

TOWN OF ALBION

**THE SALE OF AND/OR CONSUMPTION OF
ALCOHOL ON PREMISES
ORDINANCE**

I. THE SALE OF AND/OR CONSUMPTION OF ALCOHOL ON PREMISES ORDINANCE

SECTION 1.1. -- LICENSE APPLICATION. Application for a Town license shall be made to the Town Clerk on form provided by the Town Clerk's office. The fee for this license shall be One Hundred (\$100.00) Dollars.

SECTION 1.2. -- APPROVALS. No license shall be issued unless the Code Enforcement Officer certifies that the business or facility:

1. has a current license from the State of Maine, as required;
2. has an active site plan review approval from the Albion Planning Board, if applicable.

SECTION 2.1. -- LIQUOR LICENSES.

SECTION 2.2. -- NEW LICENSES.

Application to the Maine Bureau of Liquor Enforcement and Licensing for licenses for the sale of spirits, wine or malt liquor to be consumed on the premises, require the approval of the Board of Selectmen. The Board of Selectmen may, at their discretion, hold a public hearing on any new or amended license. Applications for such state liquor licenses will require a public hearing. The Town Clerk shall publish notice of any public hearing in a newspaper, as required by the Maine Liquor Laws. The Town Clerk shall send, by first-class mail, a notice that the Town Clerk's office has received an application for a new or renewed license application and that the Board of Selectmen will consider the application at a specified upcoming public hearing or meeting of the Board of Selectmen. The notice shall be sent to all property owners of record within a five hundred (500) foot radius of the premise for which the license is sought. If one (1) or more of the properties with the five hundred (500) foot radius is an apartment complex or a business complex, the Town Clerk shall send, by first-class mail, to the owner of the complex a letter suggesting that he or she or it, if a corporation, notify the tenants of the complex of the fact of the public hearing or public meeting.

In granting or denying an application, the Board of Selectmen shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

- A. Conviction of the applicant of any Class A, Class B or Class C crime;
- B. Noncompliance of the licensed premises or its use with any local Land Use Code or other

Land Use Ordinance not directly related to liquor control;

- C. Conditions of record, such as waste disposal violations, health or safety violations or repeated parking or traffic violations or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
- D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;
- E. A violation of any provision of the Maine Liquor Laws;
- F. A determination by the Board of Selectmen that the purpose of the application is to circumvent the provisions of 28-A M.R.S.A. § 601, et. seq.

In issuing or denying licenses the Board of Selectmen shall also give consideration to:

- 1. The character of any applicant;
- 2. The location of the place of business;
- 3. The manner in which it has been operated; and
- 4. Whether the operation has endangered the safety of persons in or on areas surrounding the place of business.
- 5. Result of Public Hearing indicates majority objection to issuing of license.

SECTION 2.3. --LICENSE RENEWALS.

Application for renewal of state liquor licenses will require a public hearing before the Board of Selectmen. Upon notification of any such disapproval, a public hearing will be called and held on the license renewal application. If no hearing is held, the Board of Selectmen, in their capacity as agents of the Town of Albion, is authorized to sign approval of the license renewal application.

SECTION 2.4. -- OFF-PREMISES CATERING OF SPIRITS, WINE AND MALT LIQUOR.

Persons, partnerships, corporation or other legal entities by the State to conduct off-premises catering of spirits, wine and malt liquor for public events or public gatherings sponsored by a charitable, non-profit organization or civic group or private events or private gatherings sponsored by an individual person, organization, or association of persons, must obtain approval from the Board of Selectmen for such events.

SECTION 2.5. -- ON-PREMISE CONSUMPTION OF ALCOHOL.

No person, partnership, corporation or other legal entity not licensed to sell intoxicating liquor by the Maine Bureau of Alcoholic Beverages, shall permit the consumption of alcoholic beverages on his/her premises, or on premises rented or leased to him/her/it, without first obtaining an annual license from the Town. Application for such license shall be made to the Town Clerk upon forms provided by the Town Clerk. The fee for the license provided herein shall be One Hundred (\$100.00) Dollars for all applicants other than non-profit organizations and clubs.

SECTION 2.6.

Licenses issued under this section shall be restricted as follows:

- a. The licensee shall not allow the consumption of intoxicating liquor on licensee's premises or on premises rented or leased by the licensee between the hours of 1:00 A.M. and 12:00 Noon on Sundays or legal holidays.
- b. The licensee shall not allow the consumption of intoxicating liquor between the hours of 1:00 A.M. and 8:00 A.M. on days other than Sundays or legal holidays.

SECTION 2.7.

Except as hereunder provided, this licensing requirement shall apply only to an unlicensed person, partnership, corporation or other legal entity who allows the consumption of intoxicating liquor on the licensee's premises or on premises rented or leased to the licensee and who may charge admission to said premises and/or charges for additives to the intoxicating liquor, such as carbonated or non-carbonated beverages, ice, water, etc. and/or cups or glasses or other related material.

