

NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on April 20, 2010, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 18, Businesses Article II Licenses, Section 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-36, 18-38, Article III Body Piercing, Sections 18-66, 18-68, 18-100, 18-102 through and including 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, 18-205, Article VII Ice Cream Trucks, Sections 18-423, 18-424, Article VIII Massage establishments, Sections 18-487, 18-488, Article IX Campgrounds, Section 18-526, and to Add Article X Victualers, Section 18-581 and 18-582 and to Delete the following: Article III Body Piercing, Sections 18-69, Sections 18-131 through and including 18-138, Article IV Tattooing Sections 18-168 through and including 18-173, Article VI Performing Arts Facilities Sections 18-286 through and including 18-360, Article X, Auctions, Sections 18-581 through and including 18-585, and Article XI Head Shops, Section 18-601 through and including Section 18-606 of the Old Orchard Beach Code of Ordinances, is amended by adding the underscored language and deleting the strikethrough language.

Chapter 18 **BUSINESSES***

***Cross references:** Alcoholic beverages, ch. 6; amusements and entertainments, ch. 10; emergency services, ch. 22; outdoor vending machines, § 38-271 et seq.; utilities, ch. 58; vehicles for hire, ch. 62; downtown business districts, § 78-661 et seq.; general business district 1 (GB-1), § 78-801 et seq.; general business district 2 (GB-2), § 78-831 et seq.; neighborhood commercial districts (NCD), § 78-866 et seq.; industrial district (ID), § 78-901 et seq.; planned mixed use development (PMUD), § 78-1021 et seq.; amusement overlay district (AO), § 78-1081 et seq.; home occupations, § 78-1267; wireless telecommunications facilities, § 78-1306 et seq.; removal of signs from vacant commercial buildings, § 78-1641 et seq.; adult business, § 78-2121 et seq.

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ARTICLE I. IN GENERAL

Secs. 18-1--18-25. Reserved.

ARTICLE II. LICENSES

Sec. 18-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Arcade or amusement casino means an establishment containing six or more amusement devices/machines.~~

Any personal property tax shall mean all personal property taxes assessed against any person within the definition of applicant, whether or not the property so taxed is used in the conduct or operation of the business or activity for which the license is sought.

Applicant means all of the following persons: (i) the owner of any personal property used in the conduct of the business or activity for which the license is sought, (ii) the owner of the business or activity for which the license is sought, and (iii) the person who conducts or operates the business or activity for which the license is sought.

Coin-operated amusement device includes but is not limited to jukeboxes, flipper games, video games, pinball machines, pool tables or billiard tables.

Documented and relevant disturbance means a separate complaint of disorderly, indecent, ~~tumultuous,~~ or riotous conduct upon any licensed establishment that results in a police response and report of such occurrence and which the Chief of Police, in consultation with the License Administrator and any other appropriate municipal staff, determines was caused by or causally related to the manner in which business was conducted at the licensed location.

License administrator means the code enforcement officer or such other municipal employee as the town council may designate by order.

Seasonal rental, means any rental unit, including hotels, motels, cabins, condominiums, single-family homes, duplexes or multifamily dwellings which are rented or available to be rented only during the period March 1st to December 1st.

Yearround rental means any rental unit, including hotels, motels, cabins, condominiums, single-family homes, duplexes or multifamily dwellings which are rented or available to be rented at any time during the calendar year. ~~from Columbus Day to Memorial Day as well as from Memorial Day to Columbus Day. Lodging units that qualify as yearround rentals must obtain this license as well as the innholder/lodginghouse/hotel license.~~

(Ord. of 6-13-1961, § 2(B); Ord. of 2-16-1988; Ord. of 11-8-1993; Ord. of 4-26-1995; Ord. of 3-2-1999; Ord. of 4-20-1999)

Cross references: Definitions generally, § 1-2.

Sec. 18-27. Purpose.

The purpose of this article is to provide the town council a reasonable medium of regulating the businesses and activities identified in the schedule set forth in section 18-32 and to protect and promote the health, welfare and safety of the town residents and of the general public.

(Ord. of 6-13-1961, § 2(A); Ord. of 2-16-1988)

Sec. 18-28. Violation and Penalties.

