

CHAPTER 219

NUDE ENTERTAINMENT ORDINANCE

TOWN OF GRAY, MAINE
ADOPTED _____, 2010

SECTION 219.1 – TITLE.

This ordinance shall be known and be cited as the Nude Entertainment Ordinance of the Town of Gray, Maine.

SECTION 219.2 – LEGISLATIVE FINDINGS AND PURPOSE.

WHEREAS, establishments in other communities in Maine that allow nude entertainment have been found to create or result in certain undesirable conditions; and

WHEREAS, other communities have determined that nude entertainment can induce individuals to engage in prostitution, sexual assaults, breaches of the peace and other criminal activity; and

WHEREAS, the presentation of nude entertainment in an establishment can have negative impacts upon surrounding neighborhoods and result in a tawdry atmosphere in the area; and

WHEREAS, establishments that allow or provide nude entertainment on the premises must be carefully located in a manner that minimizes their negative secondary effects on public health, safety and morals, as discussed in detail in the McCleary report for Jackson County, Missouri (dated May 9, 2008);

NOW, THEREFORE, the Gray Town Council hereby determines that this Ordinance is necessary to address the issues set forth in this section and to lessen the negative effects that nude entertainment can have on the Town.

SECTION 219.3 – DEFINITIONS

COMMERCIAL ESTABLISHMENT: Any retail establishment that offers food, beverages, merchandise, products or entertainment services for sale to members of the general public, operated as a for-profit business and treated as such for federal or state tax purposes.

NUDE ENTERTAINMENT: Any display of live persons in a state of nudity or in a visible state of sexual excitement whether or not clothed.

NUDITY: The showing of the human male or female genitals, pubic area or buttocks or the female breast below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

PERSON: Any individual, partnership, firm, association, corporation, trustee, lessee, agent, assignee or other legal entity.

PREMISES: The entire building and parcel of land on which it is located where a use occurs, including storage and unoccupied areas, regardless of whether areas are partitioned into separate rooms or used for other purposes.

SADOMASOCHISTIC ABUSE: Flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

SEXUAL CONDUCT: Acts of sodomy, masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is a female, breast.

SEXUAL EXCITEMENT: The condition of the human male or female genitals when in a state of sexual stimulation or arousal.

SECTION 219.4 – USE PERMIT REQUIRED.

No person operating a commercial establishment in the Town of Gray shall present or allow presentation of any form of nude entertainment on the premises of the establishment concerned without first obtaining a use permit for that purpose from the Town's Code Enforcement Officer. The application procedure and criteria for issuance of a use permit shall be as provided in Section 402.9.1 of the Zoning Ordinance; provided, however, that the following additional requirements shall apply to commercial establishments offering nude entertainment:

A. The application for a use permit under Section 402.9.1 of the Zoning Ordinance shall state that the proposed use includes nude entertainment. The application shall describe the nude entertainment to be offered, including the intended frequency and times, and shall indicate the area of the premises where the nude entertainment shall take place.

B. The application shall disclose the name and current residence address of all principals of the business concerned and shall disclose the name and current residence address of all persons holding a financial interest of five percent (5%) or more in the business concerned.

C. Prior to granting a use permit, the Code Enforcement Officer shall forward the application to the Cumberland County Sheriff's Office for a criminal information background check on each of the persons named in the application under Subsection B above. The Code Enforcement Officer shall deny the application if the applicant, any principal of the business concerned or any holder of a five-percent or greater financial interest in the business concerned has a record of conviction of prostitution, promoting prostitution or of a Class A, B, or C felony under Maine law, or equivalent

offenses in other jurisdictions, during the ten-year period ending immediately prior to the application date.

D. Location and standards.

(1) No use permit shall be granted for a commercial establishment offering nude entertainment unless the premises concerned are located in an eligible zoning district and the premises concerned meet all district provisions and development standards contained in the Zoning Ordinance plus the following additional requirements:

(a) No use permit shall be granted for a commercial establishment offering nude entertainment if the premises concerned are located within 1,000 feet of any other such establishment for which a use permit previously issued remains in force; any establishment licensed to sell alcohol for on-premises or off-premises consumption under 28-A M.R.S.A. §601 et seq.; a church, chapel, parish house or other place of worship; or a public library, juvenile shelter or orphanage in existence as of the application date, as measured from the main entrance of the premises to the main entrance of a building by the ordinary course of travel.

(b) The premises concerned must not be located within 750 feet of the nearest district boundary of any residential zoning district established under the provisions of the Zoning Ordinance, as measured in a straight line from the premises to such property.

(c) The premises concerned must not be located within 1,000 feet of the nearest property line of any public or private school, school dormitory, or school ground, public building, public playground or public park, as measured in a straight line from the premises to the property line.

(2) For the purposes of this Subsection D, the term "eligible zoning district" means the Commercial District "C", as designated in the Zoning Ordinance and Zoning Map.

E. No use permit shall be issued for a commercial establishment offering nude entertainment unless the premises concerned include changing rooms and toilet facilities for performers that are separated from any area of the premises to which the public will have access.

F. No use permit shall be issued for a commercial establishment offering nude entertainment if any portion of the premises concerned consists of residential apartments or other dwelling units, whether or not occupied.

