

CHAPTER 37

SPECIAL AMUSEMENT PERMIT ORDINANCE

The City of Ellsworth hereby ordains that an ordinance entitled "Special Amusement Permit Ordinance of the City of Ellsworth" be hereby adopted as follows:

ARTICLE I TITLE, PURPOSE AND DEFINITIONS

Section 101. Title

This ordinance shall be known and may be cited as the Special Amusement Permit Ordinance of the City of Ellsworth.

Section 102. Purpose

The purpose of this Ordinance is to control, as required by Title 28A, Section 1054, MRSA, as amended, the issuance of Special Permits for music, dancing or entertainment in facilities licensed by the State of Maine, to sell liquor in the City of Ellsworth.

Section 103. Definitions

103.1 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 by professional entertainers or by full-time or part-time employees if the licensed premises whose incidental duties include activities with an entertainment value.

103.2 Licensee. For the purposes of this Ordinance, the term "licensee" shall include the holder of a license issued pursuant to the provisions of Title 28, MRSA, Liquors, as amended, or any person, individual, partnership, firm, association, corporation or other legal entity acting as agent or employee of any holder of said license.

ARTICLE II GENERAL

Section 201. Permit Required

No licensee for the sale of liquor or malt liquor to be consumed on the licensed premises, situated in the City of Ellsworth, shall permit on said 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 City Council of Ellsworth, a special amusement permit signed by at least a majority of the members of said City Council.

Applications for all special amusement permits shall be made in writing to the said City Council 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; 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 City Council in the issuing of the permit, including but not limited to a copy of the applicant's current liquor license.

No permit shall be issued for any thing, or act, or premises, if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, bylaws, or rules and regulations of the City of Ellsworth.

The fee for a special amusement permit shall be Ten Dollars (\$10.00).

The City Council shall, prior to granting a permit and after reasonable notice to the municipality and the applicant, hold a public hearing within 15 days of the date the request was received, at which the testimony of the applicant and that of any interested members of the public shall be taken.

The City Council shall grant a permit unless it finds that issuance of the permit will be detrimental to the public health, safety or welfare, or would violate municipal ordinances, or rules and regulations, articles or bylaws.

A permit shall be valid only for the license year of the applicant's existing liquor license, *and a permit shall not be issued until evidence of a valid Maine State Liquor License has been issued to the applicant is presented.

201.1 Classes of permits. Special amusement permits granted by the City Council shall be limited to the following classes:

Class A – Single Instrumentalist without mechanical amplification.

Class B – Single Instrumentalist and Vocalist without mechanical amplification.

Class C – One or more vocalists and/or instrumentalists without mechanical amplification.

Class D – Any one of the above with mechanical amplification.

Class E – Dancing with any of the above or accompanied by music produced by radio or other mechanical device.

and any permit granted shall be for one of the above noted classes. A licensee shall not permit on the licensed premises, any music, dancing or entertainment which exceeds that permitted by the class of his permit, during the period for which his permit is valid as otherwise determined by this ordinance.

During the period for which his license is valid, the licensee may reapply for a new special amusement permit, if he elects to permit dancing, music or entertainment which exceeds that permitted by the current permit. Such reapplication shall be governed by all

the provisions of this Ordinance with respect to applications for a special amusement permit in general including the payment of the permit fee of \$10.00. A violation of this section by a licensee shall be grounds to revoke or suspend his permit and/or to refuse to grant a permit upon subsequent application by the same licensee.

201.2 Applications. The application for a special amusement permit shall set forth the type of music and entertainment intended by the applicant to be permitted on the licensed premises and whether dancing is permitted.

Section 202. 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 secure compliance with any ordinance provision, including this ordinance, 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 municipality 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 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 any authorized officer, official or employee of the municipality requesting the same, sufficient samples of the material or commodity for analysis.

In addition to any other penalty which may be provided, the City Council may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official or employee to make an inspection to take sufficient samples for analysis, or who interferes with such officer, official or employee while in the performance of his 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.

Section 203. Suspension or Revocation of a Permit. The City Council may, after a public hearing preceded by notice to interested parties, suspend, or revoke any special amusement permits which have been issued under this ordinance on the grounds that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety or welfare, or violates any municipal ordinances, articles, bylaws, or rules or regulations.

