

TOWN of SEARSPORT

ADULT ENTERTAINMENT BUSINESS ESTABLISHMENTS

ORDINANCE

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PREAMBLE

We the people of the Town of Searsport choose to regulate the conduct of adult entertainment business establishments to protect safety, property, and to promote the general welfare of residents.

SECTION I. Purpose and Findings

Purpose

The purpose of this Ordinance is to:

1. Regulate adult entertainment business establishments and related activities.
2. Establish reasonable and uniform regulations to prevent the harmful location and concentration of adult entertainment business establishments within the Town.

This Ordinance is not intended to:

1. Restrict the content of any communicative materials, including sexually oriented materials.
2. Restrict or deny access by adults to sexually oriented materials protected by the United States or Maine Constitutions.
3. Deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
4. Condone or legitimize the distribution of obscene materials.

B. Findings

1. Studies have shown that adult entertainment business establishments, including but not limited to "strip clubs," "illegitimate massage parlors," and "escort agencies," lead to increased rates of various forms of prostitution, which in turn is related to underage sex, human trafficking, rape, violence and threats of violence. The Town of Searsport has a strong public interest in preventing and investigating these crimes.
2. Studies show that the closer adult entertainment business establishments are to homes and other businesses, the greater the negative impact on the value of the properties.
3. The Town of Searsport has a strong interest in protecting the general welfare of children and minors from the effect of legal and illegal aspects of adult entertainment business establishments.

4. Adult entertainment business establishments have operational characteristics, which should be reasonably regulated in order to protect these substantial governmental concerns.

SECTION II. Definitions

A. ADULT ENTERTAINMENT BUSINESS ESTABLISHMENT means, but is not limited to, any adult bookstore, adult amusement store, adult video store, adult novelty store, adult motion picture theater, adult arcade, on-site video screening establishment, adult cabaret, adult entertainment nightclub or bar, establishments featuring strippers or erotic dancers, escort agency, or other sexually oriented business.

1. ADULT BOOKSTORE means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas." A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical areas" occupy 20% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as **ADULT BOOKSTORE**. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an **ADULT BOOKSTORE** so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas."

b. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

2. ADULT AMUSEMENT STORE means the same as **ADULT BOOKSTORE**.

3. ADULT VIDEO STORE means the same as **ADULT BOOKSTORE**.

4. ADULT NOVELTY STORE means the same as **ADULT BOOKSTORE**.

5. ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently

shown that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

6. ADULT ARCADE 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, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

7. ON-SITE VIDEO SCREENING ESTABLISHMENT means the same as ADULT ARCADE.

8. ADULT CABARET means a nightclub, bar, restaurant, café, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

a. persons who appear in a state of nudity or semi-nudity; or

b. live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

c. films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

d. persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

9. ADULT ENTERTAINMENT NIGHTCLUB OR BAR means the same as ADULT CABARET.

10. ESTABLISHMENTS FEATURING STRIPPERS OR EROTIC DANCERS means the same as ADULT CABARET.

11. NUDITY or a **STATE OF NUDITY** means the appearance of a human anus, pubic area, male genitals, or female genitals with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

12. ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide (differentiated from a licensed Maine guide), or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

13. 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.

14. OTHER SEXUALLY ORIENTED BUSINESS includes (but is not limited to) an adult bookstore or adult video store, adult motion picture theater, adult cabaret, escort agency, adult motel, adult theater, nude model studio, sexual encounter center, or any other facility or service that is intended for the sexual interests or titillation of an audience or customers for consideration.

15. ADULT MOTEL means a hotel, motel or similar commercial establishment that:

a. offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

b. offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

c. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

16. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

17. NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for prurient interest.

This definition does not include an establishment run by a public school licensed by the State of Maine, a college, junior college, or university supported entirely or partly by taxation.

This definition shall not apply to the artist, art instructor or art school wherein a nude model, male or female, may be employed for the purpose of creating a painting, sculpture, or photograph for artistic purpose, for instruction or for commission, sale or display.

18. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

b. activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity. A principal business purpose exists if the services offered are intended to generate business income.

