

**PUBLIC HEARING**\_\_\_\_\_

**TOWN COUNCIL**

**ORDINANCE NO.**

**AN ORDINANCE**

**Providing for:** Regulating Commercial Displays of Nudity, Whereas the Winslow Zoning Ordinance does not address nudity, and the citizens of Winslow feel there is a need for regulating nudity with the attached addition Section 14-83 Regulating Commercial Displays of Nudity to the Winslow Zoning Ordinance

**BE IT ORDAINED** by the Town Council of the Town of Winslow as follows:

**WHEREAS**, the Planning Board has received several requests from citizens to regulate nudity;

**WHEREAS**, this has caused concern over location;

**WHEARAS**, the Planning Board has reviewed the Ordinance and recommends the newly developed language Regulating Commercial Displays of Nudity be added to the Winslow Zoning Ordinance;

**BE IT ORDAINED** by the Town Council of the Town of Winslow, Maine, that the Winslow Zoning Ordinance Section 14-83 Regulating Commercial Displays of Nudity be incorporated in Chapter 14 Zoning.

**SPONSORED BY:**

**IN THE TOWN COUNCIL**

\_\_\_\_\_, 2010

First Reading, \_\_\_\_\_

accepted          rejected

\_\_\_\_\_, 2010

Second Reading, \_\_\_\_\_

adopted          rejected

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Town Clerk

APPROVED: \_\_\_\_\_, 2010

CHAIRMAN: \_\_\_\_\_

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## **ARTICLE 8, § 14-83. Regulating Commercial Displays of Nudity**

### **(a) Purpose.**

(1) A number of commercial establishments located in the Town of Winslow could potentially offer nude dances and other nude performances as a form of public entertainment. The types of nude entertainment offered by such establishments and regulated by this article are a purely commercial activity, unrelated to free expression and the exchange of ideas.

(2) The types of nude entertainment regulated by this article consist of lewd exhibitions that are patently offensive to a large majority of the residents of the Town of Winslow. In view of the foregoing legislative findings, for the purpose of protecting the public health, safety and morals, the Town Council of the Town of Winslow hereby adopts the following regulations of commercial nudity within the Town of Winslow.

### **(b) Certificate of occupancy required.**

No person operating a commercial establishment in the Town of Winslow shall present or allow presentation of any form of nude entertainment on the premises of the establishment concerned without first obtaining a certificate of occupancy for that purpose from the town's Code Enforcement Officer and Fire Chief. The application procedure and criteria for issuance of a certificate of occupancy shall be as provided in Chapter 14, Zoning; provided, however, that the following additional requirements shall apply to commercial establishments offering nude entertainment:

(1) The application for a certificate of occupancy under Chapter 14, § 14-25 shall state that the proposed use includes nude entertainment. The application shall describe the nude entertainment to be offered, including the intended frequency and times, and shall indicate the area of the premises where the nude entertainment shall take place.

(2) The application shall disclose the name and current residence address of all principals of the business concerned and shall disclose the name and current residence address of all persons holding a financial interest of 5% or more in the business concerned.

(3) Prior to granting a certificate of occupancy, the Code Enforcement Officer shall forward the application to the Chief of Police for a criminal information background check on each of the persons named in the application. The Code Enforcement Officer shall deny the application if the applicant, any principal of the business concerned or any holder of a five-percent or greater financial interest in the business concerned has a record of conviction of prostitution, promoting prostitution or of a Class A, B, or C felony under Maine law, or equivalent offenses in other

jurisdictions, during the ten-year period ending prior to the application date.

**(c) Location and standards.**

(1) No certificate of occupancy shall be granted for a commercial establishment offering nude entertainment, unless the premises concerned are located on the west side of US. Route 201 from the North line of property located on the Assessors Tax Map 4 Lot 8 to the South line of property located on the Assessors Tax Map 1 Lot 22 in the commercial zoning district and the premises concerned meet all district provisions and development standards contained in Chapter 14, Zoning, plus the following additional requirements:

(a) No certificate of occupancy shall be granted for a commercial establishment offering nude entertainment if the premises concerned are located within 500 feet of any other such establishment for which a certificate of occupancy, previously issued, remains in force; any establishment licensed to sell alcohol for on-premises or off-premises consumption under M.R.S.A. 28-A § 601 et seq.; a church, chapel, parish house or other place of worship; or a public library, juvenile shelter or orphanage in existence as of the application date, as measured from the main entrance of the premises to the main entrance of a building by the ordinary course of travel.

(b) The premises concerned must not be located within 500 feet of the nearest district boundary of any residential zoning district established under the provisions of Chapter 14, Zoning, of the Town of Winslow, as measured in a straight line from the premises to the boundary of the zoning district.

(c) The premises concerned must not be located within 500 feet of the nearest property line of any public or private school, school dormitory, or school ground, public playground or Town of Winslow public parks, as measured in a straight line from the premises to the property line.

(2) No certificate of occupancy shall be issued for a commercial establishment offering nude entertainment unless the premises concerned include changing rooms and toilet facilities for performers that are separated from any area of the premises to which the public will have access.

