

TOWN OF LINCOLNVILLE
ORDINANCE GOVERNING THE ISSUANCE, SUSPENSION AND
REVOCAION OF SPECIAL AMUSEMENT PERMITS

ARTICLE I

Section 1. Title

This Ordinance shall be known and may be cited as the Special Amusement Permit Ordinance of the Town of Lincolnville, Maine. This Ordinance is codified pursuant to Title 28-A, MRSA, subsection 1054 as amended and this Ordinance has been duly enacted by the Town of Lincolnville at a regularly constituted Town meeting on the twentieth day of June 1983.

Section 2. Purpose

The purpose of this Ordinance is to control the issuance of special permits for music, dancing, or entertainment in facilities licensed by the State of Maine to sell liquor within the meaning of Title 28-A, MRSA, subsection 1054.

Section 3. Definitions

- (A) Entertainment. For the purpose of this Ordinance, “entertainment” shall include any amusement, performance, exhibition or diversion for patrons or customers of licensed premises whether provided by professional entertainers or by full-time employees of the licensed premises whose incidental duties include activities with an entertainment value.
- (B) Licensee. For purpose of this Ordinance, “licensee” shall include the holder of a license issued under the Alcoholic Beverages Statutes of the State of Maine, or an person, individual, partnership, firm, association, corporation, or other legal entity, or any agent, or employee of any such licensee.
- (C) Tumultuous Conduct. For purposes of this Ordinance, tumultuous conduct shall be defined as conduct of such nature and magnitude as to require or to cause the involvement of law enforcement authorities.
- (D) Unnecessary Noise. For purposes of this Ordinance, unnecessary noise shall constitute noise of such a level and duration that said noise is clearly audible outside the premises for which a permit has been issued and sufficiently irritating to disturb the residents in the neighborhood where this establishment is located.

ARTICLE II General

Section 1. Permit Required

No license for the sale of liquor to be consumed on a licensed premises shall permit, on a 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 municipality in which the licensed premises are situated a special amusement permit signed by at least a majority of the municipal officers.

Applications for all special amusement permits shall be made in writing to the municipal officers and shall state the name of the applicant; his residence and address; the name of the business to be conducted; his business address; the nature of his business and the type of entertainment; 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 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.

No permit shall be issued for anything, or act, or premises, if the premises and building to be used for the purposes do not fully comply with all ordinances, articles, by-laws, or rules and regulations of the municipality.

The fee for a special amusement permit shall be set annually as determined by the Board of Selectmen.

The municipal officers shall, prior to granting a permit and after reasonable notice to the municipality and the applicant, hold a public hearing, at which the testimony of the applicant and that of any interested members of the public shall be taken. The municipal officers shall give the applicant written notice of their decision within fifteen days of the date of receiving the permit.

The municipal officers shall grant a permit unless they find that the issuance of the permit would be detrimental to the public health, safety, or welfare, or would violate municipal ordinances, or rules and regulations, articles or by-laws.

A permit shall be valid only for the license year of the applicant's existing liquor license.

- (A) Public notice of the date of the hearing shall be published in a newspaper of general local circulation no less than seven days prior to the date of the hearing on this matter.
- (B) The municipal officers shall be governed by the standards of Article II Sect. 4 in the issuance, revocation, or suspension of the permit hereunder.

Section 2. Inspection

Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a special amusement permit are provided for or required by ordinances or state law, or are reasonably necessary to secure compliance with any ordinance provision, state law, or municipal rules and regulations, 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 municipality authorized to make the inspection at any reasonable time that admission is requested.

Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with any ordinance provision or state law, it shall be the duty of the licensee, or the person in charge of the premises, to give any authorized officer, official, or employee of the municipality requesting the same sufficient samples of the material or commodity for analysis.

In addition to any other penalty which may be provided, the municipal officers may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official, or employee to make an inspection or take sufficient samples for analysis, or who interferes with such officer, official, or employee while in the performance of his duty. Provided, that no license or special amusement permit shall be revoked unless written demand for the inspection or sample is made upon the licensee or person in charge of the premises seven days prior to the time it is sought to make the inspection.

