

**TOWN OF NAPLES
ENTERTAINMENT ORDINANCE**

Adopted at Town Meeting June 27, 1998

Amended: June 11, 2002

Amended: June 8, 2011

Amended: February 20, 2020

Attested by Town Clerk

**ARTICLE I
TITLE, AUTHORITY & PURPOSE**

Section 1.1 TITLE

This ordinance shall be known and may be cited as Town of Naples, Entertainment Ordinance.

Section 1.2 AUTHORITY

This ordinance is enacted pursuant to the authority granted in Title 28-A, Section 1054 of the Maine Revised Statutes and the home rule power conferred by Article VIII, part second of the Maine Constitution and Title 30-A, Sections 2101, 2109 and 3001 of the Maine Revised Statutes.

Section 1.3 PURPOSE

The Town of Naples desires to promote tourism and provide recreational opportunities for residents and guests with outdoor celebrations, and a variety of types of entertainment while also providing for the health, safety and welfare of its residents and guests. The purpose of this ordinance is to control the issuance of special permits for music, dancing or entertainment inside or outside of facilities licensed by the State of Maine to sell liquor as required by 28-A MRSA Section 1054 and as amended from time to time and to mitigate any excessive noise or other nuisance that is created by the entertainment that impacts nearby commercial and residential uses.

**ARTICLE II
GENERAL**

Section 2.1 PERMIT REQUIRED

No licensee for the sale of liquor to be consumed on their licensed premises shall permit entertainment on their licensed premises, unless the licensee shall have first obtained from the Town of Naples an entertainment permit signed by at least a majority of the municipal officers

Applications for all entertainment permits shall be made in writing to the municipal officers on the form provided by the town and shall state the name of the applicant, address, the name and location of the business to be conducted, the business address, the nature of the business, a description of the type(s) of entertainment activities and the hours during which such activities may take place, and whether an application for a permit under the Town's Outdoor Gathering Ordinance is also requested. The application shall state whether the applicant has ever had a license to conduct the business herein described or a similar business, that was either revoked or denied. Additionally, the Code Enforcement Officer shall inform the Select Board if any letters of violation of this Ordinance or any violations of state or federal rules and/or regulations have been issued in the previous year to the same establishment under the same ownership or management. 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 municipal officers in the issuing of the permit, including but not limited to a copy of the applicant's current liquor license.

- A. No permit shall be issued under this ordinance, if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, bylaws, appropriate fire codes, rules and regulations, of the Town of Naples and state law. Prior to issuing a permit, the Select Board may request that the Code Enforcement Officer and/or public safety personnel inspect the building to determine compliance with all state and local codes.
- B. The fee for an entertainment permit shall be the fee set forth in a Fee Schedule established by Order of the Select Board as amended from time to time.
- C. A permit shall be valid only for the license year of the applicant's existing liquor license.
- D. The municipal officers shall, prior to granting a permit and after reasonable notice to the municipality and the applicant, hold a public hearing within fifteen (15) days, or such other number of days as the legislature may specify, from 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.
- E. The Town will send written notice of the public hearing to the owner of every property located within 250 feet of the property for which a permit is being applied. All measurements to determine the distance from the applicant's premises shall be taken from the applicant's property line to all property lines within 250 feet. Parcels that are only partially within 250 feet of the applicant's property shall be notified.

- F. 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, or would violate Town of Naples ordinances, articles, bylaws, rules and regulations or state law. The municipal officers may not grant a permit to any person, individual, partnership, firm, corporation or other legal entity that is required by Title 28-A of the Maine Revised Statutes to apply to the State for any liquor license or permit, but that does not hold a current valid liquor license.

Section 2.2 DEFINITIONS

Entertainment – any music, dancing, media such as movies and sporting events projected on an outdoor screen, or entertainment of any sort held inside or outside a facility licensed by the State of Maine to sell liquor as allowed by 28-A MRSA Section 1054 as amended from time to time. For the purposes of this Ordinance, activities such as bingo, turkey shoots, trivia and karaoke held inside a building or background music from a radio, internet streamed music, coin operated or other juke box type music devices or the use of a television are not considered entertainment.

