- 4) File an sworn affidavit, which states the names of all owners, officers, managers or partners of the applicant, and their places of residence at the time of the application and for the immediately preceding three (3) years;
- 5) File the release authorized by 16 M.R.S.A. §620(6) (Criminal History Record Information Act) with the application, for the applicant and each officer, owner, manager or partner of the applicant;
- 6) Submit evidence of right, title or interest in the premises in which the sexually oriented business will be sited, along with the written consent of the owner of the premises for such use if applicant is not the owner,
- 7) State the date of initiation of the sexually oriented business and the nature of the business with a description of the nature of all products and services offered to customers.
- 8) Submit evidence of compliance with Section 10 of this Article and evidence that there is no basis for denial of a license to applicant under the standards listed in Section 6 of this Article.

B. Investigation of applicant, officers. Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:

- 1) The Town Clerk, upon receipt of a completed application, shall immediately send a copy of the complete application to the Town officials referenced in paragraphs 2 through 5 below. The Town Clerk shall also immediately consult with the Chairman of the Board of Selectmen and then arrange for public notice of a public hearing on the application in a newspaper of general circulation and by mail to owners of lots within 1000 feet of the proposed location of the structure, at least ten days prior to the public hearing before the Board of Selectmen. The costs of publication, certified mail postage, and other expenses related to the hearing shall be paid from the processing fee. After receipt of required reports from Town officials, the Town Clerk shall forward the application and other documents to the Board of Selectmen for public hearing and final decision. The hearing shall be held within thirty (30) days after receipt of a complete application by the Town Clerk and a decision shall be made within three (3) business days thereafter.
- 2) The Health Officer, within fifteen days of notice, shall inspect the location or proposed location to determine whether the applicable laws relating to health and safety have been satisfied and then report findings in writing to the Town Clerk;
- 3) The Fire Chief, within fifteen days of notice, shall inspect the location or proposed location of the business to determine if applicable State and fire and safety regulations have been satisfied and then report findings in writing to the Town Clerk;

- 4) A constable or other law enforcement officer shall investigate the applicant, including the criminal history record information required under Section 5.A.5, and then report findings in writing to the Town Clerk; and
- 5) The Code Enforcement Officer, within fifteen days of notice, shall verify that the proposed premises of the establishment will comply with Section 10 and with all other applicable State and Town laws and land use codes of the Town and then report findings in writing to the Town Clerk.

C. Issuance of license. The Board of Selectmen, after notice and public hearing, shall determine whether the application and documents submitted comply with all of the requirements of this Article. The license shall be issued upon determination by the Board of Selectmen, based upon the record, including evidence and testimony at the public hearing, that the application meets the requirements of this Article. The license may not be transferred or assigned.

6. Standards for denial.

An application for a sexually oriented business license shall be denied by the Board of Selectmen in the following circumstances:

- A. the applicant is a corporation or other legal entity that is not authorized to do business in the State of Maine;
- B. the applicant is an individual who is less than 18 years of age;
- C. the applicant has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the Town Clerk or Board of Selectmen that is reasonably necessary to determine whether the license is issuable;
- D. the applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has been denied a sexually oriented business license for knowingly making an incorrect statement of a material nature within the immediately preceding five years;
- E. the applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has had a license immediately preceding five years;
- F. the applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has committed any Specified Criminal Activity as defined herein;
- G. the site on which the sexually oriented business is proposed is a prohibited site under Section 10; or
- H. the application in any other way fails to meet the requirements of this Ordinance.

7. Standards for suspension: Revocation.

A sexually oriented business license, may be suspended or revoked by the Board of Selectmen after notice and hearing upon a finding that the licensee has violated any provision of this Article.

8. Age restriction.

No sexually oriented business may permit any person under the age of 18 years on the premises in which the sexually oriented business is located.

9. Display of License.

Prices charged and names of owners or officers to be prominently displayed.

A sexually oriented business licensee must display the sexually oriented business license at all times in an open and conspicuous place in the sexually oriented business for which the license has been issued. Sexually oriented business licensees must also display at all times in an open and conspicuous place in the sexually oriented business a complete list of the names of owners and officers of the sexually oriented business and a complete list of fees, prices and charges for all food, beverages, goods, wares, merchandise or services offered by the business.

10. Prohibited sites. Site Requirements.

A. A sexually oriented business may not be sited within 300 feet of the lot lines of any of the following:

- 1) a church, synagogue or other house of religious worship;**
- 2) a public or private elementary or secondary school;**
- 3) a residence;**
- 4) a day care facility;**
- 5) a public park or public recreational facility;**
- 6) another sexually oriented business.**

The distance cited in this section shall be measured between any structure used as a sexually oriented business and the lot line of the site of the use listed in (1) through (6) above at their closest points.

