

Proposed Article for Town of Stoneham
2020 Annual Town Meeting

Article ____. Shall an ordinance entitled “Town of Stoneham Adult Entertainment Ordinance” be adopted?

Adoption Procedures

Pursuant to 30-A M.R.S. §3002, the municipal officers shall certify one copy of the proposed ordinance to the municipal clerk at least 7 days before the annual town meeting. The clerk shall keep that copy as a public record and shall make copies available for distribution to the voters from the time of certification. Copies shall also be made available at the Town Meeting.

The text of the proposed “Town of Stoneham Adult Entertainment Ordinance” is attached hereto.

**TOWN OF STONEHAM
ADULT ENTERTAINMENT ORDINANCE**

Article I. Findings

Adult entertainment establishments, because of their nature, have negative effects on surrounding areas. The presence of such establishments is associated with reductions in property values and increased crime. Such establishments, due to their nature, have serious objectionable operational characteristics, particularly when they are located near each other. An ordinance is a reasonable means of controlling the secondary effects of adult entertainment establishments in order to protect and preserve the health, safety, and welfare of their patrons and the citizens of the communities where they locate.

Article II. General

1. Authority; Name. This Ordinance is adopted pursuant to the enabling provisions of Article VIII, part 2, section 1 of the Maine Constitution; the provisions of municipal home rule authority (30-A M.R.S. § 3001 *et seq.*); and 30-A M.R.S. § 4352. This Ordinance shall be known as the “Town of Stoneham Adult Entertainment Ordinance,” and is referred to herein as “this Ordinance.”
2. Purpose. The purpose of this Ordinance is to regulate the adverse secondary effects of adult entertainment establishments (including, without limitation, reduction in residential and commercial values, perceived or actual increased crime, adverse impacts of noise and traffic, and risk for minors from exposure) in order to promote the health, safety, and welfare of the Town’s citizens by establishing reasonable and uniform time, place, and manner regulations on adult entertainment establishments. It is neither the purpose nor the effect of this Ordinance to limit or restrict the content of any communicative materials, restrict or deny access by adults to sexually oriented materials protected by the First Amendment, deny access by distributors and exhibitors of sexually oriented entertainment to their intended market, or condone or legitimize the distribution of obscene materials.
3. Administration. This Ordinance shall be administered by the Board of Selectmen (the “Board”).
4. Definitions. The definitions of certain terms used in this Ordinance are set forth in Exhibit A attached hereto and incorporated herein.

Article IV. License Required

A person or persons wishing to operate an Adult Entertainment Establishment shall obtain an annual license (1) prior to opening the Adult Entertainment Establishment and (2) prior to expiration of the current annual license, in accordance with the following requirements:

1. Application. The applicant shall: (i) complete and file an application or renewal application prescribed by the Town; (ii) deposit a non-refundable license processing fee with the Town Clerk at the time of filing an application in the amount set forth in the Fee Schedule adopted by the Board; (iii) file a sworn affidavit stating the names of all owners, officers, managers, or partners of the Adult Entertainment Establishment and their places of residence at the time of the application and for the immediately preceding three years; (iv) file any release required or allowed by 16 M.R.S. Ch. 7, §§ 701 *et seq.* (Criminal History Record Information Act) for the applicant and each owner, officer, manager, or partner of the applicant in order for the Board to conduct a criminal history record check; (v) submit evidence of right, title or interest in the premises in which the Adult Entertainment Establishment is proposed to operate, along with a sworn affidavit of the owner of the premises for such use if the applicant is not the owner; and (vi) state with specificity the nature of the proposed enterprise, including a description of the nature of all goods, services, materials, devices, or paraphernalia to be offered to customers or patrons.
2. Notice. At the time of filing the application with the Town, the applicant shall notify (by certified mail, return receipt requested) all property owners within 1,500 feet of the boundaries of the property where the Adult Entertainment Establishment is proposed. The notice shall indicate the time, date, and place

of the Board's first consideration of the application. Should the meeting for the first consideration of the application not be held for any reason, re-notification shall be provided by the applicant as required herein identifying the new date of the meeting.

