

AMUSEMENTS

Chapter 56

AMUSEMENTS

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[HISTORY: Adopted by the Town of Windham: Art I, 5-27-1978, amended in its entirety 0-27-1981, Art II, 1-31-1981 Sections 56-2 and 56-4D amended at time of adoption of Code; see Ch 1, General Provisions, Art I Chapter 56 was repealed in its entirety and replaced as follows: 2-16-1993. Section 56 5 amended to include subsection (C) (2) 5-11-2010.]

ARTICLE I

Special Permits

§ 56-1 Title.

This Ordinance shall be known and may be cited as the Amusement Ordinance of the Town of Windham, Maine.

§ 56-2 Purpose.

The purpose of this Ordinance is to control the issuance of special permits as required by 28-A, MRSA § 1054 as amended from time to time, for music, dancing or entertainment in facilities licensed by the State of Maine to sell liquor and in Bottle Clubs.

§ 56-3 Definitions.

- A. **DANCER:**
For the purposes of this Ordinance, "dancer" means a person, male and female, other than a patron, under the licensee's control and dancing on the licensee's premises to entertain patrons.
- B. **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 of the licensed premises whose incidental duties include activities with an entertainment value.
- C. **EXOTIC DANCING:**
For the purposes of this Ordinance, "Exotic Dancing" means the appearance of a person or persons, under the licensee's control, other than a patron, and on the licensee's premises, in such a manner or attire as to expose to view any portion of the pubic area, anus, buttocks, vulva, or genitals or any simulation thereof, or when any dance appears on a licensee's premises in such a manner or attire as to expose to view any portion of the breast referred to as the areola, nipple or simulation thereof. "Expose to view" shall be interpreted to prohibit, without limitation, clear, see-through or clothing which is otherwise non-opaque.
- D. **LICENSEE:**
For the purposes of this Ordinance, "licensee" shall include any person, individual, partnership, firm, association, corporation, or other legal entity to whom a license of any kind is issued by the Maine State Liquor Commission or to whom a Bottle Club license has been issued by the Windham Town Council.

E. PREMISES:

For the purposes of this Ordinance, "premises" means all parts of the contiguous real estate occupied by a licensee over which the licensee has direct or indirect control or interest, which the licensee uses in the operation of the licensed business and which have been approved by the Maine State Liquor Commission and/or the Town of Windham as proper places for the exercise of the: license privilege.

§ 56-4 Special Amusement Permit.

A. APPLICATION:

1. No license for the sale of liquor to be consumed on his/her premises, or a Bottle Club licensee, shall permit on the 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 municipality in which the premises are situated a special amusement permit.
2. Applications for all special amusement permits shall be made in writing to the town council and shall state the name of the applicant; his/her business address; the nature of the 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 specifically those circumstances; and any additional information as may be required by the town council prior to the issues of said permit, including but not limited to a copy of the applicant's current liquor license.
3. No permit shall be issued for anything or act, or premises, of the premise and building to be used do not fully comply with all ordinances, codes and regulations of the said Town.
4. The fee or fees for a special amusement permit shall be paid when application is made for said permit. If an application is withdrawn or denied, there shall be no refund except due to extraordinary circumstances on approval of Town Manager.
5. A licensee as defined by the Maine Revised Statutes or in the town's Food and Beverage Business Ordinance, Article I – Bottle Clubs, who has been issued a special amusement permit may charge admission in designated areas approved is said permit.
6. The application shall describe in detail the type of amusement or entertainment which the applicant intends to offer, the day or days such amusement or entertainment will be presented and the hours during which such proposed activities will take place. Any licenses granted will be limited as to the type of amusements, the day or days of operation set forth in the application, unless the municipal officers direct otherwise.

B. HEARING:

1. The Town Council shall, prior to granting a permit and after reasonable notice to the municipality and the applicant, yet within thirty (30) days of receipt of a completed application, hold a public hearing at which hearing the testimony of the applicant and that of any interested members of the public shall be taken.
2. The Town Council shall grant a permit unless they find that issuance of the permit would be detrimental to the public health, safety or welfare, or would violate municipal ordinances, codes and/or regulations. The permit may be granted subject to such conditions and restrictions as the Council may deem necessary.
3. A permit shall be valid only for the license year of the applicant's existing liquor license.

C. DECISION:

Within forty-five (45) days of the Town Clerk's receipt of the permit application, the Town Council shall give the applicant written notice of its decision.

1. If the Town Council denies a licensee a permit, it shall provide the licensee with the reasons for the denial in writing.
2. The licensee may not reapply for a permit within thirty (30) days after denial of an application for a permit.

