

**TOWN OF VASSALBORO
ADULT-ONLY BUSINESSES ORDINANCE**

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TOWN OF VASSALBORO ADULT-ONLY BUSINESSES ORDINANCE

Section I. Findings

The Citizens of the Town of Vassalboro believe that sexually oriented businesses, because of their very nature, have negative secondary effects on surrounding areas. They have observed that in many communities throughout this country 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 located in proximity to residences, day care centers, Schools, houses of worship, public parks or recreational areas. An ordinance is a proper and reasonable means of controlling the negative secondary effects of sexually oriented businesses.

Section II. 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 place and manner of operation of sexually oriented businesses. It is intended to regulate and to annually license sexually oriented businesses, and to prevent their location in proximity to residences, day care centers, Schools, houses of worship, public parks or recreational areas. Regulation of these uses is necessary to insure that the negative secondary effects will not contribute to the blighting or downgrading of the surrounding areas of 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 III. Definitions

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

- A. "Adult amusement store" means an establishment having as a substantial or significant portion of its sales or stock in trade, erotic material, 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 on 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 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 erotic material for observation by patrons therein.
- C. "Adult entertainment cabaret," means a public or private establishment which features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interests of the patron.

- D. "Adult spa," means an establishment or place primarily in the business of providing services of an erotic nature.
- E. "Sexually oriented business," means Adult amusement stores, Adult movie theaters, Adult entertainment cabarets, or Adult spas, as defined herein, or any business where erotic materials and activities are displayed, depicted, described or simulated as a regular and substantial part of its operation.
- F. "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.
- G. "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; 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 or probation 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 or probation 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 (5) years have elapsed since the date of the last conviction or the date of release from confinement or probation 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.

Section IV. License Required

A person or persons wishing to operate a sexually oriented business shall obtain an annual license (a) prior to opening the person's establishment, and (b) prior to expiration of the current annual license. A license issued under this Ordinance does not eliminate the requirements of any other Ordinance in Vassalboro including the Site Review Ordinance.

Section V. Application; Investigation and Issuance of License

1. Application. An applicant for sexually oriented business license shall:

- A. Complete and file an application prescribed by the Planning Board;
- B. Deposit a license fee and a processing fee in advance with the Town Clerk or the Code Officer. The amount of which fees are to be set by the Board of Selectmen and amended from time to time.

- C. Submit the completed application to the Planning Board through the Code Enforcement Officer, 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;
 - D. File a sworn affidavit, which states the names of all owners, officers, managers or partners of the applicant, and their places of residence at the time of the application and for the immediately preceding three (3) years;
 - E. File the release authorized by 16 M.R.S.A, Section 620(6) (Criminal History Record, Information Act) with the application, for the applicant and each officer, owner, manager or partner of the applicant;
 - F. 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;
 - G. 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.
 - H. Submit evidence of compliance with Section X of this Ordinance and evidence that there is no basis for denial of a license to applicant under the standards listed in Section VI of this Ordinance.
2. Investigation of applicant, officers. Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:
- A. The Code Officer, upon receipt of a completed application, shall immediately send a copy of the complete application to the Town Manager, and the Planning Board. The Code Officer shall also immediately consult with the Chairman of the Planning Board and 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 1000 feet of the proposed location of the structure, at least 10 days prior to the public hearing before the Planning Board. The costs of publication, certified mail postage, and other expenses related to the hearing shall be paid from the processing fee. After receipt of required reports from the Town officials, the Code Officer shall forward the application and other documents to the Planning Board for public hearing and final decision. The hearing shall be held within thirty (30) days after receipt of a complete application by the Code Officer and a decision shall be made within fifteen (15) business days thereafter.
 - B. The Code Enforcement Officer; within fifteen days of receipt of the application, shall inspect the location or proposed location and construction drawings to determine whether the applicant's proposed plan satisfies the setback and construction requirements of this ordinance and then report findings in writing to the Planning Board. The Code Enforcement Officer shall enforce the provisions of all the applicable Town Ordinances and State Laws as indicated in accordance with 30-A M.R.S.A. 4452.

- C. The Code Enforcement Officer with the help of the Town Police Chief, shall investigate the applicant, including the criminal history record information required under Section V (1) (E), and then report findings in writing to the Planning Board, and
 - D. The Code Enforcement Officer, within fifteen days of receipt of the application, shall verify that the proposed premises of the establishment will comply with Section X and with all other applicable State and Town laws and land use codes of the Town and then report findings in writing to the Planning Board. The Code Officer will also verify whether or not other permitting under local Ordinances and state laws is required in addition to verification for compliance.
3. Issuance of license. The Planning Board, after notice and public hearing, shall determine whether the application and documents submitted comply with all of the requirements of this Ordinance. The license shall be issued upon determination by the Planning Board, based upon the record, including evidence and testimony at the public hearing, that the applicant meets the requirements of this Ordinance. The license may not be transferred or assigned.

Section VI. Standards of Denial

An application for a sexually oriented business license shall be denied 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 that is reasonably necessary to determine whether the license can be issued;
- 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 X, or
- H. The application in any other way fails to meet the requirements of this Ordinance.