B. SPECIFIED ANATOMICAL AREAS means:

1. The human male genitals in a discernibly turgid state, even if fully and opaquely covered.

2. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

C. SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered.

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

3. Masturbation, actual or simulated.

4. Excretory functions as part of or in connection with any of the activities in 1 through 4 above.

D. EMPLOYEE means a person who performs any service on the premises of an adult entertainment business establishment on a full-time, part-time, contract, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer. The under eighteen (18) years of age restriction of Section XII shall not apply to any person excluded from the above employee classification.

1. PREMISES means the real property upon which the adult entertainment business establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment business establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the responsible party.

E. ESTABLISHMENT OF AN ADULT ENTERTAINMENT BUSINESS

ESTABLISHMENT means and includes any of the following:

1. The opening or commencement of any adult entertainment business establishment as a new business.
2. The conversion of an existing business, whether or not an adult entertainment business establishment, to any adult entertainment business establishment.
3. The addition of any adult entertainment business establishment to any other existing adult entertainment business establishment.
4. The relocation of any adult entertainment business establishment.
5. An adult entertainment business establishment or premises on which the adult entertainment business establishment is located.

F. PERSON means and includes an individual, proprietorship, partnership, corporation, association, or other legal entity.

G. SUBSTANTIAL ENLARGEMENT OF AN ADULT ENTERTAINMENT BUSINESS

ESTABLISHMENT means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas existed on the date of the enactment of this Ordinance.

SECTION III. Location Restrictions

Adult entertainment business establishments shall be permitted in district Mixed Residential (MR), as described in the Town's Comprehensive Plan and Land Use Ordinance, provided that:

A. The adult entertainment business establishment may not be operated within:

1. 1,000 feet of a church, synagogue, mosque, temple or building, which is used primarily for religious worship and related religious activities.
2. 1,000 feet of a public or private educational facility including but not limited to the following:
 - a. child care facilities;
 - b. nursery schools;
 - c. preschools;
 - d. public or private elementary schools;
 - e. public or private secondary schools;

- f. junior colleges; and
- g. universities.

School includes the facility ground, but does not include the facilities used primarily for administrative purposes.

3. 1,000 feet of a public park or recreational area within the Town which is under the control, operation, or management of the Town park and recreation authorities that has been designated for park or recreational activities including but not limited to the following:

- a. park;
- b. playground;
- c. nature trails;
- d. swimming pool;
- e. reservoir;
- f. athletic field;
- g. basketball or tennis courts;
- h. skating rink;
- i. pedestrian/bicycle paths;
- j. wilderness areas; or
- k. other similar public land.

4. 1,000 feet of the property line of a lot zoned for residential use and devoted to a residential use as defined in the Land Use Ordinance.

5. 1,000 feet of another adult entertainment business establishment.

B. An adult entertainment business establishment may not be operated in the same building or structure containing another adult entertainment business establishment.

C. For the purpose of this Ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as an adult entertainment business establishment to the nearest property line of any of the facilities or uses listed in Section III.A.

D. For purposes of subsection C of this section, the distance between any two adult entertainment business establishment uses shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as an adult entertainment business establishment to the nearest property line of the other adult entertainment business establishment.

SECTION IV. Non-Conforming Uses

- A. Any business lawfully operating on the effective date of this Ordinance that is in violation of the location or structural configuration requirements of this Ordinance is a non-conforming use. The non-conforming use will be permitted to continue pursuant to the Land Use Ordinance. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more adult entertainment business establishments are within 1,000 feet of one another and otherwise in a permissible location, the adult entertainment business establishment that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.
- B. An adult entertainment business establishment lawfully operating as a conforming use is not rendered a non-conforming use by the location of a facility listed in Section III.A within 1,000 feet of the adult entertainment business establishment after rights of the adult entertainment business establishment have vested. Vesting shall have occurred if the owner/applicant for the adult entertainment business establishment has met the following criteria:
1. Exercised due diligence in attempting to comply with the law.
 2. Demonstrated good faith throughout the proceedings.
 3. Expended substantial unrecoverable funds in reliance on the Planning Board's approval.
 4. The period during which an appeal could have been taken from the approval of the application has expired.
 5. There is insufficient evidence to prove that individual property rights or the public health, safety or welfare would be adversely affected by the project as approved.