D. INSPECTIONS:

1. Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a special amusement permit fare provided for or required by ordinance or State law, or are reasonably necessary to secure compliance with any municipal ordinance, code or regulation 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 said Town authorized to make the inspection at any reasonable time that admission is requested.
2. In addition to any other penalty which may be provided, the Town council may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official or employee which is the performance of his duty; provided, that no license or special amusement permit shall be revoked unless written demand for the inspection is made upon the licensee or person in charge of the premises, at the time it is sought to make the inspection.

E. SUSPENSION OR REVOCATION:

The Town Council may, after a public hearing preceded by notice to interested parties, suspend or revoke any special amusement permit which has been issued under this Ordinance on the ground that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety, or welfare or violates any municipal ordinances or regulations.

F. APPEALS:

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 Superior Court.

§ 56.5 Rules and Regulations.

A. EXOTIC DANCING:

1. No special amusement permit shall be issued to conduct the activity of exotic dancing on the applicant's premises.
2. It shall be unlawful and a violation of this Ordinance for a licensee holding a special amusement permit hereunder to permit exotic dancing on the premises.

B. REGULATIONS FOR DANCING:

The following regulations apply to any and all entertainment for which a special amusement permit is sought or issued where such entertainment includes a "dancer" or "dancers" as defined in this Ordinance.

1. No dancer shall dance in the premises except on a raised platform intended for that purpose which is raised as least two (2) feet from the floor.
2. No dancer shall dance closer than ten (10) feet to any patron.
3. There shall be no fondling, mingling or caressing on the premises between any patron and any dancer with the intent to sexually arouse or excite a patron's sexual desire.
4. No patron shall directly pay or give any gratuity to any dancer and no dancer shall solicit any pay or gratuity from any patron.
5. The licensee shall provide on the premises a separate dressing room and toilet facilities for use by dancers only.
6. Dancers on the premises who remove any outer garments shall not toss or throw those outer garments at or in the direction of patrons.

7. The licensee shall, at his/her own expense, post a licensed security guard or an individual authorized to act as a law enforcement officer (whether full-time or part-time and whether on-duty or off-duty) at each entrance and exit to the premises during each performance by dancers on the premises and for one hour after each such performance.
8. No one under twenty-one (21) years of age shall be permitted on the premises or portion of the premises where a performance by dancers is conducted during any such performance.
9. Any premises upon which entertainment including a dancer or dancers is proposed to be conducted shall be located at least five hundred (500) feet from any church; school; park; other facility holding a special amusement license under this Ordinance and which provided "dancers" as defined under this Ordinance; or any area for which residential uses are either a permitted use or a conditional use under the Zoning Ordinance of the Town of Windham (in each of the above instances, the distance shall be measured from property line to property line).
10. An applicant for a special amusement permit for entertainment including a dancer or dancers must demonstrate that at the time of permit application and during the duration of the permit, the applicant will have available during the hours that such entertainment is provided one (1) parking space for each three (3) persons on the premises is capable of accommodating plus two (2) parking spaces for each three (3) employees, including the dancer or dancers who are on the premises to provide such entertainment.
11. An applicant for a special amusement permit for entertainment including a dancer or dancers shall pay an application fee of Eight Hundred Dollars (\$800) to defray the administrative costs of such a permit.
12. There shall be no graphic evidence on the exterior of any facility licensed under this Ordinance of the dancers either live or simulated, requiring the licensee, if necessary, to black out windows or install curtains to prevent viewing of this dancers from the outside; provided, nothing in the paragraph shall prohibit the establishment from advertising by words the nature of the entertainment.

C. REGULATIONS GENERALLY APPLICABLE:

The following regulations apply to any and all music, dancing and entertainment for which a special amusement permit is sought or issued.

1. All music, dancing and/or entertainment subject to regulation under this Ordinance, on the premises, shall end no later than 12:00 midnight.
2. a. The maximum permissible sound pressure level produced by any music,

dancing and/or entertainment on the premises shall not exceed 50dB, measured four (4) feet above ground at the property boundary; this measurement shall be made by a meter set on the A-weighted response scale, slow response and the meter shall meet the "American Standard Specification for General Purpose Sound Level Meters."

