

**Adult Entertainment Ordinance for the Town of Stockton Springs
Final 6/15/2013**

TABLE OF CONTENTS

Section I	Purpose	1
Section II	Definitions	1
Section III	Permitting	5
Section IV	Regulations and Requirements	6
Section V	Application Requirements and Permitting Procedures	6
Section VI	Administration and Enforcement	8
Section VII	Interpretation of the Ordinance	8
Section VIII	Amendments to Approved Plans	9
Section IX	Severability	9

SECTION I. PURPOSE

The purpose of this Ordinance is to regulate adult entertainment establishments and sexually oriented businesses in order to protect the health, safety and general welfare of the citizens of Stockton Springs, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment establishments and sexually oriented businesses within the town. The provisions of this Ordinance have neither the purpose nor the 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, nor 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 materials.

This Ordinance supersedes the Obscenity Ordinance enacted June 29, 1996.

SECTION II. DEFINITIONS

ADULT ENTERTAINMENT may include, without limitation:

ADULT AMUSEMENT STORE means the same as Adult Bookstore.

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.

ADULT BOOKSTORE means a person, establishment or business 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 pictures, video cassettes, DVDs or video reproductions, slides or other digital or non-digital media or other visual representations that are distinguished or characterized by their emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas; or
- b. instruments, devices or paraphernalia that are designed for use in connection with Specified Sexual Activities.

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 an 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.

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 depiction, performance or simulation of Specified Sexual Activities or exposure of Specified Anatomical Areas; or
- c. films, motion pictures, video cassettes, DVDs, 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.

ADULT ENTERTAINMENT means:

- a. Any exhibition, performance or dance of any type conducted on Premises where such exhibition, performance or dance involves a person who is unclothed or in such costume, attire or clothing as to expose any portion of the female breast below the top of the areola or any portion of the pubic region, anus, vulva or genitals, or wearing any device or covering exposed to view which simulates the appearance of any portion of the areola or any portion of the pubic region, anus, vulva or genitals, or human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- b. Any exhibition, performance or dance of any type conducted on Premises where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on the depiction or simulation of Specified Sexual Activities;
- c. Any exhibition, performance or dance which is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the Premises' activity. This includes, but is not limited to, any such exhibition, performance or dance performed for, arranged with or engaged in with fewer than all members of the public on the Premises at that time, with separate consideration paid,

either directly or indirectly, for such performance, exhibition or dance and which is commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

ADULT ENTERTAINMENT BUSINESS OR ADULT ENTERTAINMENT ESTABLISHMENT means the operation of Adult Amusement Stores, Adult Video Stores, Adult Bookstores, Adult Novelty Stores, Adult Motion Picture Theaters, On-Site Video Screening Establishments, Adult Arcades, Adult Entertainment Nightclubs or Bars, adult spas, establishments featuring strippers or erotic dancers, Escort Agencies or other sexually oriented businesses. Any business that advertises, promotes or uses signage including the words, "adult", "adults only", "XXX", "sex," "erotic", or substantially similar language shall be considered an Adult Entertainment Business.

ADULT ENTERTAINMENT NIGHTCLUB OR BAR means the same thing as Adult Cabaret.

ADULT MOTEL means a hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, DVDs, 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 a public right of way that advertises the availability of these adult types of photographic reproductions.

ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, DVDs, 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.

ADULT NOVELTY STORE means the same thing as Adult Bookstore.

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 depiction, performance or simulation of Specified Sexual Activities or exposure of Specified Anatomical Areas.

ADULT VIDEO STORE means the same as Adult Bookstore.

APPLICANT means the individual or entity seeking an Adult Entertainment Business Permit in the Town of Stockton Springs. Provisions of this Ordinance shall be understood to apply to all partners, corporate officers and directors and any other individuals in the Applicant's business organization who hold a significant interest in the Adult Entertainment Business, based on responsibility for management of or holding a significant financial interest in the Adult Entertainment Business.

EMPLOYEE means any and all persons, including Managers, Entertainers and independent

3contractors who work in or at or render any services directly related to the operation of any Adult Entertainment Business.

ENTERTAINER means any person who provides Adult Entertainment within an Adult Entertainment Business as defined in this section,, whether or not a fee is charged or accepted for such Adult Entertainment.

ESCORT means a person, who, for consideration, agrees or offers to act as a companion, guide or date for another person.

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.

MANAGER means any person who manages, directs, administers or is in charge of the affairs and/or conduct of any portion of any activity involving Adult Entertainment occurring at any Adult Entertainment Business, and includes assistant Managers working with or under the direction of a Manager to carry out such purposes.