SECTION V. Additional Regulations for Adult Motels

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this Ordinance.
- B. It is a violation of this Ordinance for a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise to rent or sub-rent a sleeping room to a person and, within ten (10) hours from the time the room is rented, he/she rents or sub-rents the same sleeping room again.

- C. For purposes of subsection B of this section, the terms "rent" or "sub-rent," mean the act of permitting a room to be occupied for any form of consideration.

SECTION VI. Additional Regulations for Escort Agencies

- A. An escort agency shall not employ any person under the age of eighteen (18) years.
- B. It is a violation of this Ordinance for any person to act or agree to act as an escort for any person under the age of eighteen (18) years.

SECTION VII. Additional Regulations For Nude Model Studios

- A. A nude model studio shall not employ any person under the age of eighteen (18) years.

SECTION VIII. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos

- A. A person who operates, or causes to be operated, an adult entertainment business establishment, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, videocassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
1. The owner and operator of the premises shall ensure that at least one employee is on duty and situated in each manager's station at all times that a patron is present inside the premises.
 2. The interior of the premises shall be configured such that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access, except restrooms. Restrooms may not contain video reproduction equipment. The view required in this subsection must be by direct line of sight from the manager's station.
 3. The operator, and/or any agents and employees present on the premises shall ensure that the view area specified in subsection (2) of this section remains unobstructed at all times.
 4. No viewing room or booth may be occupied by more than one person at any time.
 5. No opening of any kind shall exist between viewing rooms or booths.

SECTION IX. Regulations Pertaining to Obscene Materials and Performances

A. Definitions

1. Obscene means material that the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex. Depicts or describes either patently offensive representations or descriptions of sexual acts. Patently offensive representations of excretion, masturbation, sadism, masochism and nudity, and devices used for masturbation. Taken as a whole lacks serious literary, artistic, political or scientific value.
2. Patently offensive means so offensive on its face as to be intolerable to the average person in the community.
3. Prurient interest means shameful or morbid interest.

B. Sales of obscene materials, obscene performances and the instruments, devices and paraphernalia are limited to adult entertainment business establishments regulated by this Ordinance.

SECTION X. Exterior Portions of Adult Entertainment Business Establishments

The owner or operator of an adult entertainment business establishment shall ensure that:

- A. The merchandise or activities of the establishment are not visible from a point outside the establishment.
- B. The exterior portion of the adult entertainment business establishment does not have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this Ordinance.

SECTION XI. Signage

An adult entertainment business establishment shall have only one non-changeable sign with no more than two (2) display surfaces. Each such display surface shall:

1. Not contain any flashing lights.
2. Be a flat plane, rectangular in shape.

3. Not to exceed forty (40) square feet in area.
4. Contain no photographs, silhouettes, drawings or pictorial representations in any manner.
5. May contain only the name of the enterprise.

SECTION XII. Persons Younger Than Eighteen Prohibited From Entry; Attendant Required

A. No person who is younger than eighteen (18) years of age shall enter or be on the premises of an adult entertainment business establishment at any time.

B. The operator of each adult entertainment business establishment shall ensure that an attendant is stationed at each public entrance to the adult entertainment business establishment at all times during such adult entertainment business establishment's regular business hours. The attendant shall prohibit any person under the age of eighteen (18) years from entering the adult entertainment business establishment.

SECTION XIII. Enforcement

Any violation of this Ordinance shall be punishable by a civil fine of not less than \$500.00 and not more than \$2,000.00 as well as a civil fine in the same amount for every day a violation is not remedied by the adult entertainment business establishment after the fine is ordered by a court or agreed upon by the adult entertainment business establishment and the Town.

SECTION XIV. Hours of Operation

No adult entertainment business establishment, except for an adult motel, shall remain open at any time between the hours of 11:00 p.m. and 9:00 a.m.

SECTION XV. Severability

If any section, subsection, or clause of this Ordinance is deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION XVI. Conflicting Ordinances

In the event that any ordinance or part of any ordinance is found to be in conflict with this Ordinance, this Ordinance shall supersede with the exception of the Town's Land Use Ordinance, in which case Town's Land Use Ordinance shall supersede.

SECTION XVII. Effective Date

This Ordinance was adopted at Town Meeting on March 8, 2014.

This is a true and attested copy by:

Deborah Plourde
Deborah Plourde, Town Clerk