- b. For all establishments located within five hundred (500) feet of any church, school, park, other facility holding a special amusement license under this Ordinance and which provides music, dancing and/or entertainment as defined in this ordinance, or any area for which residential uses are either a permitted use or a conditional use under the Land use Ordinance of the Town of Windham, the Town may require a sound level survey by a certified sound engineer to determine the maximum sound level to be permitted in the live entertainment performance venue to ensure compliance with the required 50 dBA limit at the property line. Such survey shall document the conditions under which the survey is taken, to include the position of loud speakers, doors, windows, or other features of the building or space within which entertainment is to be performed. The survey shall include measurements at the nearest point of compliance to determine the maximum permissible sound level allowed within the live entertainment performance venue.
- c. Based on the performance simulation and sound survey provided under subparagraph (b) the Town may require the installation, maintenance, and operation of an ANSI Type II data logging noise meter on the premises located within the live entertainment performance venue for the purpose of monitoring sound levels as experienced by the audience at all times while live entertainment is being conducted. Such meter shall be configured to take readings consistent with Section 56/5 (C)(2) of the Amusement Ordinance no less than once every sixty (60) seconds, shall record and maintain sound level data for a period of not less than seven (7) days, and shall check sound levels during each performance to ensure that the 50 dBA limit is not exceeded at the property line. Interior sound levels shall not exceed the level identified as part of the performance simulation and sound survey during any performance and shall be lowered if it is determined that the 50 dBA limit is being exceeded at the property line at the established interior sound level. The establishment shall permit access to the meter by the Town or its agents and shall display or permit the downloading of data from the meter to the Town. Failure to install, maintain, operate, provide access to, provide data from, and/or tamper with the meter and/or data in any way shall constitute a violation of the Amusement Ordinance.
- d. The Town Council shall have the authority to impose additional conditions upon any license issued under this Ordinance to ensure compliance with the noise limits established by this section. Failure to comply with any such condition may result in the suspension or revocation of the special amusement license.

3. The music, dancing and/or entertainment on the premises shall comply with all applicable law.
4. Except for where a special amusement permit is sought for entertainment including a dancer or dancers, the application for a special amusement permit shall be One Hundred Dollars (\$100), plus Thirty-Five Dollars (\$35) to cover advertising costs.
5. Must demonstrate that at the time of permit application and during the duration of the permit, the applicant will have available during the hours that such entertainment is provided one (1) parking space for each three (3) persons the premises is capable of accommodating plus two (2) parking spaces for each three (3) employees.

D. TOWN COUNCIL AUTHORITY:

The Town Council is hereby authorized, after public notice and hearing, to establish additional written rules and regulations governing the issuance, suspension, and revocation of special amusement permits, the classes of 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. The 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.

§ 56.6 Penalty.

Anyone found guilty of violating any provision of this Ordinance shall be subject to a fine of not less than Five Hundred Dollars (\$500) nor more than Twenty-Five Hundred Dollars (\$2500) in addition to such equitable relief as is necessary to insure compliance with the terms of this Ordinance. Each day such violation continues shall be deemed to be a new offense.

§ 56.7 Severability.

If any provision of this ordinance is held invalid by a court of competent jurisdiction, such ruling shall not affect the remaining provisions which shall remain in full force and effect.

ARTICLE II
Coin-Operated Devices
[Adopted 1/31/1981]

§ 56.8 Definitions.

As used in this Article, the following terms shall have the meaning indicated:

A. COIN-OPERATED AMUSEMENT DEVICE:

Any vending machine, video game, miniature pool and bowling machine, pinball machine, foose-ball or any other device, mechanical or otherwise, which, upon payment of a fee or insertion of a coin, disk or other insertion piece, whether or not also manipulated by the operation, may be used by the public generally as a game, amusement or entertainment, whether or not registering a score, and which does not dispense any form of payoff, prize or reward other than an additional free use of the device itself.

§ 56.9 License Required; Application; Issuance; Fee.

A. LICENSE REQUIRED:

No person shall either operate or permit the operation of pinball machines or other coin-operated amusement devices for the purpose of deriving revenue therefrom on premises occupied by such person without first obtaining a license.

B. APPLICATION:

Any person desiring to operate or to permit the operation of a pinball machine or other coin-operated amusement device for the purpose of deriving revenue therefrom shall make application, in proper form, to the Town Clerk and pay the appropriate license fee.

C. ISSUANCE:

The issuance of such license shall be authorized by the Council or such other official as the Council may designate,~~—~~ The Council may approve such license after receiving a recommendation from the chief officer of the Police Department. Such recommendation shall be in writing and shall briefly set forth the reasons for any recommendation or lack thereof.

D. FEE:

The fee for each such device shall be fifty dollars (\$50.00), except for the initial year when the fee will be pro-rated based on the number of months remaining in the calendar year. Said license must be displayed on premises where coin-operated amusement devices are located. Said license shall expire on December 31 of the year in which it is issued. Said license shall designate the number of machines licensed.

§ 56.10 Adult Attendant.

An adult attendant must be present on the premises any time the coin operated amusement devices are available for use by the public.

§ 56.11 Violations and Penalties.

Anyone found guilty of violating any provisions of this article shall be subject to a fine of twenty-five dollars (\$25.00). Each day such violation continues shall be deemed a new offense.