MESSAGE ESTABLISHMENT OR MESSAGE PARLOR means a place of business where any Person engages in, carries on or permits to be engaged in or carried on any method of stimulating Specified Anatomical Areas. This term 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.

NUDE MODELING 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, sculpted, photographed or similarly depicted by other persons for consideration.

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.

ON-SITE VIDEO SCREENING ESTABLISHMENT means the same as Adult Arcade.

OPERATOR means any Person operating, conducting or maintaining an Adult Entertainment Business.

PERSON means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital unit, joint venture, governmental entity or other entity or group of persons however organized.

PREMISES means the real property upon which an Adult Entertainment Establishment is located, including but not limited to: buildings, the Adult Entertainment Establishment, grounds, private walkways and parking lots and/or parking garages adjacent thereto, under the ownership, control

or supervision of the Operator or the Operator's Employees.

SPECIFIED ANATOMICAL AREAS means 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.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- a. the fondling or other erotic touching by oneself or by others of Specified Anatomical Areas
- b. sex acts, actual or simulated, including vaginal, oral or anal intercourse, manual or mechanical stimulation, oral copulation or sodomy;
- c. masturbation, actual or simulated.

SECTION III. PERMITTING

Location

See the Stockton Springs Land Use Ordinance for zones in which Adult Entertainment Establishments may be located.

Notwithstanding zoning permissions, no Adult Entertainment Establishment may be operated within 1,500 feet measured in a straight line from any property line of the Premises to the nearest property line of the premises on which any of the following is located:

1. any church, synagogue, mosque, temple or any other building which is used primarily for religious worship and related religious activities;
2. any public or private educational facility including but not limited to child care facility, nursery school, preschool, public or private school, college or university, including the facility grounds;
3. any public park or recreational area;
4. a lot zoned for residential use and devoted to residential use as defined in the Land Use Ordinance.

Nude Modeling Studio Exception

An exception to the above restrictions shall be made for nude modeling when such modeling is conducted within the context of an art or art education program. Said studios shall be characterized by being located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where the location of the studio within the structure is at all times fully screened from outside view. In such cases, the Planning Board will take into account the comments received at the Public Hearing for the Application, and may impose additional restrictions based thereon.

Permit Requirement

1. It is unlawful for any Person to conduct, manage or operate an Adult Entertainment

Business unless such Person is the holder of a valid and subsisting Permit from the Town to do so, obtained in the manner provided in this Ordinance.

2. It is unlawful for any Entertainer, Employee or Manager to knowingly work in or about or to knowingly perform any service or entertainment directly related to the operation of an unpermitted Adult Entertainment Business.

SECTION IV. REGULATIONS AND REQUIREMENTS

The following general regulations and requirements shall apply to any Adult Entertainment Business:

1. No Employee or Entertainer, while in any area viewable by members of the public, except on the performance area as specified in the Permit, shall be unclothed or in less than opaque and complete attire, so as not to expose any Specified Anatomical Areas.
2. No exterior portion of the Adult Entertainment Establishment shall have flashing lights or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner. Any signs related to the business shall be in accordance with Section XV General Performance Standards V. Signs, of the Land Use Ordinance for the Town of Stockton Springs.
3. No Employee or Entertainer mingling with members of the public shall caress, fondle or erotically touch any member of the public. No Employee or Entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any Employee or Entertainer.
4. No Employee or Entertainer shall perform actual or simulated acts of sexual conduct or any act which constitutes a violation of Maine law.
5. It is unlawful for any person under the age of 18 to be employed by or to be a customer of an Adult Entertainment Establishment.
6. Neither the performance of Specified Sexual Activities nor any photograph, drawing or sketch or other pictorial or graphic representation thereof displaying any Specified Anatomical Area shall be visible outside the Adult Entertainment Business.
7. A permitted Manager shall be on duty at an Adult Entertainment Business at all times that Adult Entertainment is being provided or members of the public are present on the Premises.
8. The Planning Board may impose reasonable conditions of approval with respect to hours of operation, based on the nature of the Adult Entertainment Business and the characteristics of the neighborhood in which it will be located.

SECTION V. APPLICATION REQUIREMENTS AND PERMITTING PROCEDURES

Applications for a permit to operate an Adult Entertainment Business shall conform to the procedures and requirements of the Site Plan Review Ordinance of the Town of Stockton Springs.

In addition to Site Plan Review Ordinance Application procedures and requirements, Applicants for a permit to operate an Adult Entertainment Business shall participate in a pre-application review meeting with the Planning Board. During this meeting, the Planning Board may request additional information in order to deliberate on the application.