(a) Any person who operates or conducts any business or activity for which a license is required under this article without first obtaining such license commits a civil violation and shall be subject to a fine not to exceed \$100.00 for the first day the offense occurs. The second day the offense occurs, the fine amount shall not exceed \$250.00. The third day and subsequent days thereafter, the fine amount shall not exceed \$500.00. Each day such violation continues shall be considered a separate violation.

(b) Any licensee who commits a civil or criminal violation in the course of conducting a licensed business or activity or who permits a business or activity to occur which involves an act, omission or condition that is:

- (1) Contrary to the health, morals, safety or welfare of the public; or
- (2) Unlawful or fraudulent in nature; or
- (3) Unauthorized or beyond the scope of the license granted; or
- (4) Forbidden by the provisions of state law or town ordinance applicable to the trade, profession, business, privilege, act or operation for which the license is granted; or
- (5) Not in compliance with all conditions required as precedent to the granting of the license, commits a civil violation.

Such violations shall be punishable as specified in Section 18-28 (a). ~~by a fine of not more than \$100.00 the first day the offense occurs. The second day the offense occurs, the fine amount shall not exceed \$250.00. The third day and subsequent days thereafter, the fine amount shall not exceed \$500.00, and each day that such violation continues shall be considered a separate violation.~~

~~(b)~~ (c) All fines shall be recovered upon complaint for use by the town and shall be placed in the town treasury.

~~(c)~~ (d) Any person, including without limitation a real estate broker, associate real estate broker, real estate sales agent, or property manager, who rents an unlicensed rental unit on behalf of the unit's owner commits a violation of this ordinance and is subject to the fines imposed by section 18-28(a) above, which fines may be imposed in addition to any fines imposed upon the unit owner.

(Ord. of 6-13-1961, § 5(A), (B); Ord. of 2-16-1988; Ord. of 8-7-2001; Ord. of 10-16-2007)

Sec. 18-29. Enforcement.

The police department shall investigate any alleged violation of this article. Upon verification of the alleged violation, the police department may issue a citation for a civil violation.

(Ord. of 6-13-1961, § 9; Ord. of 4-26-1995; Ord. of 7-20-1995)

Sec. 18-30. Payment of Fees.

All fees required to be paid under this article shall be paid prior to the issuance of the license. ~~to the tax collector and shall be deemed received by the license administrator when received by the tax collector.~~

(Ord. of 3-2-1999, § 10; Ord. of 4-20-1999; Ord. of 8-24-1999)

Sec. 18-31. License required; expiration.

(a) The town council or is authorized to grant, grant subject to conditions, or deny licenses for any business or activity listed in the schedule set forth in section 18-32 in accordance with the terms of this article except that town council review is mandatory to grant, grant subject to conditions, or deny all victualers licenses with beer, wine or liquor and special amusement licenses listed in the schedule set forth in section 18-32. The license administrator shall have the right to refer any licenses to the town council for public hearing and action if, in the license administrator's judgment, the application merits such scrutiny.

(b) Until the 2011 license cycle, any ~~Any~~ such license shall expire on May 1 of each year, unless otherwise provided therein, except that a license for which a renewal application is filed prior to May 1 shall continue in effect until the license administrator or the town council, if council action is required under section 18-38, has acted on the renewal application.

i) For the license cycle starting in 2011, licenses granted for businesses on properties on tax map numbers 101-1-1 through and including 305-4-1 shall expire on May 1, 2012. Licenses for these parcels shall expire on May 1 every other year for future cycles. (i.e. 2014, 2016 etc.) Licenses issued to businesses without tax map numbers shall be assigned to this expiration schedule.

ii) For the license cycle starting in 2011, licenses granted for businesses on properties on tax map numbers 305-4-2 through and including 404-9-10 or higher numbers subsequently created shall expire on May 1, 2013. Licenses for these parcels shall expire on May 1 every other year for future cycles. (i.e. 2015, 2017 etc.) Any such license shall expire on May 1 of the year, unless otherwise provided therein, except that a license for which a renewal application is filed prior to May 1 shall continue in effect until the license administrator or the town council, if council action is required under section 18-38, has acted on the renewal application.