B. A sexually oriented business must have a separate driveway entrance, parking area and signage at least 100 feet from any driveway entrance or signage of any of the following:

- 1) a church, synagogue or other house of religious worship;**
- 2) a public or private elementary or secondary school;**
- 3) a residence;**
- 4) a day care facility;**
- 5) a public park or public recreational facility;**
- 6) another sexually oriented business.**

C. A sexually oriented business must have a continuous 6 foot high solid fence along all boundary lines it has in common with any of the following:

- 1) a church, synagogue or other house of religious worship;
- 2) a public or private elementary or secondary school;
- 3) a residence;
- 4) a day care facility;
- 5) a public park or public recreational facility;
- 6) another sexually oriented business.

D. A lawful existing sexually oriented business, at the time of renewal of a not yet expired valid license, shall not be in violation of the site requirements of Section 10 by the subsequent location of a residence, day care center, school, house of worship, or public park or recreational area, at a site that would otherwise conflict with the site requirements of this Section.

11. Interior Layout of Sexually Oriented Business.

A. Any sexually oriented business having available for customers, patrons or members, any boom, room or cubicle for any private viewing of any adult entertainment shall comply with the following requirements:

- 1) **Access.** Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the sexually oriented business, and shall be unobstructed by any door, lock or other control-type device.
- 2) **Construction.** Every booth, room or cubicle shall meet the following construction requirements:
 - a) Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.
 - b) Each booth, room or cubicle must have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room or cubicle.
 - c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light-colored, non-absorbent, smooth textured and easily cleanable.
 - d) The floor must be light-colored, non-absorbent, smooth textured and easily cleanable.
 - e) The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten foot candles at all times, as measured from the floor.
- 1) **Occupants.** No more than one individual shall occupy a booth, room or cubicle at any time. No occupant of a booth, room or cubicle shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

B. Any adult motion picture theater shall comply with the following requirements:

- 1) Aisle lights and overhead lights in the theater shall be kept on during

business hours and shall illuminate to a minimum of ten-foot candles except when motion pictures are being shown;

- 2) No standing shall be allowed in the theater,
- 3) Signs shall be posted warning patrons that sexual activity is prohibited in the theater, and informing them of the presence of surveillance cameras; and
- 4) Theater employees shall regularly patrol the theater during business hours and eject persons found to be engaged in sexual intercourse, a sexual act, sexual contact or any criminal activity. Incidents of sexual intercourse, sexual acts, sexual contact or criminal activity in the theater shall be immediately reported to a law enforcement officer.

C. Rest room must be individual rooms and shall not contain facilities for more than one person at a time. No more than one person may be in the rest room with the door closed at any time.

12. Prohibited activities.

- A. All acts of public indecency, as defined in 17-A M.R.S.A. §854, are prohibited in sexually oriented businesses.
- B. Dancers, performers, employees, owners or officers of a sexually oriented business shall not fondle or caress any patron or client, and patrons and clients shall not fondle or caress dancers, performers, employees, owners or officers of the sexually oriented business.
- C. Dancers, performers, employees, owners or officers of a sexually oriented business shall not commit or perform, or offer or agree to commit or perform, any specified sexual activity either alone or with each other or any patron or client of the sexually oriented business; and
- D. Patrons and clients of sexually oriented businesses shall not commit or perform, or offer or agree to commit or perform, any specified sexual activity either alone or with any dancer, performer, employee, owner, officer, patron or client of the sexually oriented business.

13. Dancers and other performers.

A sexually oriented business must observe the following restrictions on dancers and the performers:

- A. All dancing or other performances must occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.
- B. No dancing or other performance shall occur closer than ten feet from any patron, and no patron shall be allowed to be closer than ten feet from any dancer or other performer.

14. Enforcement.

A violation of this Article is a civil violation and the civil penalties and remedies under Section 9 of this ordinance shall apply. The owner of the premises on or in which the sexually oriented business is located, who is not the licensee of the sexually oriented business, is jointly and severally liable with the licensee for any violation of Sections 10 through 13. The Article shall be enforced by the Code Enforcement Officer, in conjunction with the Board of Selectmen. If court action is required to enforce this Article, the Town shall be awarded its enforcement costs, including its reasonable attorney's fees.

15. Severability.

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

16. Appeals.

An appeal from any final licensing, denial, suspension or revocation decision of the Board of Selectmen may be taken by an aggrieved party to Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. Service of Process shall be served on the Town Clerk or any Selectman. The Town shall file its responsive pleadings and record of proceedings with the Court not later than ten (10) business days after service of the summons and complaint. Additionally, the Town shall submit its responsive brief within fourteen (14) days after receipt of the plaintiffs brief, and shall move for an expedited hearing. All enforcement action, if any, shall be stayed during the pendency of the Rule 80B appeal.

Adopted on: February 19, 2008 at Special Town Meeting