

# West Gardiner Adult Business Ordinance

## Section I. Findings

There is convincing documented evidence that sexually oriented businesses, because of their very nature, have negative secondary effects on surrounding areas. Research and studies of municipalities throughout this country indicate that the presence of sexually oriented businesses is consistently and strongly associated with perceived decreases in value in both residential and commercial properties and the facilitation of illicit and undesirable activities. This evidence is relevant to issues facing this 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 concentrated within a limited geographic area or are located in proximity to residences, day care centers, schools, houses of worship, public parks or recreational areas, or another sexually oriented business. A police power 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 time, 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, or another sexually oriented business. Regulations of these uses is necessary to insure that the negative secondary effects will not contribute to the blighting or downgrading of the surrounding areas or 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 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 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.

#### **Section V. Application; Investigation and Issuance of Licenses**

1. Application. An applicant for sexually oriented business license shall:
  - A. Complete and file an application prescribed by the Board of Selectmen;
  - B. Deposit a license fee of \$250.00 and a \$350.00 processing fee in advance with the Town Clerk;
  - C. Submit the completed application to the Board of Selectmen, 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 the owners, officers, managers or partners of the applicant, and their places of residence at the time of 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 owners, officers, managers or partners of the applicant:
  - A. The Board of Selectmen, upon receipt of a completed application, shall send a copy of the complete application to the town officials referenced in paragraphs B through E below. The Town Clerk shall also immediately consult with the Board of Selectmen 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 Board of Selectmen. 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 Town Clerk shall forward the application and

other documents to the Board of Selectmen for public hearing and final decision. The hearing shall be held within thirty (30) days after the receipt of a complete application by the Town Clerk and a decision shall be made within fifteen (15) business days thereafter.

- B. The Code Enforcement Officer, within fifteen days of notice, shall inspect the proposed location and construction drawings to determine whether the applicable laws relating to health and safety have been satisfied and then report findings in writing to the Board of Selectmen.
- C. The Fire Chief, within the fifteen days of notice shall inspect the location or construction plans of the business to determine if applicable State and fire safety regulations have been satisfied and then report findings in writing to the Board of Selectmen.
- D. The Code Enforcement Officer shall investigate the applicant, including the criminal history record information required under Section V (1)(E), and then report findings in writing to the Board of Selectmen, and
- E. The Code Enforcement Officer, within fifteen days of notice, shall verify that 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 Board of Selectmen.

3. Issuance of license. The Board of Selectmen, after notice and public hearing, shall determine whether the application and documents submitted comply with all the requirements of this Ordinance. The license shall be issued upon determination by the Board of Selectmen, 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 an Specified Criminal Activity as defined herein;
- G. The site on which the sexually oriented business is proposed is prohibited site under Section X, or
- H. The application in any other way fails to meet the requirements of the Ordinance.

### **Section VII. Standards for Suspension; Revocation**

A sexually oriented business license may be suspended or revoked by the Board of Selectmen after notice and hearing upon a finding that the license has violated any provision of this Ordinance.

### **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 the owners and officers of the sexually oriented business and a complete list of the names 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 lot line of a business which caters to the general public or 1,000 feet of the lot lines 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 edge of the driveway, parking area or signage used by a sexually oriented business and the driveway entrance or signage of the site of the use listed (A) through (E) above at their closest points.

### **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 Selectmen.
2. Sexually oriented businesses may have an 8.5 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 Selectmen.
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 Selectmen, who may require changes if they believe the proposed sign would be offensive to a significant number of West Gardiner residents.
  - D. The exterior dimension of the sign shall not exceed 15 feet square.
  - E. The sign may be two sided
  - F. The sign may not be lit.
  - G. The bottom of the sign may not be more than 10 feet above grade.
  - H. 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. A sexually oriented business must have a continuous 6 foot high solid fence along all boundary lines it has in common with 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 residence;
  - D. a day care facility;
  - E. a public park or public recreational facility
  - F. another sexually oriented business.

## **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.

## **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, in conjunction with the Board of Selectmen. If court action is required to enforce this Ordinance, the Town shall be awarded its enforcement costs, including reasonable attorney's fees.

## **Section XIV. Penalties**

Violation of this Ordinance shall result in a penalty of \$100.00 per day, beginning on the date a notice of the violation from the Selectmen 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 Selectmen may send a second notice. Violation of this Ordinance, after sending of the second notice, shall result in a penalty of \$500.00 per day. Remedying a violation does not prohibit the Selectmen 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.

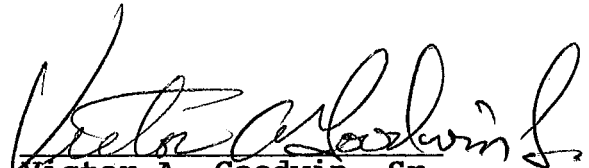
## **Section XVI. Conflict With Other Ordinances**

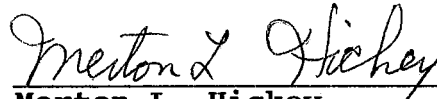
Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other Ordinance, regulation or statute, the more restrictive provision shall apply.

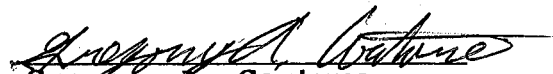
## **Section XVII. Appeals**

An appeal from any final licensing, denial, suspension or revocation decision of the Board of Selectmen may be taken by an aggrieved party to the West Gardiner Planning

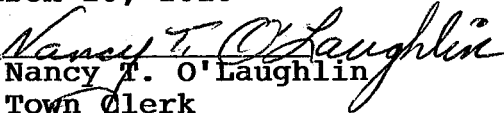
Board. The decision of the West Gardiner Planning Board may be taken to Superior Court in accordance with the provisions of rule 80B of the Maine Rules of Civil Procedure. Service of Process shall be served on the Town Clerk or any Selectman. The Town shall file its responsive pleadings and record of proceedings with the Court not later than ten (10) business days after the service of 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.

  
Victor A. Goodwin, Sr.

  
Merton L. Hickey

  
Gregory A. Couture  
Selectmen  
Town of West Gardiner

Enacted: March 20, 2010

Certified by:   
Nancy T. O'Laughlin  
Town Clerk

# Application for West Gardiner Adult Business License

Name of Applicant:

Mailing address:

Phone number:

Name of business:

Date of initiation of business:

Location of business:

Kennebec County Registry of Deeds Book and Page (attach written consent of owner to establish adult business):

Description of the nature of all products and services offered to customers:

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\*Attach 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.

\*Attach 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.

\*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.

\$250.00 License fee \_\_\_\_\_

\$350.00 Processing fee \_\_\_\_\_

\_\_\_\_\_  
Nancy O'Laughlin, Town Clerk

\_\_\_\_\_  
Date