

**TOWN OF BERWICK
SPECIAL AMUSEMENT ORDINANCE**

I. Purpose. The Purpose of this Ordinance is to control the issuance of special amusement permits as required by state law for music (except radio or other mechanical device), dancing or entertainment in facilities licensed by the state to sell liquor. This Ordinance is enacted pursuant to the provisions of 28-A MRSA 1054 and 30-A MRSA 3001. All existing Town Ordinances or parts thereof that are inconsistent with the terms and provisions of this Ordinance are hereby repealed.

II. Severability. If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decision(s) shall not affect the validity of the remaining portions of this Ordinance.

III. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section except where the context clearly indicates a different meaning:

Available to the public means that the matter or performance or act may be purchased or attended on a subscription basis; on a membership fee arrangement; for a separate fee for each item, performance or act; or be available merely by being a patron of or present in an establishment licensed to sell liquor.

Disseminate means to transfer possession of, with or without consideration.

Entertainment means 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.

Knowingly means being aware of the character and the content of any material or act described in this Ordinance.

Licensee means any person, individual, partnership, firm, association, corporation or other legal entity which is the holder of a license for the sale of liquor to be consumed on premises owned or leased by said licensee or any agent or employee of any such licensee.

Material means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical or electrical reproduction or any other articles, equipment or machines.

Obscene means that to the average person applying contemporary community standards, the predominant appeal of the matter or act taken as a whole, is to prurient interest, and the matter or act depicts or describes in a patently offensive manner sexual conduct or lewd exhibition of the genitals or other body parts mentioned in this Ordinance, and the matter or act or performance, when considered as a whole, lacks serious literary, artistic, political or scientific value; or any matter, acts or performances which are prohibited by the statutes of the State.

Performance means any preview, play, show, skit, film, dance or other exhibition or entertainment performed before an audience.

Promote means to cause, permit, procure, counsel or assist.

Service to patrons means the provisions of services to customers, patrons or any other persons present in establishments providing food and beverages including, but not limited to, hostessing, hat-checking, cooking, bartending, serving, table setting, table waiting and clearing, and entertainment.

IV. Permit Required. No licensee for the sale of liquor to be consumed on the licensed premises shall permit, on the 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 Town a special amusement permit issued and signed by at least a majority of the Municipal Officers.

V. Permit Application. Applications for all special amusement permits shall be made in writing to the Municipal Officers and shall state:

- (1) The name of the applicant;
- (2) The residence address of the applicant and telephone number to call;
- (3) The name of the business;
- (4) The business address and telephone number of the business;
- (5) The nature of the business;
- (6) The location of the business;
- (7) The applicant's places of residence during the past five years;
- (8) Whether the applicant has ever had a license to conduct the business described in the license either denied or revoked by this or another licensing authority; and, if so, the specific circumstances of such denial or revocation.

- (9) Whether the applicant, including all partners or corporate officers, has ever been convicted of a felony; and, if so, the specific circumstances of such conviction.
- (10) Any additional information as may be required by the Municipal Officers in the issuing of the permit, including, but not limited to a copy of the applicant's current liquor license.

VI. Compliance with law. No permit under this Ordinance shall be issued if the premises and building to be used for the purposes do not fully comply with all Ordinances, Rules or Regulations of the Town.

VII. Admission. A licensed establishment which has been issued a special amusement permit may charge admission in designated areas and/or for designated events if approval to do so is included in the special amusement permit.

VIII. Fee. The fee for a special amusement permit shall be \$100. The Municipal Officers shall have the authority to adjust this fee as they may deem necessary.

IX. Hearing; denial; duration.

(1) **Public Hearing.** The Municipal Officers shall, prior to granting a permit and after reasonable notice to the public and the applicant, hold a public hearing at which the testimony of the applicant and that of any interested members of the public shall be taken.

(2) **Basis for Approval.** 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 of the residents of the Municipality or would violate any Municipal Ordinance(s), Rules or Regulations.

(3) **Duration of permit.** The permit shall be valid only for the license year of the applicants' existing liquor license.