Upon complaint or complaints of any person or persons that there are grounds to revoke said permit, and said complaint or complaints having been found by the City Council to be valid, after hearing as hereinbefore provided, the City Council may warn the licensee that unless the cause or causes of said complaints are removed forthwith, that said permit will be revoked or suspended after a subsequent hearing covering same.

Section 204. Permit and Appeal Procedure

204.1 Any licensee requesting a special amusement permit from the City Council shall be notified in writing of its decision no later than fifteen (15) days from the date his 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 within 30 days after an application for a permit which has been denied, except with the consent of the City Council.

204.2 Any licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the Ellsworth Board of Appeals as defined in Title 30, Section 2411, MRSA, as amended. 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 and welfare, or that the denial, revocation or suspension was not based by a preponderance of the evidence, on a violation of any ordinance, article, bylaw, or rule or regulation of the municipality.

Section 205. Admission. A licensed hotel, Class A restaurant, Class A 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 206. Conduct Constituting Offenses by Licensees.

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

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

206.3 Unnecessary Noise. The licensee shall not allow on any licensed premises the making, creation or maintenance of excessive, unnecessary, unnatural or unusually loud noises which disturb, annoy, injure, prejudice or endanger the comfort, repose, health, peace or safety of individuals or ordinary sensibilities or the public in general, or the property rights of others.

206.4 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, or any

Chapter 37 - Special Amusement Permit Ordinance

sections of any ordinances, articles, by-laws or rules and regulations of the City of Ellsworth or under any statutes of the State of Maine.

- 206.5 Prostitution and Public Indecency. The licensee shall not allow on any licensed premises or aid in, offer, agree to or allow in or near such licensed premises any prostitution, prostitutes, or any public indecency in derogation of any statutes of the State of Maine; or any meretricious display, or lewd act, or act of moral perversion, or knowingly receive or offer or agree to receive any person on such licensed premises for the purpose of performing a lewd act or 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 to aid, abet, allow, permit or participate in the commission of any such acts.
- 206.6 Gambling. The licensee shall not allow any licensed premises to be used or occupied for gambling or games of chance as prohibited by the statutes of the State of Maine or ordinances, articles, by-laws or rules and regulations of the City of Ellsworth.
- 206.7 Obscenity. The licensee, on any licensed premises, shall not:
1. Knowingly disseminate, distribute or make available to the public any obscene material; or
 2. Knowingly make available to the public any obscene performance; or
 3. Knowingly engage in commerce 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; or
 4. Provide service to patrons in such a manner as to expose to public view:
 - a. The licensee's or any of his agents' or employees' genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
 - b. Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - c. Any portion of the female breast at or below the areola thereof; or
 5. Knowingly promote the commission of any of the above listed acts of this Ordinance section.

For the purposes of this section, the following words and phrases shall have the following definitions:

Chapter 37 - Special Amusement Permit Ordinance

1. Obscene material or performance means any material or performance which:
 - a. To the average individual, applying contemporary community standards, the predominant appeal of the matter or act taken as a whole, is to prurient interest;
 - b. Depicts or describes, in a patently offensive manner, ultimate sexual acts, excretory functions, masturbation or lewd exhibition of the genitals;
 - c. Considered as a whole, lacks serious literary, artistic, political or scientific value;
2. 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, chemical or electrical reproduction or any other articles, equipment or machines.
3. Disseminate – means to transfer possession of, with or without consideration;
4. Knowingly – means being aware of the character and the content of the material;
5. Performance – means any preview, play, show, skit, film, dance or other exhibition or entertainment performed before an audience;
6. Available to the public – means that the matter, performance or act may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item, performance or act available merely by being a patron of or present in an establishment that is licensed to sell liquor;
7. Service to patrons – means the providing of services to customers, patrons or any other persons present on the licensed premises and shall include hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waitering and entertaining.

ARTICLE III

PENALTY, SEPARABILITY & EFFECTIVE DATE

Section 301. Penalty. Whoever violates any of the provisions of this ordinance shall be deemed guilty of a criminal offense and upon conviction thereof, shall be penalized by a fine not exceeding \$1,000.00 or by imprisonment for not more than 30 days or by both said fine and imprisonment.

Chapter 37 - Special Amusement Permit Ordinance

Any violation of this ordinance or any provision thereof shall be deemed a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

Section 302. Separability. The invalidity of any provision of this ordinance shall not invalidate any other part.

Section 303. Effective Date. The effective date of this ordinance shall be June 18, 1978.