3. Inspection. The Code Enforcement Officer and Fire Chief shall, within 15 business days of receipt of a completed application, inspect the proposed location of the Adult Entertainment Establishment and any construction documents, as applicable, for compliance with this Ordinance and with all applicable laws relating to health and safety, and shall report findings in writing to the Board.
4. Public Hearing. After receipt of the inspection reports from the Code Enforcement Officer and Fire Chief, the Board shall set the date for a public hearing and shall cause the applicant to publish notice, in a form acceptable to the Board, of the date, time, and place of the hearing in a newspaper of general circulation in the municipality at least twice; the date of the first publication to be at least 7 days prior to the hearing. Notice of the public hearing shall also be given, by certified mail, return receipt requested, by the applicant to all property owners within 1,500 feet of the edge of the property where the Adult Entertainment Establishment is proposed at least 7 days prior to the date of the public hearing.
5. License Review and Issuance. The Board, after notice and hearing, shall determine based upon the record (including the application and evidence and testimony accepted at the public hearing) whether the application complies with all provisions of this Ordinance. In all instances, the burden of proof shall be on the applicant, who must produce evidence sufficient to justify a finding that all applicable standards of this Ordinance have been met. The Board shall issue a license approving, approving with conditions, or denying the application, and shall specify in writing its findings of fact and reasons for any denial. The Board may deny an application for any one or more of the following reasons or circumstances:
 - A. The application fails to meet the requirements of this Ordinance, including any of the standards in Article IV;
 - B. The applicant has submitted an incomplete application, has provided false or misleading information, or failed to supply additional information sought by the Board that is reasonably necessary to determine whether the license can be issued;
 - C. The applicant or any person having an ownership or management interest has been denied an Adult Entertainment Establishment license or has had such license revoked for having provided false or misleading information within the immediately preceding 5 years;
 - D. The applicant or any person having an ownership or management interest has been convicted of any of the following offenses: prostitution or promotion of prostitution, dissemination of obscene materials; sale, distribution, or display of harmful material to a minor; sexual performance by a child; or any similar sex-related offense to those described herein under the Maine Criminal Code or statutes of other states, the United States, or any other nation or province;
 - E. The applicant is an individual who is under 18 years of age;
 - F. The applicant is not authorized to do business in the State of Maine; or
 - G. The applicant's technical or financial capacity is insufficient to ensure that the Adult Entertainment Establishment operation will be conducted in the manner stated in the application or in compliance with all applicable standards.
6. License Suspension; Revocation. An Adult Entertainment Establishment license may be suspended or revoked by the Board, after notice and hearing, upon a finding that the licensee has violated any provision of this Ordinance.
7. No Transferability. Licenses issued under this Ordinance are not transferable or assignable.

Article IV. Standards

An Adult Entertainment Establishment must strictly comply with the following standards:

1. Age Restricted. No Adult Entertainment Establishment may permit any person under the age of 18 years onto the premises in which the Adult Entertainment Establishment is located.
2. Location Restricted. An Adult Entertainment Establishment may not operate within 1,500 feet of any of the following structures or uses:
 - A. A church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities.
 - B. A public or private educational facility, including but not limited to a child care facility, nursery school, preschool, kindergarten, elementary school, private school, intermediate school, junior high school, middle school, high school, vocational school, career and technical education center, career and technical region, secondary school, continuation school, special education school, day center, junior college, or university. "Educational facility" includes the school grounds.
 - C. Any public or private facility that caters to minors, including but not limited to an ice cream store, toy store, summer camp, or nonprofit facility primarily serving youth such as the YMCA or the Boys and Girls Club.
 - D. A park or other facility or area designated for recreational activities, including but not limited to a park, playground, campground, campsite, nature trail, conservation easement, swimming pool, pond, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian or bicycle path, national forest, or wilderness area.
 - E. A single family or multi-family dwelling, bed & breakfast, inn, motel, or hotel.
 - F. Another Adult Entertainment Establishment.

Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the nearest property line of the premises where the Adult Entertainment Establishment operates to the nearest property line of the structures or uses identified in subsections A through E, above. For purposes of subsection F, above, the distance between any two Adult Entertainment Establishments shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each Adult Entertainment Establishment is located.

