

AN ORDINANCE OF THE TOWN OF SEARSPORT ESTABLISHES THE FOLLOWING  
REGULATIONS ON SEXUALLY ORIENTED BUSINESS.

WHEREAS, sexually oriented businesses in the incorporated area of the Town of Searsport require special supervision from public safety and health agencies of the County in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as citizens of the Town; and

WHEREAS, from review of other cities/towns studies and their own surveys and testimony from its citizens there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing among other adverse secondary effects, increased crime and downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectional operational characteristics, particularly when they are operating in close proximity to each other, thereby contributing to crime, lower property values, urban blight and downgrading of the quality of life in the adjacent area; and

WHEREAS, the Board of Selectmen finds that sexually oriented businesses are frequently used for unlawful sexual activities including prostitution, sexual liaison of casual nature; and

WHEREAS, increased crime and unhealthful conduct tend to accompany, concentrate around and be aggravated by sexually oriented businesses including but not limited to prostitution, pandering, exposing minors to harmful materials, possession

and distribution of obscene materials and child pornography, possession and sale of controlled substances and violent crimes against persons and property; and

WHEREAS, concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the Town which demands reasonable regulations of sexually oriented business in order to protect the health and well being of the citizens; and

WHEREAS, the Board of Selectmen has considered in part, each of the following matters: (a) areas within close walking distance of single and multiple family dwellings should be free of sexually oriented businesses uses; (b) areas where children could be expected to walk, patronize, or frequent to be free of sexually oriented business uses; (c) sexually oriented business uses should be located in areas of the Town which are not in close proximity to residential uses, churches, parks, or other public facilities and schools; (d) the image of the Town of Searsport as a pleasant attractive place to reside will be adversely affected by the presence of sexually oriented business uses in close proximity to residential land uses, churches, parks and other public facilities, and schools; (e) sexually oriented business land use should be regulated from other dissimilar uses just as any other and use should be separated from uses with characteristics different from itself; (f) residents of the Town of Searsport and persons who are non-residents but use the Town of Searsport for shopping and other commercial needs will move from the community or shop elsewhere if sexually oriented businesses land uses are allowed to locate in close proximity to residential uses, churches, parks, and other public facilities, and schools; (g) merchants in the commercial area of the Town are concerned about the adverse impact and the character and quality of the Town in the event that sexually oriented business land uses are located with close proximity to residential uses, churches, parks, and other public

facilities, and schools, and that such locations will reduce retail trade to commercial uses in the vicinity, thus reducing property values and tax revenues to the Town; and that such adverse affect on property values and business would cause the loss to some commercial districts within the Town leading to further deterioration of the commercial quality of the Town, and (h) no evidence has been presented to show that location of sexually oriented businesses within the Town will improve the commercial viability or quality of life of the community; and

WHEREAS, the Town recognizes the possible harmful effects on children and minors exposed to the effects of such businesses and the deterioration of respect for family values, and the avoidance of such businesses which necessitate children walking through or visiting in the immediate neighborhood of such businesses; and

WHEREAS, the Board of Selectmen finds that there would be a deterioration of the quality of businesses which chose to operate in around such sexually oriented businesses; and

WHEREAS, the Board of Selectmen desire to minimize and control those adverse secondary effects and thereby protect the health, safety and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and the character of surrounding neighborhoods and businesses, deter the spread of urban blight and protect against the threat to health from the spread of communicable and social diseases; and

WHEREAS, the Board of Selectmen recognizes that the exceptions, where sexually oriented businesses are permitted to be established without regard to distance regulations, are either inward looking configurations, or those isolated from direct view from public streets, parks, schools, boys' clubs,

girls' clubs, or similar youth organizations, public buildings, religious institutions or residential districts or uses. This configuration reduces the adverse secondary effects associated with sexually oriented businesses by segregating such businesses away from the aforementioned sensitive uses, and placing them in a location where they do not effect the public health, safety, and moral climate of the community as a whole. It decreases the problems of harassment of neighborhood adults and children, littering of sexually explicit reading materials and paraphernalia, loitering, and visual blight. In addition, this promotes the Town's interests by shifting part of the regulatory burden to the private sector. A shopping center or resort complex has its own signage, paint and landscaping restrictions, as well as hours of operation, parking, and security. The Town is relieved from some of the regulatory burden while protecting the Town's commercial tax base; and

WHEREAS, the Board of Selectmen has considered the decisions of the United State Supreme Court regarding local regulation of sexually oriented businesses, including but not limited to, Young v. American Mini-Theatres, Inc., 427 U.S. 50 (1976) reh. denied 429 U.S. 873; Renton v. Playtime Theatres, U.S. 41 (1986) reh. denied 475 U.S. 1132; FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990); and Barnes v. Glen Theatre, 501 U.S. \_\_\_\_\_, 111 S.Ct. 2456 (June 21, 1991); and City of National City v. Wiener, et al, 3 Cal.4th 832 (1992) (as modified Jan. 21, 1993). Topanga Press, Inc., et al v. City of Los Angeles, 93 D.A.R. 3585 (March 22, 1993) 93 D.A.R. 5261 (as amended Apr. 27, 1993); and

WHEREAS, the Board of Selectmen consistent with sale and consumption of alcohol and outside advertising limitations further finds that restricted hours of operation will further prevent the adverse effects of sexually oriented business; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Board of Selectmen to condone or legitimize the distribution of obscene material, and the Board recognizes that state law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state obscenity statutes against such illegal activities in Searsport; and

NOW THEREFORE, the Board of Selectmen of the Town of Searsport do ordain as follows:

#### SECTION 1. Purpose and Intent

It is the purpose and intent of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance 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 the ordinance to condone or legitimize the distribution of obscene material.