Section 2.3 PERFORMANCE STANDARDS FOR ALL ENTERTAINMENT PERMITS

- A. Outdoor entertainment must cease no later than 11PM.
- B. Indoor entertainment must cease no later than 1AM.
- C. No entertainment is allowed between the hours of 1AM to 9AM.
- D. The decibel levels shall not exceed 70 decibels on average over any 15 minute period using the “A-weighted equivalent sound level” as defined by the Maine Department of Environmental Protection at any point that is 200’ from the outside walls of the building where entertainment is held, or at the nearest property line with a residential building, dwelling unit or residential institution, hotel, motel, Bed and Breakfast Inn or a campground, whichever is less.

Section 2.4 INSPECTIONS

Whenever inspections of the premises used for or in connection with the operation of the licensed business which has obtained an entertainment permit are provided for or required by municipal ordinance, articles, bylaws, rules and regulations, or state law, or are reasonably necessary to secure compliance with any of the above, it shall be the duty of the licensee, their employee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee, of the Town of Naples authorized to make the inspection at any reasonable time that admission is requested.

The inspection shall be preceded by a written demand for inspection, which shall specify the date and time inspection is sought. The written demand shall be delivered to the licensee, their employee, or the person in charge of the premises to be inspected by certified mail or in person at the time it is sought to make the inspection.

In addition to any other penalty which may be provided, the municipal officers may revoke, after public notice and hearing, the entertainment permit of any licensee in the municipality

who refuses to permit any such officer, official, or employee, while in the performance of their duty.

Section 2.5 ENFORCEMENT

- A. The provisions of this Ordinance shall be enforced by the Code Enforcement Officer or other staff as designated by the Select Board. If a permit holder is not in compliance with the performance standards of this Ordinance it shall be considered a violation. Evidence of an alleged violation of this Ordinance may be submitted to the Code Enforcement Officer in the form of a written notice to the Town of Naples by the County Sheriff's Department or in the form of a written complaint, signed and dated by the complainant and submitted to the Code Enforcement Officer outlining all relevant data pertaining to the alleged violation of this Ordinance.
- B. First Violation – If the Code Enforcement Officer finds credible evidence that a violation of this Ordinance has occurred, the Code Enforcement Officer shall issue a written warning to the permit holder by certified and regular mail, which warning shall be postmarked within 3 business days of the Code Enforcement Officer's determination that a violation has occurred. A copy of the same written warning shall be hand delivered to the establishment during their regular business hours. The permit holder shall have 7 days from the date of receipt of the written warning to respond by demonstrating the permit holder is in compliance with the Ordinance or to demonstrate how the permit holder will come into compliance with the Ordinance. The permit holder must submit in writing what measures have been or will be taken to come into compliance with the Ordinance.
- C. Second Violation – If the Code Enforcement Officer finds credible evidence that a second violation of this Ordinance by the same permit holder has occurred, the Code Enforcement Officer shall issue a notice of violation to the permit holder by certified and regular mail, which notice of violation shall be postmarked within 3 business days of the Code Enforcement Officer's determination that a second violation has occurred. A copy of the notice of violation shall be hand delivered to the establishment during their regular business hours. The notice of violation for a second violation shall explain the nature of the violation and shall indicate that the matter is being referred to the Select Board for consideration of a suspension or revocation of a permit as described in Section 2.6 below. If the permit holder disagrees with the notice of violation issued by the Code Enforcement Officer, the permit holder must submit a written response to the notice of violation describing how the permit holder is in compliance with the Ordinance. A copy of the permit holder's written response shall be provided to the Select Board at least 5 days before the Select Board meeting date. scheduled to address the alleged violation.