All applications for an Adult Entertainment Business permit shall also include the following:

1. If a partnership, whether general or limited, and if a corporation, date and place of incorporation, evidence that it is in good standing under the laws of Maine, and name and address of any registered agent for service of process.
2. Whether the Applicant or any partner, corporate officer or director of the Applicant holds any other Permits under this Ordinance or any permit for Adult Entertainment or Sexually Oriented business from any municipality, county or state, and if so, the names and addresses of each such permitted business.
3. A summary of the business history of the Applicant and all Managers in owning or operating Adult Entertainment or other sexually oriented businesses, providing names, addresses and dates of operation for such businesses, and whether any business permit or Adult Entertainment Permit has been revoked or suspended, and the reason therefor.
4. For the Applicant and all Managers, any and all criminal convictions or forfeitures within five years immediately preceding the date of the application, other than parking offenses or minor traffic infractions, including the dates of conviction, nature of the crime, name and location of court and disposition.
5. For the Applicant and all Managers, a description of business, occupation or employment history for the three years immediately preceding the date of the application.
6. Authorization for the Town, its agents and employees to seek information to confirm any statements set forth in the application.
7. A scale drawing or diagram showing configuration of the Premises for the proposed Adult Entertainment Business, including a statement of the total floor space occupied by the business, the total floor space of the Premises, and marked dimensions of the interior of the Premises, including performance areas, seating areas, Manager's office and stations, restrooms and service areas all clearly marked.
8. A nonrefundable application fee, as set forth in the Stockton Springs Land Use Ordinance.
9. Any other information requested by the Planning Board at the pre-application review meeting.

Upon receipt of the application, the Planning Board shall schedule a Public Hearing in accordance with the provisions of the Site Plan Review Ordinance, and that Public Hearing shall be considered to address the requirements of both The Site Plan Review Ordinance and the Adult Entertainment Ordinance. Upon receipt of the complete application and fee, the Code Enforcement Officer (CEO) shall provide copies to the police and fire departments for their investigation and review to determine compliance of the proposed Adult Entertainment Business with the laws and regulations of each department. Within 30 days of the date of application, each department will inspect and make a written report to the CEO of its findings. In the event the Premises have not yet been constructed, the departments shall base their recommendation as to Premises' compliance on their review of the drawings submitted in the application.

Upon review and approval by the Planning Board, the Adult Entertainment Business shall be issued a Permit by the CEO that is valid for not more than one year from the date of issuance of the Permit. Not more than 60 days prior to the expiration of that Permit, the CEO and/or such other town officials and/or their agents as deemed necessary, shall inspect the business during its

regular business hours without notice, in order to ensure compliance with this Ordinance. If such findings are satisfactory, the Permit shall be eligible for renewal for one year. Said inspection and renewal process shall be ongoing unless violations are found.

SECTION VI. ADMINISTRATION AND ENFORCEMENT

This Ordinance shall be administered and enforced by the CEO.

It shall be the duty of the CEO or his/her agent to enforce the provisions of this Ordinance. If the CEO or his/her agent shall find that any provision of this Ordinance is being violated, he/she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she shall order discontinuance of illegal use of buildings, structures, additions, or work being done, or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

The CEO is hereby authorized to institute or cause to be instituted, in the name of the Town of Stockton Springs, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this Ordinance; provided, however, that this section shall not prevent any person entitled to equitable relief from enjoining any act contrary to the provisions of this Ordinance.

Any person, firm, or corporation being the owner of or having control or use of any building or premises who violated any of the provisions of this Ordinance, shall be fined in accordance with Title 30-A §4452. Each day such a violation is permitted to exist after notification shall constitute a separate offense. The Selectmen, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

SECTION VII. INTERPRETATION OF THE ORDINANCE

The CEO shall be responsible for administering the provisions of this Ordinance including interpreting the provisions hereof.

Any person who believes that the CEO has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Board of Appeals as an administrative appeal. If the Board finds that the CEO erred in his/her interpretation of the Ordinance, it shall modify or reverse the action accordingly.

Appeal of any actions taken by the Planning Board with respect to this section shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

SECTION VIII. AMENDMENTS TO APPROVED PLANS

Approvals of permits issued under this Ordinance are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the Applicant. Any variation from the plans, proposals, and supporting documents, except minor changes that do not affect approval standards, is subject to Planning Board review and approval.

SECTION IX. SEVERABILITY

If any provision of this Ordinance is determined invalid by a court of law, the validity of the remaining sections, subsections and clauses shall not be affected thereby.