#### SECTION 2. Definitions

For the purposes of this division, certain terms and words are defined as follows:

A. "Sexually oriented businesses" are those businesses defined as follows:

1. "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

2. "Adult Bookstore", "Adult Novelty Store" or "Adult Video Store" means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

(c) An establishment may have other principal business

purposes that do not involve the offering for sale, rental or viewing or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

3. "Adult cabaret" means a nightclub, bar, restaurant, "bottle club", or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features; (a) persons who appear nude or in a state of nudity or semi-nude; (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

4. "Adult motel" means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub-rent the

sleeping room for a time period of less than ten (10) hours.

5. "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

6. "Adult theatre" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities".

7. "Escort" means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

8. "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

9. "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration or fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "specified sexual activities", or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas". The definition of sexually oriented businesses shall not include the practice of massage

in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

10. "Nude Model Studio" means any place where a person, who regularly appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

11. "Sexual encounter establishment" means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where to or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more persons is in a state of nudity or semi-nude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

B. "Establishment" means and includes any of the following:

1. The opening or commencement of any such business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;

3. The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or

4. The relocation of any such sexually oriented business.

C. "Nudity or State of Nudity" means: (a) the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

D. "Operator" means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

E. "Permitted or Licensed Premises" means any premises that required a license and/or permit and that is classified as a sexually oriented business.

F. "Permitee and/or Licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

G. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

H. "Public building" means any building owned, leased or held by the United States, the state, the county, the town, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.

I. "Public park" or "recreation area" means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the city which is under the control, operation, or management of the town park and recreation authorities.

J. "Religious institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

K. "Residential District or Use" means a single family home, duplex, townhouse, multiple family home, or mobile park or subdivision and campground.

L. "School" means any public or private educational facility including but limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

M. "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

N. "Sexually Oriented Business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, massage parlor, sexual encounter establishment, escort

agency or nude model studio.

O. "Specified Anatomical Areas", as used in this division means and includes any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

P. "Specified Sexual Activities", as used in this division means and includes any of the following:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;

2. Sexual acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

3. Masturbation, actual or simulated; or

4. Human genitals in a state of sexual stimulation, arousal or tumescence;

5. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

### SECTION 3. Establishment, Classification, and Location of Sexually Oriented Businesses

A. The establishment and/or operation of a sexually oriented business shall be subject to the following restrictions. No person shall cause or permit the establishment of any of

the following sexually oriented businesses, as defined above, within 1,000 feet of another such business or within 1,000 feet of any religious institution, school, boys' club, girls' club, or similarly existing youth organization, or public park or public building, or within 1,000 feet of any property zoned for residential use or used for residential purposes and are classified as follows:

1. adult arcade
2. adult bookstore, adult novelty store or adult video store
3. adult cabaret
4. adult motel
5. adult motion picture theater
6. adult theater
7. massage parlor
8. sexual encounter establishment
9. escort agency, or
10. nude model studio.

#### SECTION 4. Measurement of Distance

As regarding Section 3, paragraph A., distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexual oriented business and any religious

institution, public or private elementary or secondary school, boys' club, girls' club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes shall also be measured in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where the sexually oriented businesses is conducted, to the nearest property line of the premises of a religious institution, public or private elementary or secondary school, boys' club, girls' club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes.

#### SECTION 5. Hours of Operation

It shall be unlawful if a person operates or causes to be operated a sexually oriented business, regardless of whether or not the business satisfies all other requirements as outlined by the Town of Searsport, and allows such business to remain open for business, or to permit any person to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 9:00 p.m. and 9:00 a.m.

#### SECTION 6. Transfer of Permit

A. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

B. A permittee shall not transfer his/her permit to another person unless and until such other person submits a separate application for approval to the Town Selectmen.

#### SECTION 7. Sexually Oriented Business Permit

A. The Town of Searsport Selectmen shall grant or deny an application for a permit to operate within thirty (30) days from the date of its proper filing. The Town Selectmen shall grant approval of said application unless one or more of the criteria set forth in this ordinance, any other Ordinance that governs within the Town of Searsport, and State and Federal Statutes is/are not met.

B. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application with the Town of Searsport. Application for renewal of said sexually oriented business shall be made at least thirty (30) days (not more) before the expiration date.

C. If the Town Selectmen revoke, deny a permit, or a renewal application is not received by the expiration date, the applicant shall not be issued a permit under this ordinance for one (1) year from the date of denial.

#### SECTION 8. Revocation of Sexually Oriented Business Permit

If said business fails to comply with the above ordinance, ordinances governing the Town of Searsport, and State and Federal Statutes, the permit shall be revoked by the Town Selectmen, and operation of said business will be denied. See Section 7.

#### SECTION 9. Severability

If any section, phrase, sentence or portion of this ordinance 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.

This is a true and attested copy by: Deborah Plourde, Town Clerk  
Deborah Plourde, Town Clerk