

TOWN OF SIDNEY

ORDINANCE REGULATING
SEXUALLY ORIENTED BUSINESSES

Section 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, summer camps or another sexually oriented business. Data in municipalities throughout the country also indicates that certain designs of the interior space in sexually oriented businesses, especially "viewing booths" and similar private rooms or cubicles, are conducive to sexual activities which can result in the spread of sexually transmitted diseases, posing a risk to the patrons of the establishments and to the health of the community.

Section 2. Purpose

The regulations of this Ordinance are not directed at the content of speech, but are directed at the negative secondary effects of sexually oriented businesses. The purpose of this Ordinance is to regulate the time, place and manner of operation of sexually oriented businesses. It is intended to regulate sexually oriented businesses; and to prevent their location in proximity to residences, day care centers, schools, houses of worship, public parks or recreational areas, summer camps, or another sexually oriented business. Regulations of these uses are 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 Ordinance 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.

Section 3. Definitions

The following terms as used in this Ordinance and for the purpose of this Ordinance 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, recorded, or computerized 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 Sadomasochistic acts or Bondage and discipline to patrons," or (v) features any visitors, employees, sub-contractors, waiters, waitresses, servers, or employees who display "specified anatomical areas."
- 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, or specified anatomical areas, 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. "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.
- 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.

M. "Opaquely covered" means that the specified anatomical area is completely concealed by a covering made of cloth or textile material, not including latex body paint or similar materials applied as a liquid.

Section 4. Standards for denial

An application for a sexually oriented business license shall be denied by the Planning Board 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 Planning Board that is reasonably necessary to determine whether the application is approvable;

- 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 granted pursuant to this Ordinance 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 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 7; or
- H. the application in any other way fails to meet the requirements of this Ordinance.

Section 5. Standards for suspension; Revocation.

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

Section 6. 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.

Section 7. Prohibited sites, Site Requirements.

- A. A sexually oriented business may not be sited within 1,000 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;
 - 7. a summer camp;

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 (A) through (F) above at their closest points.

B. A sexually oriented business must have a separate driveway entrance, parking area and signage at least 200 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;
7. a summer camp;

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;
7. a summer camp;

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 7 by the subsequent location of a residence, day care center, school, house of worship, a summer camp, or public park or recreational area, at a site that would otherwise conflict with the site requirements of this Section.

Section 8. 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.

Section 9. 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.

Section 10. 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.

Section 11. Appeals.

An appeal from any final approval, denial, suspension or revocation decision of the Planning Board may be taken by an aggrieved party to Superior Court in accordance with the provisions of Rule SOB of the Maine Rules of Civil Procedure.

Effective Date: March 24, 2012