(c) Payment of a pro rata license fee shall be ~~prohibited for any license.~~ allowed as follows: In the event of a change in ownership, license category or other activity necessitating a new business license, the applicant shall be required to pay the new application fee plus the percentage of the fee set forth in Appendix A based on the percentage of the licensing cycle remaining.

(d) Any person engaged in any business or activity listed in the schedule set forth in section 18-32 shall obtain a license for that business or activity even if such person also engages in some other business or activity not requiring a license.

(e) No person shall operate or conduct any business or activity identified in the schedule set forth in section 18-32 without first obtaining a license therefor, nor shall any person operate or conduct any business or activity identified in the schedule set forth in section 18-32 except in compliance with the terms of this article and any conditions imposed upon the license issued.

(Ord. of 6-13-1961, § 1; Ord. of 2-16-1988; Ord. of 6-18-1991; Ord. of 3-2-1999; Ord. of 4-20-1999)

Sec. 18-32. Schedule.

The schedule of license, permit and application fees is set forth in appendix A of this Code.

(Ord. of 4-1-2003)

Sec. 18-33. Application.

(a) Any person who owns, operates or conducts any business or activity listed in the schedule of license, permit and application fees set forth in appendix A of this Code shall ~~annually~~ make application to the town council for a license to conduct such business or activity by submitting the following to the license administrator:

(1) A description of the business or activity which the applicant proposes to operate or conduct and the location at which the licensed activity or business will occur.

(2) A statement that the applicant has secured or is in the processing of securing all state or local permits required for the licensed business or activity, provided that any license issued by the town council prior to the receipt of such

other permits shall not authorize the operation of the business until all such other permits are obtained.

(3) A statement that the business and the premises are in compliance with all local ordinances other than this article, including but not limited to article II of chapter 6 pertaining to special amusements, the building code in article II of chapter 66, and chapter 78 pertaining to zoning.

(4) Evidence of satisfactory resolution of any public health, safety or welfare problems occurring in the operation of that or a similar business at the same location in the immediately preceding year, including but not limited to neighborhood complaints, disorderly customers, and excessively loud or unnecessary noise that initiate complaints to or require a response from the police, fire department or other municipal regulatory body or employee.

(5) A nonrefundable application processing fee as specified in the schedule of license, permit and application fees in appendix A of this Code, unless the applicant has previously received a license under this article for the same business or activity at the same location and the license had been applied for prior to April 30th of the expiration year.

(b) The town council may require documentation of any of the information provided in the license application whenever the council determines that such documentation is needed to process the application.

(Ord. of 6-13-1961, § 4(A); Ord. of 2-16-1988; Ord. of 5-5-1998; Ord. of 3-2-1999; Ord. of 4-1-2003, § 2)

Sec. 18-34. Notice of ~~new~~ special amusement and victualers with beer, wine and/or liquor applications; public hearing.

(a) The license administrator shall give notice of all ~~new~~-special amusement and victualers with beer, wine and/ or liquor license applications by posting a list of the applicants and the licenses applied for in the town hall at least seven days prior to the license hearing.

(b) The town council shall conduct a license hearing at which it shall announce the pending special amusement and victualers with beer, wine and/ or liquor license applications, although it may incorporate by reference a previously published list thereof. Any applicant and member of the public shall be permitted to speak with regard to a specific license or applicant; provided, however, that if no one desires to speak in favor of or in opposition to a license application, the town council is authorized to act upon such application without hearing any testimony. The town council is authorized to inquire of any municipal employee, including without limitation the tax assessor, the building inspector, the electrical inspector, the town manager or any representative of the police or fire department regarding any matter within their expertise and pertaining to any such license application.

(Ord. of 6-13-1961, § 4(B); Ord. of 2-16-1988; Ord. of 4-26-1995; Ord. of 3-2-1999; Ord. of 4-20-1999)

Sec. 18-35. Denial; imposition of conditions for issuance.

(a) Failure to provide any of the information required by section 18-33 to the license administrator in a timely manner shall be cause for a denial of a license application.

