

**Town of Skowhegan**

**Obscenity and Adult Entertainment Ordinance**

Adopted: Town Meeting, June 10, 2019

**SECTION I            AUTHORITY**

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.) and by Title 28-A M.R.S.A.1054 regarding the authority to require a permit for music, dancing or entertainment on licensed premises.

**SECTION II            APPLICABILITY**

Persons or entities wishing to establish an Adult Entertainment Business within the Town of Skowhegan shall first obtain a permit from the town and shall be subject to the provisions of this ordinance.

In addition this ordinance identifies offences and penalties for any person engaging in commerce in obscene materials, obscene devices or obscene performances.

**SECTION III            PURPOSE**

It is the purpose of this ordinance to regulate Adult Entertainment 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 adult entertainment 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 obscene material.

In addition the purpose of this ordinance is to protect the morals of the community by using the recognized, traditional police power of government to protect societal order, morality, physical and emotional health and human dignity. This ordinance also acts to reduce the likelihood of criminal activity, moral degradation, sexually transmitted diseases and disturbances of the peace, without infringing on protected First Amendment rights; and to establish the community standard on obscene material and performances.

**SECTION IV ADULT ENTERTAINMENT BUSINESSES**

**4.1 Prohibitions**

- a) No person shall cause or permit the establishment of any Adult Entertainment Businesses, as defined, within seven hundred and fifty feet of any church, public or private school, library, or any municipally owned or state-owned park, athletic field or recreational facility that is open to the public where children are the primary users.
- b) For the purpose of this Ordinance, measurements shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises for an Adult Entertainment Business to the nearest property line of a church, school, library or to the nearest boundary of a park, athletic field or recreational facility.

**4.2 Application for a Permit to Operate an Adult Entertainment Business**

Applications for a permit to operate an Adult Entertainment Business shall be available at the Town Clerk’s Office and shall include the following:

- a) Name, address and telephone number of applicant.
- b) Name and address of the person, firm, corporation or association which will operate the Adult Entertainment Business, if the permit is granted.
- c) Such other information as the Board of Selectmen shall request in order to have all facts before it prior to making a decision.
- d) Upon receipt of such application and any necessary supplementary information, the Board of Selectmen shall set a date for a public hearing in regard to the granting of such a license, and a notice of such public hearing shall be published no earlier than twenty (20) days and no later than ten (10) days before the date of such public hearing.

Adult Entertainment Licenses issued pursuant to this Ordinance shall be for a term of no more than one year. The fee for an Adult Entertainment Business license shall be set by the Board of Selectmen.

**SECTION V OBSCENE MATERIAL, DEVICES AND PERFORMANCE**

**5.1 Offences**

- a) A person commits an offense if, knowing its content and character, they wholesale promote or possess with the intent to wholesale promote any obscene material or obscene device as defined.
- b) A person commits an offense if, knowing its content and character, said person:
  - i. Promotes or possesses with intent to promote any obscene material or obscene device; or

- ii. Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.
- c) A person who promotes, or wholesale promotes, obscene material or an obscene device, or possesses the same with intent to promote or wholesale promote it in the course of their business is presumed to do so with the knowledge of its content and character.
- d) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

**SECTION VI           INSPECTIONS**

Whenever inspections of the adult entertainment and/or licensed premises is required by this ordinance, state law or is reasonably necessary to secure compliance with any town ordinance, code, regulation or state law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any law enforcement officer, official or employee of the town authorized to make the inspection at any reasonable time that admission is requested.

**SECTION VII           ENFORCEMENT**

This Ordinance shall be enforced by the Skowhegan Police Department.

**SECTION VIII         PENALTIES**

**8.1     Obscenity**

The violation of any provision of this ordinance shall be punishable by a fine of one thousand dollars (\$1,000.00) for a first offense, one thousand five hundred dollars (\$1,500.00) for a second offense, and two thousand dollars (\$2,000.00) for a third or subsequent offense, regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalties the town may enjoin or abate any violation of this ordinance by appropriate action and, if the court finds for the town, the town shall recover its costs of suit, including reasonable experts' fees, reasonable attorneys' fees and reasonable investigative costs.