A lawfully operating Adult Entertainment Establishment is not rendered nonconforming by the subsequent location of any structure or use identified in subsections A through E, above, within 1,500 feet of said lawfully operating establishment, provided the rights of said establishment have vested prior to the location of one of said structures or uses. Vesting shall have occurred if the owner of the Adult Entertainment Establishment: (i) exercised due diligence in attempting to comply with the law, (ii) demonstrated good faith throughout the review proceedings before the Board, (iii) expended substantial unrecoverable funds in reliance on the Board's approval, (iv) the period during which an appeal could have been taken from the Board's approval of the application has expired, and (v) there is insufficient evidence to prove that individual property rights or the public health, safety, or welfare would be adversely affected by the project as approved.

3. No Co-Location. An Adult Entertainment Establishment may not operate in the same building or structure, or portion thereof, containing another Adult Entertainment Establishment.
4. Signage. An Adult Entertainment Establishment shall install an 8.5 x 11 inch sign at each entrance to the establishment stating "No Admission Under 18" or similar wording accepted by the Board. The Adult Entertainment Establishment shall have only one unlit or exterior-lit business identification sign

on the premises whose exterior dimensions do not exceed 24 square feet and whose top may not be more than 12 feet above grade.

5. Traffic and Parking. An Adult Entertainment Establishment shall make safe and adequate provision for on-premises parking, for traffic circulation within the premises, and for pedestrian, vehicular, and emergency vehicular access to and from the premises, and shall cause no unreasonable increase to traffic volume on nearby public roadways. An Adult Entertainment Establishment shall submit a traffic impact study and shall prepare and comply with a traffic plan that is approved by the Code Enforcement Officer, Fire Chief, and Oxford County Sheriff's Department. The plan shall identify with specificity all measures by which the licensee will control traffic impacts.
6. Noise. An Adult Entertainment Establishment shall cause no unreasonable disruption to the normal pattern of activities in the surrounding areas. Noise shall cease from 9:00 pm to 9:00 am on Sundays through Thursdays. Noise shall cease from 10:00 pm to 9 am on Friday and Saturday nights, unless otherwise conditioned by the Board. The noise level at the perimeter of the establishment may not exceed 70 decibels on the A scale of a sound level meter meeting specifications of the American National Standards Institute.
7. No Overnight Assembly. Overnight assembly or stay at the premises of an Adult Entertainment Establishment by any patron, customer, or employee (except security personnel) of said establishment is prohibited.
8. Safety and Security. An Adult Entertainment Establishment shall make safe and adequate provision for safety and security. An Adult Entertainment Establishment shall prepare and comply with a security plan that is approved by the Code Enforcement Officer, Fire Chief, and Oxford County Sheriff's Department. The plan shall identify with specificity all measures by which the licensee will control crowds, secure the premises, prohibit the uses and activities identified in Article VI, prevent access to the premises by persons under the age of 18, provide fire protection, provide emergency medical services, and otherwise protect the health, safety and welfare of patrons and customers of the Adult Entertainment Establishment.
9. Natural Resources. An Adult Entertainment Establishment shall cause no undue adverse impact to existing natural features on and nearby the premises, including watercourses, wetlands, wooded areas, and other natural resources.
10. Insurance. Prior to occupying the premises, a licensee shall provide the Town with a certificate of insurance issued by a Maine-licensed company demonstrating liability insurance of at least \$1,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage.
11. Prominent Display of License. The licensee must display the Adult Entertainment Establishment license at all time in an open and conspicuous place on the premises of the Adult Entertainment Establishment, along with a complete list of the names of the owners, officers, and managers of the Adult Entertainment Establishment; and a complete list of fees and prices charged for all goods and services offered therein, unless the price is conspicuously displayed on the individual product.

Article V. Prohibited Activities

Notwithstanding anything to the contrary in this Ordinance, the following uses and activities are prohibited:

1. Public Indecent Conduct. All acts of public indecency, as defined in 17-A M.R.S. § 854, as may be amended from time to time, on the premises of an Adult Entertainment Establishment are prohibited.
2. Adult Spas. Unlicensed massage parlors, also known as adult spas, are prohibited.
3. Nude Entertainment. No person may appear in a State of Nudity while acting as a salesperson, wait staff person, entertainer, dancer, performer, or in any other capacity as an owner, manager, agent, contractor, or employee in an Adult Entertainment Establishment which is licensed to serve liquor to

its patrons. No person may cause, permit, procure, counsel, or assist any person to violate this prohibition.