(b) The town council shall consider information provided by the applicant or received from the building inspector, the electrical inspector, the town manager, the police chief, the fire chief or any other municipal employee or the general public in determining

whether to issue, issue subject to conditions, or deny any license requested. The town council may deny a license application if it finds that:

- (1) The applicant does not have the legal right to occupy the premises for which the license is sought;
 - (2) Required state or local permits have not been obtained or applied for;
 - (3) The business or activity is not or the premises are not in compliance with other local ordinances;
 - (4) Any public health, safety or welfare problems which occurred in the operation of the business or activity or a similar business or activity on the premises during the immediately preceding year were not satisfactorily resolved and are likely to recur;
 - (5) The applicant for the license has, during the immediately preceding year, committed or permitted, in the course of conducting a business or activity subject to this article, an act or omission which constitutes a violation of this article as defined in section 18-28 or 18-39;
 - (6) The applicant is delinquent in paying any personal property tax assessed by the town, unless there is pending at the time of application for the license a request for abatement of the tax or an appeal of the tax assessment. ~~For purposes of this subsection, the word "applicant" means all of the following persons: (i) the owner of any personal property used in the conduct of the business or activity for which the license is sought, (iii) the owner of the business or activity for which the license is sought, and (ii) the person who conducts or operates the business or activity for which the license is sought. As used in this subsection, the term "any personal property tax" shall include all personal property taxes assessed against any person within the definition of applicant, whether or not the property so taxed is used in the conduct or operation of the business or activity for which the license is sought;~~
 - (7) The licensed location has had three or more documented and relevant disturbances as verified by the police chief within the previous licensing period, which documentation shall be provided to the license administrator by the police department; or
 - (8) The applicant owes any fine, penalty or judgment to the town as a result of any violation of this article and the fine, penalty or judgment, with any accrued interest, has not been paid in full. Notwithstanding anything to the contrary in 1 M.R.S.A. § 18-3202, this subsection applies to actions and proceedings pending on the effective date of the Ordinance of April 15, 1997.
 - (9) The applicant owes any amount to the Town of Old Orchard Beach for services rendered by the town or by town employees to the applicant or the applicant's property, is in default on any performance guarantee or contractual obligation to the town, or is otherwise delinquent in any financial obligation to the town, including real property taxes.
- (c) The town council may also impose conditions on the operation of any licensed business or activity, such as restrictions on the hours of operation, a requirement of trash removal at specified intervals, or implementation of particular forms of crowd control, where the public interest so requires.
- (d) When the town council denies a license, ~~it shall provide~~ written notice of the decision shall be provided to the applicant within ten days thereof, which shall set forth the reasons for the denial. The licensee shall receive written notice in the same manner of any conditions imposed upon the license whenever conditions are imposed, and the license administrator shall note such conditions on the license records maintained by the license administrator.

(Ord. of 6-13-1961, § 4(C); Ord. of 2-16-1988; Ord. of 6-18-1991; Ord. of 11-8-1993; Ord. of 3-4-1997; Ord. of 4-15-1997; Ord. of 3-2-1999; Ord. of 4-20-1999; Ord. of 4-15-2008)

Sec. 18-36. Effective date; payment of full fee required.

(a) A license issued pursuant to this article shall be effective as of the date issued or as of the date payment of the appropriate license fee is received by the license administrator, whichever is later.

(b) Payment in full of the license fee is required for each license, ~~and there shall be no pro-rata apportionment of such fees.~~

(Ord. of 6-13-1961, § 4(D); Ord. of 2-16-1988; Ord. of 3-2-1999; Ord. of 4-20-1999)

Sec. 18-37. Inspections.

(a) A licensee, as a condition of receipt of a license under this article, must allow any town official who is performing his official duties and who presents valid identification to enter the licensed premises at the same times and in the same manner as the licensee's patrons, customers or invitees, and the licensee shall not charge such town official any admission or entry fee.

(b) A licensee, as a condition of receipt of a license under this article, must also allow any town official who is authorized to determine compliance with federal, state or town law and who presents valid identification to enter at any reasonable time any portion of the licensed premises which the licensee has the right to enter or occupy.

(c) Failure to allow entry required by this section shall constitute a violation of this article and shall constitute cause for nonrenewal, suspension or revocation of this license.

(Ord. of 7-20-1990, § 7)

Sec. 18-38. Renewals.