SECTION 2.8.

For the purpose of this Section, a non-profit organization or club shall mean an organization or club, no part of the income or profit from which is distributed to its members, directors, officers, governing body, employee or agents.

SECTION 2.9.

The Constables of the Town of Albion or his/her authorized agent or agents shall have the right to inspect the records of any license, non-profit organization or club, to determine its compliance or non-compliance with this licensing Section.

SECTION 2.10.

The Constables of the Town of Albion or his/her authorized agent or agents shall have the right to obtain a restraining order, preliminary injunction and permanent injunction in Kennebec County Superior Court against any person, partnership, corporation, or other legal entity not licensed as required by the Chapter and not found to be a non-profit corporation or a club having an annual dues of at least Fifty (\$50.00) Dollars per member. The Town shall also be entitled to its reasonable attorney fees and costs for the successful prosecuting any violation under this Section.

SECTION 2.11.

Licenses issued under this Section may be suspended or revoked as provided in this Chapter.

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II. SPECIAL AMUSEMENT ORDINANCE

SECTION 1. -- TITLE, PURPOSE AND DEFINITION

1.1 Title

This Ordinance shall be known and may be cited as the Sale and/or Consumption of Alcohol on Premises Ordinance --Special Amusement Section of the Town of Albion.

1.2 Purpose

The purpose of this Ordinance is to control the issuance of special permits for music, dancing, or entertainment in facilities licensed by the State of Maine to sell liquor, without infringing on protected First Amendment rights. This section is adopted pursuant to 28-A M.R.S.A. §1054 and 30-A M.R.S.A. §3001.

1.3 Definitions

(1) Entertainment -- For the purposes of this Ordinance, “entertainment” shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided:

- (a) by professional entertainers;
- (b) by full-time or part-time employees of the licensed premises whose incidental duties included activities with an entertainment value; or
- (c) by patrons induced by prizes or otherwise to engage in activities with an entertainment value.

(2) Licensee -- For the purpose of this Section, “licensee” shall include the holder of a license issued under the Alcoholic Beverages Statutes of the State of Maine, or any person, individual, partnership, firm, association, corporation, or other legal entity, or any agent or employee of any such licensee.

SECTION 2. -- GENERAL

2.1 Permit Required

No license for the sale of liquor to be consumed on his/her licensed premises shall permit, on his/her licensed premises, any music except radio or other mechanical device, or any dancing or entertainment of any sort unless the licensee shall have first obtained from the Board of Selectmen a special amusement permit.

Applications for all special amusement permits shall be made in writing to the Board of Selectmen and shall state the name of the applicant; his residence address; the name of the business to be conducted; his business address; the nature of his business, including a specific description of any entertainment to be offered; the location to be used; whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, the applicant shall describe those circumstances specifically; whether the applicant, including all partners or corporate officers, has ever been convicted of a felony and, if so, the applicant shall describe specifically those circumstances; and any additional information as may be needed by the Board of Selectmen in the issue of the permit including, but not limited to, a copy of the applicant's (current) liquor license.

2.2 Grounds and procedure for denial, suspension or revocation

- (1) *Generally.* The Board of Selectmen may, after a public hearing preceded by notice to the licensee, deny, suspend or revoke any special amusement permits, which are sought or have been issued under this ordinance, on the grounds that the music, dancing, live sporting exhibitions or entertainment so permitted, constitute a detriment to the public health, safety, or welfare, or violate any Town ordinance, articles, bylaws, rules or regulations, or the provisions of this chapter.
- (2) *Additional grounds.* In addition to the general standards for denial, suspension or revocation identified in subsection 1 of this section, a permit may be denied, suspended or revoked upon a determination of the existence of one or more of the following grounds:
 - a. The applicant has offered or will offer entertainment which includes:
 - (i) Exposing to view the male and/or female genitals, pubic hair, anus vulva or any portion of the female breasts at or below areola area thereof. "Exposing to view" includes, without limitation, appearing without an opaque covering or appearing with only an opaque covering which adheres to the skin, such as body paint; or
 - (ii) The actual or simulated touching, caressing or fondling of the breast, buttocks or genitals;
 - b. The permitted activity, or persons on the premises for purposes of participating in a

permitted activity, or persons patronizing licensed premises, have caused one or more breaches of the peace;