4. Public Displays of Specified Sexual Activities or Specified Anatomical Areas. No Adult Entertainment Establishment may display, facilitate the display, or cause or permit the display of Specified Sexual Activities or Specified Anatomical Areas in such manner that such Specified Sexual Activities or Specified Anatomical Areas are visible from any public or private right-of-way, roadway, highway, or sidewalk.
5. Obscenity. Furnishing, offering to furnish, or advertising to furnish for any form of consideration any obscene materials or obscene performances, whether or not associated with an Adult Entertainment Establishment, is prohibited.

Article VI. Violations and Penalties

1. A violation of this Ordinance is a civil violation. Violation of this Ordinance shall result in a penalty of \$1,000 per violation, beginning on the date a notice of violation is mailed to the applicant at the address contained in Town records. Each day that a violation exists shall constitute a separate violation. If the violation is not remedied within ten days of the notice of violation being mailed to the applicant, the Code Enforcement Officer may send a second notice. Continued violation of this Ordinance after mailing of the second notice shall result in a penalty of \$5,000 per violation per day.
2. Any non-licensee owner of the premises on or in which the Adult Entertainment Establishment is located is jointly and severally liable with the licensee of any violations of this Ordinance. The Ordinance shall be enforced by the Code Enforcement Officer in conjunction with the Board.
3. If court action is required to enforce this Ordinance, the Town shall be awarded its enforcement costs, including its reasonable attorneys' fees.
4. Remedying a violation does not prohibit the Board from suspending or revoking a license as provided herein.
5. In addition to any other penalty provided by this Ordinance or by law, a violation of the provisions of this Ordinance shall constitute a nuisance and may be abated by the Town by seeking an injunction to prohibit further or continued violation of this Ordinance.

Article VII. Appeals

An aggrieved party may appeal any final licensing, denial, suspension, or revocation decision of the Board under this Ordinance to Oxford County Superior Court in accordance with 30-A M.R.S. § 4482-A and the provisions of Rule 80B of the Maine Rules of Civil Procedure.

Article VIII. Miscellaneous

1. Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid by a 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.
2. Conflicts. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, rule, or statute, the more restrictive provision shall apply.
3. Retroactivity. This Ordinance shall be effective as of the date of its approval by the voters of the Town of Stoneham at a town meeting or referendum (the "Effective Date"). Notwithstanding the provisions of 1 M.R.S. § 302, and regardless of the date on which it is approved by the voters of the Town, this

Ordinance shall be applicable retroactively as of December 12, 2019 (the “Date of Applicability” and shall govern any and all pending proceedings on or at any time after the Date of Applicability.

EXHIBIT A

The following words, terms, and phrases shall have the following meanings when used in this Ordinance.

Adult Entertainment Establishment – An establishment, any portion of which consists of selling, renting, leasing, exhibiting, displaying, or otherwise furnishing or dealing in services, materials, devices, or paraphernalia of any kind which, when taken as a whole, appeal to prurient interests and lacks serious literary, artistic, political, or scientific value. “Adult Entertainment Establishment” includes, but is not limited to: adult arcades, adult amusement stores, adult bookstores, adult cabarets, adult motels, adult motion picture theaters, adult novelty stores, adult spas, adult theaters, adult video stores, adult viewing booths or viewing facilities, escort agencies, establishments featuring strippers or erotic dancers, on-site video screening establishments, sexual encounter centers, unlicensed massage parlors, or other commercial establishments whose goods, services, materials, devices, or paraphernalia depict or describe Specified Sexual Activities or Specified Anatomical Areas.

Nudity or State of Nudity – The appearance of a human anus, pubic area, male genitals, or female genitals with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Person – An individual, firm, partnership, proprietorship, corporation, association, or other legal entity, whether acting individually or jointly.

Sexual Encounter Center – A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons where one or more persons is in a state of nudity. A principal business purpose exists if the services offered are intended to generate business income.

Specified Anatomical Area – (i) The human male genitals in a discernibly turgid state, even if fully and opaquely covered, or (ii) less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or a female breast at or below a point immediately above the top of the areola.

Specified Sexual Activity – (i) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered; (ii) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (iii) masturbation, actual or simulated; or (iv) excretory functions as part of or in connection with any of the activities set forth in (i), (ii), or (iii).