G. The premises concerned, in addition, shall meet all applicable local code requirements.

H. The subsequent establishment of an establishment licensed to sell alcohol, a public or private school or school dormitory, a church, chapel, parish house or other place of worship, a public library, a juvenile shelter or orphanage, a playground or public park or the rezoning of any nonresidential district within 750 feet shall not affect the validity of a use permit of a legally existing commercial establishment offering nude entertainment. In the event of the subsequent establishment of any of the foregoing uses, the commercial establishment offering nude entertainment shall be treated as any other use permitted in the zoning district.

I. Notwithstanding any other ordinance provision to the contrary, the Code Enforcement Officer must decide any application hereunder within thirty (30) days of its receipt, the applicant must take any appeal to the Zoning Board of Appeals within thirty (30) days thereafter, the Zoning Board of Appeals must hear the case within thirty (30) days of any such appeal, and then must decide the appeal within thirty (30) days of the conclusion of the appeal hearing.

SECTION 219.5 – CONDUCT.

A. No person under the age of eighteen (18) years shall be employed in any capacity upon the premises of a commercial establishment that offers nude entertainment. The operator of each such establishment shall be responsible for verifying the age of each employee through photographic identification, including hourly employees, salaried employees and all persons working on the premises for tips, commissions or as independent contractors, contract dancers or contract performers.

(1) Each employer shall maintain records showing the name and date of birth for each employee, including a copy of the photographic identification used to verify age. Prior to any employee's beginning employment, the operator shall bring the records to the Cumberland County Sheriff's Office to verify the age of the prospective employee. These records must be maintained by the employer until six (6) months after the employee ceases to work for the employer. These records are also subject to review by the Cumberland County Sheriff's Office on the business premises during normal operating hours.

(2) In the event that the Cumberland County Sheriff's Office reasonably suspects that any employee listed in the records is under the age of eighteen (18) years, it may copy the record for investigatory purposes. Any record or information so obtained, and any subsequent information developed therefrom, is declared to be "intelligence and investigative information" under 16 M.R.S.A. § 611, Subsection 8, the Criminal History Record Information Statute, which, if publicly disclosed, would endanger the life or safety of the individuals named therein. Record information may be disclosed to the person named therein, notwithstanding this declaration.

B. No person under the age of eighteen (18) years shall be admitted to any commercial establishment offering nude entertainment, as a customer or patron. The operator of each such establishment shall be responsible for verifying the age of each person entering the premises, through photographic identification.

C. No alcoholic beverages shall be sold, served or given away on the premises of any commercial establishment offering nude entertainment, whether for on-premises or off-premises consumption. Further, operators of any such establishment shall not allow customers or patrons to bring or consume alcoholic beverages on the premises.

D. There shall be no physical contact on the premises between patrons and dancers. For the purposes of this subsection, physical contact does not include incidental touching between a dancer and patron, but does include contact that occurs if a patron is giving a monetary tip to a dancer. In no case shall incidental contact be deemed to include physical contact otherwise prohibited by law.

E. Dancers or performers who remove any garments during the nude entertainment shall not toss or throw those garments to any customer or patron.

F. Dancers or performers providing the nude entertainment shall not engage in any sadomasochistic abuse or sexual conduct as defined in Section 219.3.

G. Nude entertainment presented in a commercial establishment shall not include any showing of the male or female genitals, pubic area, perineum or anus or the female breast below the top of the nipple of any person with less than a fully opaque covering.

H. No nude entertainment shall be presented after the hour of 1:00 a.m., local prevailing time. All premises offering nude entertainment shall be closed and cleared of customers and patrons between the hours of 1:15 a.m. and 6:00 a.m. Mondays through Saturdays and 9:00 a.m. Sundays, local prevailing time.

SECTION 219.6 – VIOLATIONS AND PENALTIES.

A. Any violation of this Chapter by the owner, lessee, licensee, permittee or operator of a premises shall constitute a land use violation and shall be subject to prosecution and penalties as provided in 30-A M.R.S.A. §4452, provided that the minimum fine for any violation by such persons shall be \$500 for each offense. Each day in violation shall constitute a separate offense. In addition, the Code Enforcement Officer may suspend or revoke the use permit for any establishment offering nude entertainment in violation of this Chapter, or in violation of conditions contained in the use permit. Suspension or revocation of a certificate of occupancy shall be subject to administrative appeal as provided in Section 402.9.2 of the Zoning Ordinance, subject to the various time requirements imposed under Section 219.4(I) above.

B. Any violation of this Chapter by a person other than the owner, lessee, licensee, permittee or operator of any premises shall be punished by a fine of not less than \$500 for the first offense, and not less than \$1,000 for the second and subsequent offenses. Each day in violation shall constitute a separate offense.

SECTION 219.7 – THEATRICAL PERFORMANCES.

The provisions of Section 219.4(A) through (D) shall not apply to theaters, dinner theaters, licensed movie theaters or similar establishments which are primarily devoted to theatrical performances or the presentation of movies, provided that any displays of live nudity within such theaters, dinner theaters, licensed movie theaters or similar establishments shall be limited to occasional nudity by bona fide stage actors during the course of theatrical performances; provided also that the provisions of Section 219.4(E) through (H), 219.5(C) through (H) and 219.6 of this Chapter shall apply to nude theatrical performances under this section.

APPLICABILITY DATE: Notwithstanding any other provision of law to the contrary, and to the maximum extent allowed by the State Savings Statute, 1 M.R.S.A. § 302, this ordinance when enacted shall be applicable to any use, application, change of use or related land use or licensing ordinance applications for any use not lawfully in existence as of November 9, 2010, when this ordinance was first read before the Town Council.