

## PROPOSED AMENDMENT TO LAND USE ORDINANCE OF THE TOWN OF DAMARISCOTTA

### Findings:

The Selectboard hereby finds that adult amusement stores in communities in Maine and elsewhere are associated with a wide variety of deleterious secondary effects including, without limitation, personal and property crimes, prostitution, potential spread of disease, public lewdness and indecency, obscenity, illicit drug use and trafficking, negative impacts on the condition and value of closely-situated surrounding properties, urban blight, litter, and sexual assault and exploitation. The location of adult amusement stores in proximity to residences, schools, daycares, places of worship, recreational and other public parks, liquor licensees, and other incompatible land uses are of particular concern. These findings are supported by research and studies by municipalities and others across the Nation, reflected in a substantial published literature on the subject, including materials provided by Town Counsel for the Selectboard and Legislative body's review and consideration, which materials are incorporated herein by reference as part of the record of the adoption of the following regulations for adult amusement stores.

The Selectboard further finds that preventing the deleterious secondary effects associated with adult amusement stores through the adoption of content-neutral regulations of the times, places, and manner in which such establishments may be operated falls within the Town of Damariscotta's inherent police power as a municipal corporation and subdivision of the State of Maine, and its home rule authority granted by the Legislature pursuant to Title 30-A, Maine Revised Statutes, Section 3001, and serves the substantial governmental interest in preventing such deleterious effects. Finally, the regulations adopted herein are intended to be no greater than is necessary to achieve the purpose of preventing the deleterious secondary effects associated with adult amusement stores, and to allow for reasonable locations in the Town for such establishments.

### Retroactivity:

The Amendments enacted shall be effective, to the maximum extent permitted by law but subject to the severance clause herein, and shall be applied to all proceedings or applications not pending, and business activities not commenced, established, located or operating within the Town, as of August 20, 2014.

Be it hereby proposed, by the Town of Damariscotta Maine, that the Town of Damariscotta Land Use Ordinance be amended as follows to enact the following provisions relative to Adult Entertainment Establishments:

## Town of Damariscotta Land Use Ordinance

### Article 2 – DEFINITIONS

Add:

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 or ADULT VIDEO STORE means a commercial establishment that utilizes at least 15% of the establishment’s floor space for display, sale, or rental, for consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas;” or instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

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 semi-nudity; or
- b. live performances that are distinguished or characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- c. films, motion pictures, video cassettes, 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 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.

ADULT ENTERTAINMENT NIGHTCLUB OR BAR means the same as ADULT CABARET.

ADULT MOTEL means a hotel, motel or similar commercial establishment that:

- a. offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, 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 the public right of way that advertises the availability of this adult type of photographic reproductions; or
- b. offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
- c. allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than twenty-four (24) hours.

ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, 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 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 exposure of “specified anatomical areas” or by “specified sexual activities.”

ADULT VIDEO STORE means the same as ADULT BOOKSTORE.

EMPLOYEE means a person who performs any service on the premises of an adult entertainment establishment on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does “employee” include a person exclusively on the premises as a patron or customer.

ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease 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.

ESTABLISHMENT means and includes any of the following:

- a. the opening or commencement of any adult entertainment establishment as a new business;
- b. the conversion of an existing business, whether or not an adult entertainment establishment, to any adult entertainment establishment;
- c. the additions of any adult entertainment establishment to any other existing adult entertainment establishment; or

d. the relocation of any adult entertainment establishment; or

e. an adult entertainment establishment or premises on which the adult entertainment establishment is located.

ESTABLISHMENTS FEATURING STRIPPERS OR EROTIC DANCERS means the same as ADULT CABARET.

LIVE THEATRICAL PERFORMANCE means a play, skit, opera, ballet, concert, comedy, or musical drama.

NUDE MODEL 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, sculptured, 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.

PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES means the real property upon which the adult entertainment establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the owner or operator of the adult entertainment establishment.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

- b. activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity. A principal business purpose exists if the services offered are intended to generate business income.

SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS means:

- a. the human male genitals in a discernibly turgid state, even if fully and opaquely covered;
- b. less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- a. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- b. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. masturbation, actual or simulated; or
- d. excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

SUBSTANTIAL ENLARGEMENT of an adult entertainment establishment means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas existed on the date of enactment of this ordinance.

