

SPECIAL AMUSEMENT ORDINANCE

ARTICLE I

TITLE, PURPOSE & DEFINITIONS

SECTION 101 TITLE

This Ordinance shall be known and may be cited as the Special Amusement Ordinance of the Town of Livermore, Maine.

SECTION 102 INTENT AND PURPOSE

The Town of Livermore recognizes that certain kinds of entertainment may be recognized as having objectionable operational characteristics, particularly when conducted on premises located near residences, schools, houses of worship or public parks or recreational areas. Special regulation and oversight is thereby necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood, or diminish the strong sense of community that is highly valued by the town's residents, consistent with Livermore's Comprehensive Plan.

The purpose of this Ordinance is to control the issuance of special permits for music, dancing or entertainment in facilities located within the boundaries of the Town of Livermore and licensed by the State of Maine to sell liquor as required by 28-A M.R.S.A., § 1054, and 30-A M.R.S.A., § 3001, as they may be amended from time to time.

SECTION 103 DEFINITIONS

103.1 Entertainment. For the purposes of this Ordinance, "entertainment" shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value, by patrons induced by prizes or otherwise to act as entertainers, or by any other.

103.2 Licensee. For purposes of this Section, "licensee" shall include the holder of a license issued under the Alcoholic Beverages Statutes of the State of Maine, or any person, individual, partnership, firm, association, corporation, or other legal entity, or any agent, or employee of any such licensee.

103.3 Licensed Premises. Licensed Premises includes all parts of the contiguous real estate occupied or controlled by a licensee and used by the licensee in the operation of a business which includes activities covered by this Ordinance.

ARTICLE II GENERAL

SECTION 201 PERMIT REQUIRED

No licensee for the sale of liquor to be consumed on his/her licensed premises shall permit, on his/her licensed premises, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the municipality in which the licensed premises are situated a Special Amusement Permit signed by at least a majority of the municipal officers.

Applications for all Special Amusement Permits shall be made in writing to the municipal officers and shall state the name of the applicant; his/her residence address; the name of the business to be conducted; his/her business address; the nature of his/her business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically; whether the applicant, including all managers, partners or corporate officers, has ever been convicted of a felony and, if so, the applicant shall describe specifically those circumstances; and any additional information as may be needed by the municipal officers in the issuing of the Permit, including but not limited to a copy of the applicant's current liquor license and Bureau of Public Safety Occupancy Permit showing the facility's seating capacity.

No Permit shall be issued for any thing, or act, or premises, if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, bylaws, rules and regulations of the municipality, or state law.

All applications for Special Amusement Permits shall be accompanied by the appropriate application fee. The fee is intended to cover the cost of the municipality's administrative processing of the application, including advertising costs and the time of the Code Enforcement Officer for review and inspections. The fee shall not be refundable.

Special Amusement Permit fees shall be established by the Municipal Officers from time to time following consultation with the Planning Board. The Municipal Officers shall also have the authority to establish the penalty fee for violations of this ordinance, consistent with Article 3, Section 301 of this ordinance.

The Municipal Officers shall, prior to granting a Permit and after reasonable notice to the municipality and the applicant, hold a public hearing within 21 days of the date of the request was received, at which the testimony of the applicant and that of any interested members of the public shall be taken. The Municipal

Officers shall grant a Permit unless they find that issuance of the Permit will be detrimental to the public health, safety or welfare, or would violate any ordinances, articles, bylaws, rules and regulations of the municipality, or state law.

A Permit shall be valid only for the license year of the applicant's existing liquor license.

SECTION 202 CONDUCT CONSTITUTING OFFENSES BY LICENSEES

202.1 Tumultuous conduct. The licensee shall not knowingly allow on any licensed premises any person or persons to disturb, tend to disturb, or aid in disturbing the peace of others of ordinary sensibilities or to be disorderly, riotous or reveling by violent, tumultuous, offensive or obstreperous conduct; or to permit or gather a crowd, or audience, or patrons to witness any entertainment, amusement, or show as to create a dangerous condition because of fire or other risks in derogation of the public health, comfort, convenience, safety, or welfare.