X. Suspension or revocation. The Municipal Officers may suspend or revoke a special amusement permit which was issued under this Ordinance if the permit holder is in violation of any provision of this Ordinance or has knowingly made an incorrect statement of a material nature on the application for a permit. Determination of the severity of the violation and whether a suspension or revocation is warranted shall be made by the Municipal Officers following a public hearing preceded by notice to the public and to interested parties. After such a public hearing, the Municipal Officers may suspend or revoke any permits which they have issued under this Ordinance on the grounds that the music, dancing or entertainment permitted constitutes a detriment to the public health, safety or welfare or violates provisions of this or other Municipal Ordinances, Rules or Regulations.

XI. Conduct constituting offenses by licensees.

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

(2) Riots. The licensee shall not allow on any licensed premises any public entertainment or amusement or show of any kind which tends to or is calculated to cause or promote any riot or disturbance.

(3) Unnecessary Noise. The licensee shall not allow on any licensed premises the making, creation or maintenance of excessive, unusually loud noise. (See Land Use Ordinance, Article VII, Section 7.6 as may be amended in the future).

(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, sections of Ordinances, Rules and Regulations of the Town or statutes of the State.

(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, or any meretricious display, lewd act, or act of moral perversion; or knowingly receive or offer to receive any person on such licensed premises for the purpose of performing a lewd act, 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.

(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 kind of drink.

(7) Gambling. The licensee shall not allow on any licensed premises the use or occupancy of the premises for gambling or for games of chance as prohibited by the statutes of the State

(8) Obscenity.

(a) Prohibited acts. The licensee on any licensed premises shall not:

1. Material. Knowingly disseminate, distribute or make available to the public any obscene material as defined in this Ordinance.

2. Performance. Knowingly make available to the public any obscene performance.

3. Commercial Activity. Knowingly engage in commerce and/or for commercial gain with materials depicting and describing explicit sexual conduct, nudity or excretion, utilizing displays, circulars, advertisements or any other public sales efforts that promote such commerce primarily on the basis of their prurient appeal.

4. Exposure. Provide service to patrons in such a manner as to expose to public view:

a. The licensee's, or any agents or employees of the licensee, genitals, pubic hair, buttocks, perineum, or anal region;

b. Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum or anal region; or

c. Any portion of the female breast at or below its areola.

5. Promotion. Knowingly promote the commission of any act listed in this Subsection.

XII. Rules and Regulations.

(1) The Municipal Officers of the Town of Berwick are authorized to establish written Rules and Regulations governing the following providing such Rules and Regulations are consistent with the provisions of this Ordinance:

(a) The issuing, suspension and revocation of Special Amusement Permits;

(b) The classes of any such Permits should there be more than one;

(c) The music, dancing or entertainment permitted under each class;

(d) Other limitations on these activities required to protect the public health, safety and welfare.

(e) The location and size of permitted premises, the facilities that may be required for the permitted activities on those premises and the hours during which the permitted premises may operate.

XIII. Permit issuance or denial. Any licensee applying for a special amusement permit from the Municipal Officers shall be notified in writing of their decision within thirty days of the date the application was received. If a licensee is denied a permit, the licensee shall be provided with written reasons as to why the permit was denied. The licensee may not reapply for a permit within thirty days after an application for a permit has been denied.

XIV. Appeal Procedure. Any licensee who has applied for a permit and has been denied, or whose permit has been suspended or revoked, may within thirty days of the denial, suspension or revocation, appeal the decision to the Berwick Board of Appeals. The 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 not based by a preponderance of the evidence on a violation of a statute of the State or the provisions of this Ordinance or any Rule or Regulation adopted by the Municipal Officers pursuant to it.

XV. Enforcement. Officers of the Berwick Police Department and the Code Enforcement Officer are authorized enforcement agents of the Town under this Ordinance. The Berwick Fire Chief is authorized to enforce State Life Safety Codes in any licensed premises.

XVI. Penalty. Whoever violates any of the provisions of this Ordinance shall be punished by a fine of not more than \$500 for the first offense and up to \$1,000 for the second and subsequent offenses to be recovered, on complaint, for the use of the Town. Each day shall be considered a separate violation or offense. The Town shall be entitled to be reimbursed for any expenses incurred as a result of any enforcement actions, including reasonable attorney's fees.

XVII. Effective Date. This Ordinance shall be in effect following its approval by the voters of the Town.