- c. The is a clear and immediate danger that a breach of peace will occur, if the activity is permitted;
 - d. The permitted activity of persons patronizing the permitted premises will substantially adversely affect the peace and quiet of the neighborhood or a substantial portion thereof;
 - e. The permit licensee has violated any provision of this chapter in the conduct of the activity for which the permit has been applied or has been issued;
 - f. There has been an occurrence of any event subsequent to issuance of the permit which would have been a basis for denial of the permit; this shall be grounds for revocation of the permit; or
 - g. There has been an occurrence of entertainment as described in subsection 2(a) of this section;
 - h. The applicant has failed to fully complete the application forms, knowingly made an incorrect statement of a material nature on such a form, failed to supply any additional documentation required or reasonably necessary to determine whether such permit is issuable, or failed to pay any fee required under this chapter.
- (3) No permit holder shall allow on the permitted premises any activity described in paragraphs (2)(a) through (d) of this section, without regard to whether such activity is carried on by professional entertainers, employees or any other person and with regard to whether any compensation is paid by the permit holder.
- (4) The fee for a special amusement permit shall be One Hundred (\$100.00) Dollars.
- (5) The Board of Selectmen shall, prior to granting a permit and after reasonable notice to the public and applicant, hold a public hearing within 30 days of the date the request was received, at which the testimony of the applicant and that of any interested member of the public shall be taken.
- (6) The Board of Selectmen shall grant a permit, unless they find that issuance of the permit will be detrimental to the public health, safety or welfare, or would violate Town ordinances, or rules and regulations articles or bylaws.
- (7) A permit shall be valid for the license year of the applicant's existing liquor license.

2.3 Inspections

Whenever inspections of the premises used for or in connection with the operation of a licensed

business, which has obtained a special amusement permit, are provided for or required by ordinance or state law, or are reasonably necessary to ensure or secure compliance with any ordinance provision or state law, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the Town of Albion authorized to make the inspection at any reasonable time that admission is requested. Whenever an analysis of any commodity or material is reasonably necessary to ensure or secure conformance with any ordinance provision or state law, it shall be the duty of the licensee, or the person in charge of the premises, to give to any authorized officer, official or employee of the Town of Albion requesting the same sufficient samples of the material or commodity for analysis.

In addition to any other penalty which may be provided, the Board of Selectmen may revoke the special amusement permit of any licensee in the Town of Albion who refuses to permit any such officer, official or employee to make an inspection or take sufficient samples for analysis, or who interferes with such officer, official or employee while in the performance of his/her duty. Provided, that no license or special amusement permit shall be revoked unless written demand for the inspection or sample is made upon the licensee or person in charge of the premises, at the time it is sought to make the inspection.

2.4 Rules and Regulations

The Board of Board of Selectmen is hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension, and revocation of special amusement permits, the classes of permits, the music, dancing, or entertainment permitted under each class, and other limitations on these activities required to protect the public health and safety and welfare. These rules and regulations may specifically determine 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 activities are permitted. Such rules and regulations shall be additional to and consistent with all sections of this Ordinance.

2.5 Permit and Appeal Procedures

- (1) Any licensee requesting a special amusement permit from the Board of Selectmen shall be notified in writing of their decision no later than thirty (30) days from the date his/her request was received. In the event that a licensee is denied a permit, the licensee shall be provided with the reasons for the denial in writing. The licensee may not reapply for a permit with thirty (30) days after an application for a permit is denied.
- (2) Any licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may appeal the decision to the Board of Appeals within thirty (30) days of the denial, suspension, or revocation. The Board of Appeals may grant or reinstate the permit, if it finds that:
 - a. The permitted activities would not constitute a detriment to the public health, safety or welfare, or violate the Town's ordinances or regulations; or

- b. The denial, revocation or suspension was arbitrary or capricious.

Appeals from decision of the Board of Appeals shall be taken within forty-five (45) days to the Superior Court, in accordance with Rule 80B of the Maine Rules of Civil Procedure.

2.6 Admission

A licensed motel, restaurant, tavern or restaurant malt liquor licensee, who has been issued a special amusement permit, may charge admission in designated areas approved by the municipal special amusement permit.

SECTION III. -- PENALTY, SEPARABILITY & EFFECTIVE DATE

3.1 Penalty

This Ordinance shall be enforced by any Town employee, Town official, or a Kennebec County Deputy Sheriff, as appointed by the Board of Board of Selectmen.

Whoever violates any of the provisions of this Ordinance shall be punished by a fine of not more than Three Hundred (\$300.00) Dollars for the first offense, and up to Five Hundred (\$500.00) Dollars for each subsequent offense, to be recovered on complaint, to the use of the Town of Albion. In addition, any licensee found in violation of this Ordinance shall pay the reasonable attorney fees for prosecution, and costs of prosecution. Upon finding a violation, a court of competent jurisdiction may also issue orders of abatement or permanent injunctions to prohibit similar repeat violations.

3.2 Separability

The invalidity of any provision or portion of this Ordinance shall not invalidate any other part.

3.3 Effective Date

The effective date of this Ordinance shall be immediately upon passage of this Ordinance.