

Town of Wales

Ordinance for Adult Entertainment Businesses

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SECTION I. Authority and Applicability

This ordinance is adopted pursuant to the enabling provisions of Article VIII, part 2, Section 1 of the Maine Constitution; the provisions of the Municipal Home Rule Authority (30-A MRSA Section 3001 et seq.). Persons or entities wishing to establish a sexually oriented business within the Town of Wales shall first obtain a permit from the town and shall be subject to the provisions of this ordinance.

SECTION II. Purpose

It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the town. 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 neither 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 this ordinance to condone or legitimize the distribution of adult themed material.

SECTION III. Definitions

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

1. "Adult use establishment" means an adult amusement store, adult entertainment cabarets, adult motion picture theaters, or adult relaxation spas, all as defined below; or any commercial establishment that permits any person on the premises, including an employee, entertainer or patron, to expose that person's specified anatomical areas or perform specified sexual activities as defined below.
2. "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 sell such material.
3. "Adult motion picture theatre" 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.
4. "Adult Entertainment cabaret" means a public or private establishment which by the nature of its existence seeks to support a commercial interest by:
 - a. featuring topless dancers, strippers, wait staff, male or female impersonators, or erotic dancers;

- b. featuring entertainers who display “specified anatomical areas”;
 - c. featuring 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
 - d. offering sadomasochistic acts of bondage and discipline to patrons
5. “Adult relaxation spa” means an establishment that provides steam bath, sauna, bathing, hot tub, or “rub down” or other pseudo massage services at which a person performs any activity that applies any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction, massage, or a manipulation of the external parts of the human body with hands or other parts of such person or with the aide of any instrument or device, if such person performs such activity or services while that person’s specified anatomical areas are exposed to another individual, or if such person performs such activity to another individual whose specified anatomical areas are exposed or touched.
 6. “Sexually oriented business,” means sexually oriented businesses, including but are not limited to, Adult amusement stores, Adult movie theaters, Adult entertainment cabarets, Adult relaxation spas or Adult spas or any commercial establishment that permits any person on the premises, including an employee, entertainer or patron, to expose that person’s specified anatomical areas or perform specified sexual activities.
 7. “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.
 8. “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 mobile home.
 9. “Sadomasochistic 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.
 10. “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.
 11. “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:
 - a. 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;
 - b. 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;
 - c. 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.

12. "Specified sexual activities" means:
 - a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts of human masturbation, sexual intercourse, any sexual act or sexual contact as defined by Maine law, or sodomy;
 - c. Fondling or other touching of human genitals, pubic region, buttock or breast.
13. "Specified anatomical areas" means
 - a. 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
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SECTION IV. Prohibited Sites, Site Requirements

1. A sexually oriented business may not be sited within 2,500 feet of the lot lines of any of the following:
 - a. a church, synagogue or other house of religious worship;
 - b. a public or private elementary or secondary school;
 - c. a residence;
 - d. a day care facility;
 - e. a public building, public park or public recreational facility;
 - f. a previously established 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 (i) through (vi) above at their closest points.

2. A sexually oriented business must have a separate driveway entrance, parking area and signage at least 1000 feet from any driveway entrance or signage of any of the following:
 - a. a church, synagogue or other house of religious worship;
 - b. a public or private elementary or secondary school;
 - c. a residence;
 - d. a day care facility;
 - e. a public building, public park or public recreational facility;
 - f. a previously established sexually oriented business.
3. A sexually oriented business must have a continuous 6 foot high solid fence around any buildings or parking areas.
4. A lawfully 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 this Section by the subsequent location of a residence, day care center, school, house of worship, or public park or recreation area, at a site that would otherwise conflict with the site requirements of this Section.