Section 3. Suspension or Revocation of a Permit

The municipal officers may, after a public hearing preceded by written public notice to interested parties, suspend, or revoke any special amusement permits which have been issued under this Ordinance on the grounds that the music, dancing, or entertainment so permitted constitutes a detriment to the public health, safety, or welfare, or violates any municipal ordinances, articles, by-laws or rules and regulations.

- (A) Public notice to interested parties shall consist of notice published in a local newspaper of general circulation at least seven days prior to the date of the hearing.

Section 4. Standards

The following standards, in addition to provisions of Section 5 of this Article, shall govern the issuance of a special amusement permit and the suspension or revocation of such permits:

- (1) **Hours of Operation.** The permitted activities under a special amusement permit shall cease no later than 11:00 PM, on every night except Saturday night. The permitted activities commencing Saturday night under a special amusement permit shall cease no later than 1:00 a.m. Sunday morning. It

shall be deemed detrimental to the public safety or welfare for entertainment of the type requiring a special amusement permit to occur on any night except Saturday night between 11:00 p.m. and 6:30 a.m. the next morning. It shall be deemed detrimental to the public safety or welfare for entertainment of the type requiring a special amusement permit to occur on Sunday morning between the hours of 1:00 a.m. and 6:30 a.m.

- (2) Amplified music in the Town of Lincolnville in connection with a Special Amusement Permit shall be permitted only upon an express finding by the municipal officers that such amplified music does not constitute a detriment to the public health, safety, or welfare, or violate any municipal ordinances or regulations. In connection with the issuance of a permit, the municipal officers may impose reasonable conditions in order to protect the public health, safety and welfare. For purposes of this Ordinance, “amplified music” shall include any amplification of sound by musical instruments, or the use of amplified systems in playing tapes, CD’s, records, or videos for the provision of entertainment.
 - (A) For amplified music which occurs inside a building or structure on the license premises, the applicant must set forth in the license application the following information:
 - (1) The type of amplified music which will occur;
 - (2) The time of day during which the amplified music will occur;
 - (3) Sufficient evidence or information which demonstrates, to the satisfaction of the municipal officers, that the Licensee has taken and will take appropriate measures and safeguards prior to the inception of the use of amplified music in the licensed premises to prevent amplified music which is clearly audible and annoying or detrimental to the quiet enjoyment of any person who is located outside the legal boundaries of the licensed premises. Those measures may include, without limitation, soundproofing, a requirement that windows and doors must remain closed during the occurrence of such amplified music, and sound suppression measure for that amplified music.

Based on the information in the application and the evidence at the public hearing, the municipal officers shall determine whether the applicant has produced sufficient proof that the standard set forth (A) (3) above has been satisfied.

If the Board imposes conditions which include a measure or safeguard set forth in (A) (3) above, then the Code Enforcement Officer shall have the authority to inspect the licensed premises in order to determine that the measure or safeguard has been appropriately undertaken by the Licensee. The inspection shall take place at a reasonable

time during the day. Following that inspection, the Code Enforcement Officer shall report the results of that inspection to the municipal officers.

- (B) For amplified music which occurs outside of buildings or structures on the licensed premises, the license application shall include the following:
 - (1) All of the information set forth above for amplified music inside a building or structure;
 - (2) The specific dates on which such amplified music shall occur;
 - (3) A written commitment from the Licensee that the Licensee will cease further outdoor use of amplified music, until municipal officers have had an opportunity to evaluate those complaints at a public hearing, if such music results in two or more complaints to the municipal officers that such outdoor amplified music is irritating or detrimental to individuals located outside the licensed premise; provided that those complaints are accompanied by a letter from the Code Enforcement Officer or Constable of the Town that there is a reasonable basis for those complaints. Such a public hearing will be conducted in accordance with the provisions of Section 6 of this Ordinance.