## Article 5(C)(2) –CONDITIONAL USES

Add:

### f. Adult Entertainment Establishments

## Article 5(C)(3) – STANDARDS

Add:

c. Adult Entertainment Establishment Standards – See Article 9(Q) for additional performance standards for these establishments.

## Article 9 – GENERAL PROVISIONS

Add:

### Q. Adult Entertainment Establishments

Shall meet all of the standards contained in the Land Use Ordinance, Conditional Use Standards, Site Review Ordinance as applicable, and Additional Standards specific to Adult Entertainment Establishments as set forth below:

#### 1. Purpose.

It is the purpose of this ordinance to regulate adult entertainment establishments and related activities to promote the health, safety, and general welfare of the citizens of the municipality, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment establishments within the Town of Damariscotta. 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 not 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 materials.

#### 2. Location Restrictions

Adult entertainment establishments shall be a conditional use in accordance with Article V of the Town of Damariscotta Land Use Ordinance Section C and also provided that:

A. The adult entertainment establishment may not be permitted or operated within:

1. 1,500 feet of a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

2. 1,500 feet of a public or private educational facility including but not limited to child care facility, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;

3. 1,500 feet of a public park or recreational area or private recreational facility which has been designated for park or recreational activities, including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town park and recreation authorities or a private entity;

4. 1,500 feet of another adult entertainment establishment.

B. An adult entertainment establishment may not be operated in the same building, structure, or portion thereof, containing another adult entertainment establishment.

C. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult entertainment establishment is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected recreational facility or licensed child care facility.

D. For purposes of subsection (C) of this section, the distance between any two adult entertainment establishment uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

### 3. Adult Entertainment Establishment Signage.

A. All signs shall be in accordance with any Ordinances or Regulations of the Town of Damariscotta relative to Signs.

B. Notwithstanding anything to the contrary, an Adult Entertainment Establishment shall not be permitted more than one (1) sign advertising its business, which shall be an on-premise free-standing or attached wall sign only. No such sign shall:

1. Be placed in any window, except that one sign no larger than one (1) sq. ft. may be placed on the door to state only the store's hours of operation and that admittance is for adults only;

2. Be neon or internally-illuminated or contain any flashing lights, moving elements, or mechanically changing messages;



3. Contain any depiction of the human form or any part thereof, whether by photograph, painting, drawing, silhouette, or pictorial representation;
4. Contain any sexually explicit or suggestive language such as "nude dancing";
5. Be located off-site;
6. Have more than two display surfaces; or;
  7. Exceed twenty (20) sq. ft.
  - C. Any sign located on the premises of a multi-unit commercial center such as a shopping center or plaza and identifying one or more of the businesses that comprise the center shall also comply with this subsection if such sign identifies an Adult Entertainment Establishment on the premises.

#### 4. Amortization of Existing Adult Entertainment Establishments.

A. Any Adult Entertainment Establishment lawfully operating upon the adoption of this Ordinance that is in violation of this Ordinance shall be deemed to be a nonconforming use. This nonconforming use shall be permitted to continue for a period of twenty-four (24) months from the effective date of this Ordinance, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use may not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use.

B. An Adult Entertainment Establishment lawfully operating as a conforming use as of the effective date of this ordinance, shall not be rendered a nonconforming use by the subsequent location of a church, synagogue, or other house of religious worship, public or private elementary or secondary school, recreational facility, or municipal facility, within the distance limitations of this ordinance.

5. Conflicts. Notwithstanding the foregoing, if there is any conflict between this Section Q and other Damariscotta Codes and Ordinances, the more stringent provisions shall apply.

6. Severability. If any section, phrase, sentence, or portion of this Section Q 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.

7. Retroactivity. The provisions set forth in this Section shall be effective, to the maximum extent permitted by law but subject to the severance clause herein, and shall be applied to all proceedings or applications not pending, and business activities not commenced, established, located or operating within the Town, as of August 20, 2014.

ENACTED: \_\_\_\_\_, 2015

ATTEST: A True Copy

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Cheryl Pinkham, Damariscotta Town Clerk