

TOWN OF NAPLES

SPECIAL AMUSEMENT ORDINANCE

Adopted at Town Meeting June 27, 1998

Amended: June 11, 2002 Amended: June 8, 2011

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, Special Amusement 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 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 28A MRSA Section 1054. and to mitigate any excessive noise or other nuisance that is created by the entertainment for 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, on their 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 Town of Naples a special amusement permit signed by at least a majority of the municipal officers. This does not apply to background music from a radio, internet streamed music, coin operated or other juke box type music devices, or the use of a television.

Applications for all special amusement 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, the applicant's residence, address, the name and location of the business to be conducted, the business address, the nature of the business, whether the application is for a Basic or Expanded Special Amusement Permit and the location to be used. 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 Codes Enforcement Officer shall inform the Board of Selectpersons 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 ordinance, articles, bylaws, appropriate fire codes, rules and regulations, of the Town of Naples and State law. Prior to issuing a permit, the Codes Enforcement Officer and public safety personnel may inspect the building to determine compliance with all State and local Codes.

B. The fee for a special amusement permit shall be established by Order of the Select Board ~~\$75 dollars per year, prorated from date of issuance.~~

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. ~~Written notice of the public hearing shall be sent to every property owner within 250 feet of the applicant's property. 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.~~

- E. 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, by laws, 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

Basic Permit – a Basic Permit allows up to 9 evenings of entertainment between the Friday before Fathers’ Day to the Monday of Labor Day weekend. These events include three evenings of entertainment during Blues Festival weekend and the Fourth of July plus five other events between the Friday before Fathers’ Day to the Monday of Labor Day weekend.

Expanded Permit – an Expanded Permit is required if the requested number of Special Amusements exceeds the number of events allowed under a Basic Permit.

Section 2.3 PERFORMANCE STANDARDS FOR STANDARD SPECIAL AMUSEMENTS

- A. Special amusements are events described in this ordinance that occur between 5PM and 11PM on all days except Blues Festival weekend and the Fourth of July when a special amusement are events between the hours are 5PM to 1AM.
- B. No special amusement entertainment is allowed between the hours of 11PM and 9AM, except for Blues Festival and the Fourth of July when no entertainment is allowed between 1AM and 9AM.

Section 2.4 PERFORMANCE STANDARDS FOR EXPANDED PERMITS

- A. The decibel levels shall not exceed 70 decibels between 9AM and 9PM and 60 decibels between 9:01PM and 11PM at any point that is 200’ from the outside walls of the building where Special Amusements are held, or at the nearest property line with a residential building, dwelling unit or residential institution, whichever is less.
- B. The Establishment requesting an Expanded Special Amusement must install a sound level system that has the capability to do the following:
- a. to record the level of sound while the entertainment is occurring,
 - b. to average the sound levels over any half-hour period,
 - c. to produce written reports,
 - d. to display the level of sound in real time in a location that both staff and performers can see so that sound volumes can be reduced if the levels are too high.

C. The holder of the Expanded Permit shall submit sound level reports for all special amusement events to the Codes Enforcement Officer on a monthly basis. The Codes Enforcement Officer may request sound level reports more frequently if high noise level complaints are made. All requests for noise level reports shall be made in writing by the Codes Enforcement Officer and shall be delivered to the establishment. The establishment shall have 5 business days to submit the requested report. Failure to supply a report shall be considered a violation unless the owner or manager provides a credible reason in writing to the Codes Enforcement Officer explaining why the report cannot be filed in the time required.

Section 2.25 INSPECTIONS

Whenever inspections of the premises used for or in connection with the operation of the licensed business which has obtained a special amusement 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 proceeded 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 special amusement 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 2.36 SUSPENSION OR REVOCATION OF PERMIT

A. The provisions of this Ordinance shall be enforced by the Codes Enforcement Officer.

B. A warning or summons issued by the County Sheriffs Department or a report showing that the level of allowable sound has been exceeded constitutes a violation.

C. Warnings shall be issued for the first two violations. The warning shall be issued by either the County Sheriff's Department or the Codes Enforcement Officer. If a verbal warning is given at the time of a violation, a written warning shall be issued by either the County Sheriff's Department or the Codes Enforcement Officer within

5 business days of the verbal warning. In the case of a violation showing that the level of noise has been exceeded, the Codes Enforcement Officer shall issue a written warning of the violation within 5 business days.

D. If a third violation is issued, by either the County Sheriff's Department or the Codes Enforcement officer, tThe municipal officers may, after notice to the holder of the permit; public notice and hearing, suspend, or revoke any special amusement permit which has been issued under this ordinance on the grounds that the music, dancing, or entertainment, so permitted, or activities related thereto, constitute 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 2.47 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 special amusement 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 2.58 PERMIT AND APPEAL PROCEDURES

- A. Any licensee requesting a special amusement permit from the municipal officers shall be notified in writing of their decision no later than fifteen (15) days, or such other number of days as the legislature may specify, 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 thirty (30) days, or such other number of days as the legislature may specify, after an application for a permit, which 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 30A, MRSA 2691. 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 2.69 **ADMISSION**

A licensee who has been issued a special amusement permit may charge admission in designated areas approved by the Naples special amusement permit.

Section 2.710 **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**

Whoever violates any of the provisions of this ordinance shall be punished by a fine of not less than five hundred (\$500) dollars for each offense. The penalty provided in this Section 3.1 shall be in addition to any other penalty provisions provided within this ordinance, and shall be in addition to all other remedies to the Town of Naples at law and in equity. The provisions of this ordinance shall be enforced by the Code Enforcement Officer or other representative authorized by the Town of Naples. Each day that a violation exists or continues shall be considered a separate offense. All fines shall be payable to the Town of Naples. Refusal to comply with a stop order issued by an authorized representative of the Town of Naples will be punishable by an automatic fine of ~~twoten~~ thousand five hundred dollars (\$~~10,02,500~~).

Section 3.2 SEPARABILITY

The invalidity of any provision of this ordinance shall not invalidate any other provision.

Section 3.3 EFFECTIVE DATE

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