Based on the information in the application and the evidence at the public hearing, the municipal officers shall determine whether the applicant has provided sufficient proof that the standard set forth in (A) (3) above has been satisfied and that the written commitment set forth in (B) (3) above has been made. The applicant has the burden of proof that the requirements have been satisfied. In connection with the approval of a permit, which allows amplified music outside of buildings or structures on the licensed premises, the Board of Selectmen may impose reasonable conditions in order to protect the public health, safety, and welfare. Those conditions may include, among other reasonable conditions, the following conditions:

- (A) That the Licensee shall not allow more than a specific number of events with amplified music outside buildings or structures in any month during the license year;
- (B) That outside amplified music shall occur only during certain specified hours of the day and that the duration of such music shall not exceed a specific length of time;
- (C) That the outside amplified music occur only in a specific location on the premises; and

- (D) That each event with outside amplified music must obtain the approval of the Selectmen for that music no less than ten days prior to the occurrence of the event upon written request to the municipal officers for such event.
- (3) The facilities receiving a permit under the terms of this Ordinance shall be adequate to assure the safety of all patrons of that establishment and shall comply with all state laws and ordinances regarding such an establishment.

Section 5. Incidents of Tumultuous Conduct and Unnecessary Noise.

Incidents of tumultuous conduct shall be grounds for the suspension or revocation of a permit following notice and hearing and subject to the procedures of Article II, Section 3 of this Ordinance. The licensee of the permit hereunder shall not permit tumultuous conduct in his establishment at anytime. Incidents or occurrences of tumultuous conduct as defined herein twice in one week or three times in one month shall be such conduct constituting grounds for suspension or revocation of the permit following notice and hearing and upon a finding of fact that the owner or manager of said establishment took no reasonable actions to abate this conduct shall be prima facie evidence of a condition detrimental to the public health, safety or welfare of the community.

- (a) An instance of tumultuous conduct involving more than five people shall constitute riotous conduct. One such instance or occurrence of riotous conduct shall be such conduct constituting grounds for suspension or revocation of the permit following notice and hearing and upon a finding of fact that the owner or manager of said establishment took no reasonable actions to abate this conduct shall be prima facie evidence of a condition detrimental to the public health, safety or welfare of the community.
- (b) Unnecessary noise as defined herein constitutes a detriment to the public health, safety, or welfare.

SECTION 6.

In the event that the municipal officers, after a public hearing preceded by a written public notice to interested parties, determine that a licensee with a special amusement permit has violated provisions of the Ordinance or that valid grounds exist for the suspension or revocation of that special amusement permit; and in the event that the municipal officers have found a violation of the Ordinance or just grounds for revocation or suspension of that party's special amusement permit after public hearing and notice on three prior occasions concerning that same party within a period of one year, then the municipal officers shall suspend that licensee's special amusement permit for a period of at least thirty days and in addition may assess any other penalties permitted herein. In the event that a licensee with a special amusement permit is determined by the municipal officers, following public hearing and said public notice, to have violated the provisions

of this Ordinance or in the event that grounds have been found by the municipal officers for the revocation or suspension of that special amusement permit and in the event that said special amusement permit has been suspended for a period of at least thirty days as a result of the immediately preceding sentence on prior occasion within one year of this determination, then the municipal officers shall suspend that licensee's special amusement permit for at least the remainder of the license year, and in addition may assess other penalties permitted herein.

ARTICLE III

Permit and Appeal Procedure

Section 1.

Any licensee requesting a special amusement permit from the municipal officers shall be notified in writing of their decision no later than fifteen days 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 denial in writing. The licensee may not reapply for a permit within thirty days after an application for a permit which has been denied.

Section 2.

Any licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may, within thirty days of the denial, suspension, or revocation, appeal the decision to the municipal Board of Appeals as defined in 30-A MRSA subsection 2691.

The municipal Board of Appeals may grant or reinstate the Special Amusement Permit if the Board finds that:

(A) The permitted activities would not constitute a detriment to the public health, safety or welfare, or violate municipal ordinances or regulations;

or

(B) The denial, revocation or suspension was arbitrary and capricious.

Section 3. Admission

A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee who has been issued a special amusement permit may charge admission in designated areas approved by the municipal special amusement permit.

ARTICLE IV
Penalty

Section 1. Fine

Whoever violates any provision of this Ordinance, shall be punished by a fine of not more than one hundred dollars (\$100) for the first offense and up to two hundred dollars (\$200) for each subsequent offense, to be recovered, on complaint, to the use of the Town of Lincolnville.

ARTICLE V
Separability

Section 1.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any 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.

ARTICLE VI
Effective Date

Section 1.

The effective date of the Ordinance shall be June 21, 1983.

Amended July 13, 1995 Special Town Meeting.