202.2 Riots. The licensee shall not allow on any licensed premise any public entertainments or amusement or show of any kind which tends to or is calculated to cause or promote any riot or disturbance.

202.3 Unnecessary noise. The licensee shall not allow on any licensed premises the making, creation, or maintenance of excessive, or unnecessary, or unnatural, or unusually loud noises which disturbs, annoys, injures or prejudices, or endangers the comfort, repose, health, peace, or safety of individuals of ordinary sensibilities or the public in general, or the property rights of others.

202.4 Nuisances. The licensee shall not allow any licensed premises to be so conducted or operated as to amount to a nuisance in fact under any ordinances, or any sections of any with all ordinances, articles, bylaws, rules and regulations of the municipality, or state law.

202.5 Prostitution and Public Indecency. The licensee shall not allow on any licensed premises or aid in or offer or agree to or allow in or near such licensed premises any prostitution, or prostitutes, or any public indecency under any or in derogation of any statutes of the State of Maine; or, to persons of ordinary sensibilities, any meretricious display, or lewd act, or act of moral perversion, or knowingly receive, or offer or agree to receive any person on such licensed premises for the purpose of performing a lewd act, or an act of prostitution or moral perversion, or public indecency, or to knowingly permit any person to remain on such licensed premises for any such purpose, or to aid, abet, allow, permit, or participate in the commission of any such acts.

202.6 Solicitation of Drinks. The licensee shall not allow on any licensed premises any person to frequent or loiter with the purpose of soliciting any other person, customer, or patron to purchase any drink of any kind.

202.7 Gambling. The licensee shall not allow on any licensed premises the use or occupancy thereof for gambling or games of chance as prohibited by any ordinances, articles, bylaws, rules and regulations of the municipality, or state law; nor shall any licensee have or keep for gambling purposes on or about such licensed premises any dice, cards, bowls, quoits or other implements used in gambling, or allow any person resorting thereto to use or exercise for gambling purposes any of said games or any other unlawful game or sport therein.

202.8 Violations. The licensee, on any licensed premises, shall not:

1. Shall not permit entertainment on the licensed premises whether provided by professional entertainer(s), employees of the licensed premises or any other person or patron, when the entertainment involves:

- a. Acts, or simulated acts, or sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
- b. The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals;
- c. The actual or simulated displaying or exposing to view of the genitals, pubic hair, buttocks, anus or any portion of the female breasts at or below the areola area thereof; or
- d. The permitting by any licensee of any person to remain in or upon the licensed premises who exposes to any public view any portion of his or her genitals or anus or any portion of the female breasts at or below the areola area thereof.

For purposes of this section, the terms "display" or "displaying" and "expose" or "exposing" shall mean unclothed or uncostumed or not covered by a fully opaque cloth or textile material or to employ any device or covering which is intended to give the appearance of or to simulate the genitals, pubic hair, buttocks, anus, or the portions of the female breasts at or below the areola.

2. Knowingly promotes the commission of any of the above-listed acts of this Ordinance section.

SECTION 203

LOCATION

203.1 Any premises used for or in connection with the operation of a Special Amusement Permit may not be sited within 500 feet of the closest part of the structure of a business which caters to the general public or 1,000 feet of the closest part of the structure 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 day care facility;
4. A public park or public recreational facility; or
5. Any residence on adjacent property, excepting the owner or proprietor of the licensed premises.

The distance cited in this section shall be measured between the closest edge of the structure of the licensed premises and the closest edge of the structure of the use listed (1) through (5) above.

203.2 It shall be unlawful for any person to cause or permit the operation, establishment, substantial enlargement, or transfer of ownership or control of a permitted premises within one thousand (1,000) feet of another permitted premises.

SECTION 204

SIGNAGE AND EXTERIOR LIGHTING

204.1 Signage and exterior lighting for permitted premises must meet the approval of the Planning Board.

204.2 Each permitted premises shall be allowed one sign that conforms to the following standards:

1. The exterior dimension of the sign shall not exceed 30 square feet.
2. The sign may be two sided.
3. The sign may be unlit, internally lit, or lit with spotlights.