Section 2.6 SUSPENSION OR REVOCATION OF PERMIT

If a second notice of violation is issued pursuant to Section 2.5.C, above, the municipal officers may, after notice to the holder of the permit; public notice and hearing, suspend, or revoke any entertainment permit which has been issued under this ordinance on the grounds that the violation constitutes a detriment to the public health, safety, or welfare or violates any municipal ordinances, articles, bylaws, appropriate fire code, rules and regulations or state laws.

Section 2.7 RULES AND REGULATIONS

The municipal officers are hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension, and revocation of entertainment permits, the classes or permits, the music, dancing, or entertainment permitted under each class and other limitations on these activities required to protect the public health, 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.

Section 2.8 PERMIT AND APPEAL PROCEDURES

- A. Any licensee requesting an entertainment permit from the municipal officers shall be notified in writing of the municipal officers' decision no later than fifteen (15) days, or such other number of days as the legislature may specify, from the date the permit 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 thirty (30) days, or such other number of days as the legislature may specify, after an application for a permit has been denied.

- B. Any licensee who has requested a permit and has been denied or whose permit has been revoked or suspended may, within thirty (30) days of the denial, suspension, or revocation, appeal the decision to the Naples Board of Appeals as defined in and pursuant to 30-A M.R.S. § 2691, as amended from time to time. The Naples 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 violations of any municipal ordinance, article, bylaw, appropriate fire codes, rule or regulation or State law.

Section 2.9 ADMISSION

A licensee who has been issued an entertainment permit may charge admission.

Section 2.10 LIVE ENTERTAINMENT REGULATION

The purpose of this section is to regulate nudity as a form of live entertainment in those establishments at which alcoholic beverages are served or consumed, and which are licensed under this ordinance.

No licensee shall permit entertainment on the licensed premises whether provided by professional entertainer(s), employees of the licensed premises, or any other person, when the entertainment involves:

- A. The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

- B. The actual or simulated touching, caressing, or fondling of the breasts, buttocks, anus or genitals.
- C. The actual or simulated displaying of the genitals, pubic hair, buttocks, anus, or any portion of the female breasts at or below the areola area thereof.
- D. The permitting by any licensee of any person to remain in or upon the licensed premises who exposes to any public view any portion of his or her genitals or anus or female breasts below the areola area thereof.

For purposes of this section, “display” or “displaying” and “expose” or “exposing” shall mean being unclothed or uncostumed or not covered by a fully opaque cloth or textile material or to employ any device or covering which is intended to give the appearance of or to simulate the genitals, pubic hair, buttocks, anus or the portions of the female breasts at or below the areola area thereof.

**ARTICLE III
PENALTY, SEPARABILITY & EFFECTIVE DATE**

Section 3.1 PENALTY

Any person who violates any provision of this Ordinance shall be subject to a penalty of not less than five hundred dollars (\$500) for each offense. The penalty provided in this Section 3.1 shall be in addition to any other penalty provisions provided in other Town ordinances, and shall be in addition to all other remedies available to the Town of Naples at law and in equity, including but not limited to the remedies available under 30-A M.R.S. § 4452 *et seq.* Each day that a violation exists or continues shall constitute a separate offense. All fines and penalties shall be payable to the Town of Naples. Refusal to comply with a suspension or revocation of a permit issued by an authorized representative of the Town of Naples will be punishable by a fine of two thousand five hundred dollars (\$2,500).

Section 3.2 SEPARABILITY

The invalidity of any provision of this ordinance shall not invalidate any other provision. Nothing in this Ordinance shall relieve a licensee for the sale of liquor to be consumed on their licensed premises from complying with all requirements of other applicable ordinances, including specifically the permitting requirements of the Naples Outdoor Gathering Ordinance, where applicable.

Section 3.3 EFFECTIVE DATE

The effective date of this ordinance shall be when enacted by the Town of Naples. Enacted June 27, 1998.