**8.2     Adult Entertainment**

Any person who violates this Ordinance commits a civil violation for which a forfeiture not to exceed five hundred dollars (\$500.00) may be adjudged. Each day, during any portion of which, any violation of the Ordinance is committed, permitted or continued, shall constitute a separate offense. The Board of Selectmen may, after notice to the licensee and hearing, suspend or revoke the permit issued under this Ordinance upon a finding that the licensee has violated any of the provisions of this Ordinance.

**SECTION IX SEVERABILITY**

In the event that any section or any portion of this Ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such declaration shall not be deemed to affect the validity of any other section, subsection or portion of this Ordinance.

**SECTION X CONFLICT**

This ordinance shall not in any way impair, or remove, the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw or provision of law.

**SECTION XI DEFINITIONS**

The following words, terms or phrases, when used in this Ordinance, shall have the same meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

**Adult Entertainment Business** means:

- a) **Adult Book Store** is a person, establishment or business having more than a minimal portion of its stock in trade, such as recordings, books, magazines, periodical films, video tapes/cassettes or other reading or viewing materials for sale or viewing at the premises, materials which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific or general sexual activities or anatomical areas; or an establishment with a section devoted to the sale or display or viewing of such materials.
- b) **Adult Motion Picture Theater** is a structure--either indoors or outdoors--used for showing, displaying or presenting to patrons therein or thereat materials distinguished and characterized by emphasis on depicting, describing or relating to specific or general sexual activities or specific anatomical areas.
- c) **Adult Motion Picture Arcade** is a place to which the public is permitted or invited, wherein coin or slug-operated or electronically, electrically, mechanically or otherwise controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to any one person, at any machine, at any time so displayed as to distinguish or characterize by emphasis on depicting or describing specific sexual activities or specific anatomical areas.
- d) **Massage Establishment** is a place of business where any person, firm, association, or corporation engages in, carries on, or permits to be engaged in or carried on, any of the following activities:
  - i. Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or device, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or others similar preparations.

The term "Massage Establishment" shall not apply to hospitals, nursing homes, or medical clinics or to persons possessing a license to practice massage therapy under the laws of the State of Maine.

**Material** means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical, or electrical reproduction but does not include an actual three-dimensional obscene device.

**Obscene** shall mean to the average person applying contemporary community standards the predominant appeal of the matter or act taken as a whole, is to prurient interest, and the matter or act depicts or describes in a patently offensive manner sexual conduct or lewd exhibition of the genitals or other body parts mentioned in this ordinance and the manner or act or performance considered as a whole lacks serious literary, artistic, political or scientific value; or any matter or acts or performance which are prohibited by the statutes of the State of Maine.

**Obscene Device** means any physical three-dimensional object or item that is classified as “obscene”, as defined in this ordinance.

**Patently Offensive** means so offensive on its face as to be intolerable to the average person, applying contemporary community standards.

**Performance** means any preview, play, show, skit, film, dance, or other exhibition, or entertainment performed before an audience.

**Person** means a person, firm, partnership, corporation, association, or legal representative, acting individually or jointly.

**Promote** means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, or to offer or agree to do the same.

**Prurient interest in sex** means a shameful or morbid interest in sex.

**Sexually-Oriented Material** means any element of adult merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, or other visual representation characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas

**Specific Anatomical Area** means less than completely covered human genitals, pubic regions, and female breasts below a point immediately above the top of the areola, and the human male genitals in a discernible turgid state.

**Specific Sexual Activity** means:

- a. Human male genitals in a state of sexual stimulation or arousal.
- b. Ultimate sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation or sodomy;
- c. Fondling or other erotic touching of human or animal genitals, pubic regions, buttocks or breasts.

**Wholesale Promote** means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for the purpose of resale.