SECTION V. Interior Layout of Sexually Oriented Business

1. Any sexually oriented business having available for customers, patrons or members, any booth, room or cubicle for any private viewing of any adult entertainment shall comply with the following requirements:
 - a. 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 devices.
 - b. Construction. Every booth, room or cubicle shall meet the following construction requirements:
 - i. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.
 - ii. 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.
 - iii. 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.
 - iv. The floor must be light-colored, non-absorbent, smooth textured and easily cleanable.
 - v. 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.
 - c. 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.
2. Any adult motion picture theater shall comply with the following requirements
 - a. 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;
 - b. No standing shall be allowed in the theater;
 - c. Signs shall be posted warning patrons that sexual activity is prohibited in the theater, and informing them of the presence of surveillance cameras; and
 - d. 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.
3. In addition to being in compliance with Maine State Statutes on building codes and occupancy, rest rooms must be individual rooms and/or contain stalls with walls that are solid and without any openings and extended from the floor to a height of not less than six feet, and shall not contain facilities for more than one person at a time. No more than one person may be in the rest room or individual stall with the door closed at any time.

SECTION VI. . Prohibited Activities

1. All acts of public indecency, as defined in 17-A M.R.S.A. §854, are prohibited in sexually oriented businesses.
2. 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.
3. 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
4. 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.

SECTION VII. Dancers and Other Performers

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

1. 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.
2. 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.

SECTION VIII. License Required – Application Process

A person wishing to operate a sexually oriented business shall obtain an annual municipal license prior to opening the person's establishment.

1. Application. An applicant for a sexually oriented business license shall:
 - a. Be in compliance with the Town of Wales Land Use Ordinance and obtain Site Review Application approval from the Town of Wales Planning Board.
 - b. Complete and file an application prescribed by the Board of Selectmen;
 - c. Deposit a license fee as established by the selectmen in the Town of Wales Fee Schedule and a minimum of \$500 to establish an escrow account to cover the processing fee(s) in advance with the Town Clerk;
 - d. 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 and 2 positive forms of identification of which one is to be a photo ID for each applicant;
 - e. File a sworn affidavit, which states the name of all owners, officers, managers or partners of the applicant, and their places of residence and phone numbers at the time of the application and for the immediately preceding three (3) years;
 - f. File the release authorized by Title 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;
 - g. 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;

- h. 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;
 - i. Submit evidence of compliance with Section 4 (Prohibited Sites, Site Requirements) of this Article and evidence that there is no basis for denial of a license to applicant under the standards listed in Section 4 (Prohibited Sites, Site Requirements) of this Article.
 2. Investigation of applicant, officers, and inspection of premises.
 - a. 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 “b” through “e” 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 2500 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 escrow account created to cover the processing fees. 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.
 - b. 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 finding in writing to the Town Clerk.
 - c. 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.
 - d. A constable, law enforcement officer, or other state authority (i.e. State Bureau of Identification or licensed private investigator) shall initiate an applicant background investigation as directed by the town selectmen including the criminal history record information required under Section VIII (1)(f) and then report findings in writing to the Town Clerk. This must also be initiated upon receipt of a notice of change of owners, officers, managers or partners of the applicant.
 - e. The Code Enforcement Officer, within fifteen days of notice, shall verify that the proposed premises of the establishment will comply with Section 4 (Prohibited Sites, Site Requirements) of Article II 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.
 3. 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 and any change of owners, officers, managers or partners must be reported to the Wales Town Clerk.
 4. 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 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, 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, has had a license granted pursuant to this Article or a similar ordinance provision in any other municipality revoked for any reason during the immediately preceding five years;
- f. The applicant, if an individual, or any person having an ownership or management interest, if a corporation, 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 4 (Prohibited Sites, Site Requirements), Article II; or
- h. The application in any other way fails to meet the requirements of this Ordinance.

SECTION IX. 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 Ordinance.

SECTION X. Age Restriction

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

SECTION XI. 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.

SECTION XII. Enforcement

1. This ordinance shall be enforced by the Androscoggin Sheriff's Department, the Maine State Police, and/or the Town of Wales Code Enforcement Officer.
2. To ensure that the health and welfare of the public is protected, the premises will be inspected prior to the issuance of the license, within fifteen (15) days of the annual license renewal, and may be inspected anytime thereafter by the code enforcement officer, health officer, or law enforcement officer(s) during regular business hours and without notice.

SECTION XIII. Severability

Should any section or provision of this ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision.

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