4. The lights may not blink.
5. The bottom of the sign may not be more than 10 feet above grade.
6. The top of the sign may not be more than 15 feet above grade.
7. Exterior lights shall be used for necessary illumination; they shall not blink nor be so bright as to unduly disturb neighbors or passersby, as determined by the Planning Board.
8. Signs may not be placed within the right-of-way of any road.

SECTION 205

INSPECTIONS

Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a Special Amusement Permit are provided for or required by any ordinances, articles, bylaws, rules and regulations of the municipality, or state law, or are reasonably necessary to secure compliance with any ordinances, articles, bylaws, rules and regulations of the municipality, 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 officer, official, or employee of the municipality authorized to make the inspection at any reasonable time that admission is requested.

Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with any ordinances, articles, bylaws, rules and regulations of the municipality, or state law, it shall be the duty of the licensee, or the person in charge of the premises, to give to any authorized officer, official, or employee of the municipality requesting the same sufficient samples of the material or commodity for analysis.

In addition to any other penalty which may be provided, the municipal officers may revoke the Special Amusement Permit of any licensee in the municipality who refuses to permit any such officer, official, or employee to make an inspection or take sufficient samples for analysis, or who interferes with such officer, official, or employee while in the performance of his/her duty, provided that no license or Special Amusement Permit shall be revoked unless written demand for the inspection or sample is made upon the licensee or person in charge of the premises at the time it is sought to make the inspection.

SECTION 206

SUSPENSION OR REVOCATION OF A PERMIT

The municipal officers may, after a public hearing preceded by notice to interested parties, suspend, or revoke any Special Amusement Permits which have been issued under this ordinance on the grounds that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety, or welfare, or violates this or any ordinances, articles, bylaws, rules and regulations of the municipality, or state law.

SECTION 207

APPLICATION, INVESTIGATION AND ISSUANCE OF PERMIT

An applicant for a Special Amusement Permit shall:

1. Complete and file an application as prescribed by the municipal officers.
2. Deposit the appropriate application and license fee in advance with the Town Clerk, the amount of which shall be established in accordance with Section 201 of this ordinance.
3. Submit the completed application to the municipal officers through the Town Clerk, together with attested copies of the applicant's most recent liquor license and renewal application, whether or not it is subject to municipal review and/or approval.
4. Submit evidence of right, title or interest in the licensed premises, along with the written consent of the owner of the premises for such use if the applicant is not the owner.
5. Submit evidence that the signage and lighting proposed for the permitted premises meets with the approval of the Planning Board.

SECTION 208

PERMIT AND APPEAL PROCEDURES

208.1 Any licensee requesting a Special Amusement Permit from the municipal officers shall be notified in writing of their decision no later than fifteen (15) days from the date his/her request was received. In the event that a licensee is denied a Permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a Permit within 30 days after an application for a Permit which has been denied.

208.2 Any licensee who has requested a Permit and has been denied, or whose Permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the municipal board of appeals as defined in 30-A M.R.S.A. § 2691. The municipal board of appeals may grant or reinstate the Permit if it finds that the permitted activities would not constitute a detriment to the public health, safety, or welfare, or that the denial, revocation or suspension was arbitrary or capricious, or that the denial, revocation, or suspension was not based by a preponderance of the evidence of a violation of any ordinances, articles, bylaws, rules and regulations of the municipality, or state law.

SECTION 209

ADMISSION

Any premises licensed by the State of Maine to serve alcohol, in accordance with M.R.S.A. Title 28-A, and who has been issued a Special Amusement Permit may charge admission in designated areas approved by the municipal Special Amusement Permit.

ARTICLE III

VIOLATIONS AND PENALTIES, SEPARABILITY & EFFECTIVE DATE

SECTION 301

VIOLATIONS AND PENALTIES

Violations of this ordinance shall be enforced in accordance with the provisions of 30-A M.R.S.A. §4452 as land use violations. The penalties set forth in 30-A M.R.S.A. §4452 shall apply to violations of this ordinance.

SECTION 302 SEPARABILITY

The invalidity of any provision of this Ordinance shall not invalidate any other part.

SECTION 303 EFFECTIVE DATE

This ordinance shall become effective when enacted.