(3) No certificate of occupancy shall be issued for a commercial establishment offering nude entertainment if any portion of the premises concerned consists of residential apartments or units, whether or not occupied.

(4) The premises concerned, in addition, shall meet all applicable requirements of Chapter 14, International Building Code, and Life Safety Code, as amended.

(5) The subsequent establishment of an establishment licensed to sell alcohol, a public or private school or school dormitory, a church, chapel, parish house or other place of worship, a public library, a juvenile shelter or orphanage, a playground or public park or the rezoning of any property to residential shall not affect the validity of a certificate of occupancy of a legally existing commercial establishment offering nude entertainment. In the event of the subsequent establishment of any of the foregoing uses, the commercial establishment offering nude entertainment shall be treated as any other use permitted in the zoning district.

**(d) Conduct.**

(1) No person under the age of 18 years shall be employed in any capacity upon the premises of a commercial establishment that offers nude entertainment. The operator of each such establishment shall be responsible for verifying the age of each employee through photographic identification, including hourly employees, salaried employees and all persons working on the premises for tips, commissions or as independent contractors, contract dancers or contract performers.

(a) Each employer shall maintain records showing the name and date of birth for each employee, including a copy of the photographic identification used to verify age. Prior to any employee's beginning employment, the operator shall bring the records to the Winslow Police Department to verify the age of the prospective employee. These records must be maintained by the employer until six months after the employee ceases to work for the employer. These records are also subject to review by the Winslow police on the business premises during normal operating hours.

(b) In the event that the Winslow police reasonably suspect that any employee listed in the records is under the age of 18 years, the Winslow police may copy the record for investigatory purposes. Any record or information so obtained, and any subsequent information developed there from, is declared to be "intelligence and investigative information" under 16 M.R.S.A. § 611, Subsection 8, the Criminal History Record Information Statute, which, if publicly disclosed, would endanger the life or safety of the individuals named therein. Record information may be disclosed to the person named therein, notwithstanding this declaration.

(2) No person under the age of 18 years shall be admitted to any commercial establishment offering nude entertainment, as a customer or patron. The operator of each such establishment shall be responsible for

verifying the age of each person entering the premises, through photographic identification.

(3) No alcoholic beverages shall be sold, served or given away on the premises of any commercial establishment offering nude entertainment, whether for on-premises or off-premises consumption. Operators of any such establishment shall not allow customers or patrons to bring or consume alcoholic beverages on the premises.

(4) There shall be no physical contact on the premises between patrons and dancers or performers. For the purposes of this subsection, physical contact does not include incidental touching between a dancer and patron of a business or social nature, i.e., a handshake or the brief contact that occurs while a patron is giving a tip to a dancer. In no case shall incidental contact be deemed to include contact barred by the state statutes regarding unlawful sexual contact.

(5) Dancers or performers who remove any garments during the nude entertainment shall not toss or throw those garments to any customer or patron.

(6) Dancers or performers providing the nude entertainment shall not engage in any sadomasochistic abuse or sexual conduct, as defined in Article 9, § 14-85 of this chapter.

(7) Nude entertainment presented in a commercial establishment shall not include any showing of the male or female genitals, pubic area, perineum or anus of any person with less than a fully opaque covering.

(8) No nude entertainment shall be presented after the hour of 1:00 a.m. All premises offering nude entertainment shall be closed and cleared of customers and patrons between the hours of 1:15 a.m. and 6:00 a.m. Mondays through Saturdays and 9:00 a.m. Sundays.

**(e) Violations and penalties.**

(1) Any violation of this article by the owner, lessee, licensee, permittee or operator of a premises shall constitute a land use violation and shall be subject to prosecution and penalties as provided in 30-A M.R.S.A. § 4452 and Chapter 14 Section 14-13, provided that the minimum fine for any violation by such persons shall be \$500 for each offense, none of which may be suspended. In addition, the Code Enforcement officer may suspend or revoke the certificate of occupancy for any establishment offering nude entertainment in violation of this article, or in violation of conditions contained in the certificate of occupancy. Suspension or revocation of a certificate of occupancy shall be subject to administrative appeal as provided in Chapter 14, Section 14-14 Right of Appeal.

(2) Any violation of this article by a person other than the owner, lessee, licensee, permittee or operator of a premises shall be punished by a fine of not less than \$500 for the first offense, and not less than \$1,000 for the second and subsequent offenses, none of which may be suspended.

(3) Any violator shall be responsible for the Town's reasonable attorney's fees in prosecution of a violation.

(4) Each day a violation continues shall be a separate offense.

**(f) Existing establishments.**

(1) Within 30 days after the effective date of this article, all existing establishments wishing to offer nude entertainment at their existing location shall apply for a new certificate of occupancy as provided in § 14-83 (b) .

**(g) Theatrical productions.**

(1) The application and location restrictions of § 14-83 (c) above shall not apply to theaters, dinner theaters, licensed movie theaters or similar establishments which are primarily devoted to theatrical performances or the presentation of movies, provided that any displays of live nudity within such theaters, dinner theaters, licensed movie theaters or similar establishments shall be limited to occasional nudity by bona fide stage actors during the course of theatrical performances; provided also that the provisions of §§ 14-83 (d), (4)through (8) shall apply.