Section VII. Standards for Suspension; Revocation

A sexually oriented business license may be suspended or revoked by the Planning Board after notice and hearing upon a finding that the licensee has violated any provision of this Ordinance. Providing false or erroneous information in an application shall be a reason for revoking or suspending a permit.

Section VIII. Age Restriction

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

Section IX. Prominent Display of License; Price Charges and Names of Owners or Officers

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 licenses 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 charged for all food, beverages, goods, wares, merchandise or services offered by the business unless the price is conspicuously displayed on the individual product.

Section X. Prohibited Sites; Site Requirements

1. A sexually oriented business 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:
 - A. A church, synagogue or other house of religious worship;
 - B. A public or private elementary or secondary school;
 - C. A day care facility;
 - D. A public park or public recreational facility;
 - E. Any residence on adjacent property, excepting the owner or proprietor;

The distance cited in this section shall be measured between the closest edge of the structure of the sexually oriented business and the closest edge of the structure of the use listed (A) through (E) above.

2. A sexually oriented business will be required to construct a visual barrier around the sides of the business as required by the Planning Board.
3. It shall be unlawful for any person to cause or permit the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business.
4. It shall be unlawful for any person to cause or permit the operation or establishment of more than one sexually oriented business in the same building, structure, or portion thereof.

Section XI. Signs and Exterior Layout of Sexually Oriented Businesses

1. Sexually Oriented Businesses shall have an 8.5 inch by 11 inch sign at each entrance stating “Under 18 not admitted” or similar wording accepted by the Planning Board.
2. Sexually Oriented Businesses may have an 8.5 inch by 11 inch sign at entrances listing business hours, and appropriately posted signs, with letters no larger than 3 inches high, stating “Entrance”, “Parking”, “No Loitering” or other wording approved by the Planning Board.
3. Sexually Oriented Businesses shall have only one exterior identification sign.
 - A. The sign shall contain only the name of the establishment and “XXX” or the type of business as defined in Section III above.
 - B. The sign may not contain any other symbols or illustrations.
 - C. The sign must meet the approval of the Planning Board, who may require changes if they believe the proposed sign would be offensive to a significant number of Vassalboro residents.
 - D. The exterior dimension of the sign shall not exceed 30 square feet.
 - E. The sign may be two sided.
 - F. The sign may be unlit, internally lit, or lit with spotlights.
 - G. The lights may not blink.
 - H. The bottom of the sign may not be more than 10 feet above grade.
 - I. The top of the sign may not be more than 15 feet above grade.
4. No signs or symbols, except as permitted in Section XI, paragraphs 1 through 3 above, shall be visible from the exterior of the establishment.
5. 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.

Section XII. Prohibited Activities

- A. All acts of public indecency, as defined in 17-A M.R.S.A., Section 854, are prohibited in sexually oriented businesses.
- B. All other acts prohibited by applicable ordinances or laws.
- C. No alcoholic beverages allowed on the premises.
- D. The sexually oriented business hours of operation will be allowed anytime during the hours of 8:00 am – Midnight seven days a week.

Section XIII. Enforcement

A violation of this Ordinance is a civil violation and the civil penalties and remedies under Section XV shall apply. The owner of the premises on or in which the sexually oriented business is located, who is not the licensee of the sexually oriented business, is jointly and severally liable with the licensee for any violation of Sections X to XIII. The Ordinance shall be enforced by the Code Enforcement Officer, the Planning Board, and any law enforcement officials having jurisdiction within the Town of Vassalboro. If court action is required to enforce this Ordinance, the Town shall be awarded its enforcement costs, including its reasonable attorney's fees.

Section XIV. Penalties

Violation of this Ordinance shall result in a monetary penalty beginning on the date a notice of violation from the Code Officer is mailed to the Applicant at the address contained in Town records. If the violation is not remedied within ten days of notice being sent, the Code Officer shall send a second notice. Fees are to be set by the Board of Selectmen and amended from time to time. Remedying a violation does not prohibit the Planning Board from suspending the license as provided in Section VII. "Standards for Suspension, Revocation."

Section XV. 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 XVI. Conflict with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other Ordinance, regulation or statute, the more restrictive provision shall apply.

Section XVII. Appeals

An appeal from any final licensing, denial, suspension or revocation decision of the Planning Board may be taken by an aggrieved party to the Vassalboro Appeals Board within 30 days of the decision. The decision of the Vassalboro Appeals Board may be taken to Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. Service of Process shall be served on the Town Clerk. The Town shall file its responsive pleadings and record of proceedings with the Court not later than ten (10) business days after service of the summons and complaint. Additionally, the Town shall submit its responsive brief within fourteen (14) days after receipt of the plaintiff's brief, and shall move for an expedited hearing. All enforcement action, if any, shall be stayed during the pendency of the Rule 80B appeal.

Section XVIII. Effective Date

This Ordinance shall become effective immediately after approval by the voters of the Town of Vassalboro.