(a) The license administrator is authorized to renew, without further action by the town council, the license of any person holding a license pursuant to this article, referred to as the "licensee," ~~on April 30 of each year~~ upon receipt of the required fee and of a written statement from the licensee that there has been no material change in the information provided in the licensee's previous application. The license administrator may not renew a license, but must refer the application to the town council, if:

(1) The license has been suspended or revoked by the town council during the preceding ~~12 months~~, licensing cycle as outlined in Section 18-31 of this ordinance

(2) The license administrator has received, during the past ~~12 months~~, licensing cycle as outlined in Section 18-31 of this ordinance, any written complaint from any person charging that the licensee has violated the terms of this article or any other section of this Code or town ordinance.

(3) The applicant is delinquent in paying any personal property tax assessed by the town, unless there is pending at the time of application for the license a request for abatement of the tax or an appeal of the tax assessment. ~~For purposes of this subsection, the word "applicant" means all of the following persons: (i) the owner of any personal property used in the conduct of the business or activity for which the license is sought, (ii) the owner of the business or activity for which the license is sought, and (ii) the person who conducts or operates the business or activity for which the license is sought. As used in this subsection, the term "any personal property tax" shall include all personal~~

~~property taxes assessed against any person within the definition of applicant, whether or not the property so taxed is used in the conduct or operation of the business or activity for which the license is sought.~~

(4) The licensed location has had three or more documented and relevant disturbances as verified by the police chief within the previous licensing ~~period~~ cycle as outlined in Section 18-31 of this ordinance, which documentation shall be presented to the license administrator in writing by the police department.

(b) In cases involving a complaint under subsection (a)(2) of this section or disturbances under subsection (a)(4) of this section, the license administrator shall bring the complaint or disturbance to the attention of the town manager before referring the application to the town council. The town manager will then convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of the town, appointed by the town council, to discuss the complaint or disturbance with the applicant. At this time, the town manager shall notify the town council chairperson, in writing, that this board is being convened. The purpose of the administrative board will be fact finding with the goal of resolving the issues raised by the complaint or disturbance. If the administrative board finds that the applicant has not successfully addressed the complaint or disturbance, the administrative board shall propose a consent agreement with the applicant to address the complaint or disturbance. If the applicant fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall refer the application to the town council with the recommendation that the license not be renewed.

(c) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings.

(Ord. of 6-13-1961, § 1-A; Ord. of 2-16-1988; Ord. of 6-18-1991; Ord. of 11-8-1993; Ord. of 3-2-1999; Ord. of 4-20-1999; Ord. of 9-18-2001)

Sec. 18-39. Suspension or revocation.

(a) The town council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article. The term "cause" shall mean the violation of any license condition, any section of this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state or local license that is a condition precedent to the issuance of a license pursuant to this article. The term "cause" shall also include any of the grounds for denying a license application under section 18-35.* Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the town manager or the town council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee receives written notification of the suspension and the reasons therefor, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

*Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this amendment shall apply to any actions or proceedings pending on the date of its enactment.

(b) Before the town council conducts a hearing on a suspension or revocation, the town manager will convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of

the town, appointed by the town council, to discuss with the licensee the situation giving rise to the possible suspension or revocation.

(c) The purpose of the administrative board will be fact finding with the goal of resolving the situation by proposing a consent agreement with the licensee. If the licensee fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall recommend to the town council that the license be suspended or revoked, as appropriate.

(d) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings.

(Ord. of 6-13-1961, § 5(C); Ord. of 2-16-1988; Ord. of 8-7-2001; Ord. of 9-18-2001; Ord. of 4-15-2008)

Secs. 18-40--18-65. Reserved.

ARTICLE III. BODY PIERCING*

*State law references: Body piercing, 32 M.R.S.A. § 4321 et seq.

DIVISION 1. GENERALLY

Sec. 18-66. Definitions.

Terms and words as used in this article and not specifically defined are intended to have their commonly accepted meaning. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Blood means human blood, human blood components and products made from human blood.~~

~~Bloodborne pathogens means pathogenic microorganisms that are present in the human and can cause disease in humans, including but not limited to hepatitis B virus (HBV) and human immunodeficiency virus (HIV).~~

Body piercing means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes but is not limited to piercing of an ear, lip, tongue, nose or eyebrow. Body piercing does not include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

Commercial body piercer means any person who performs body piercing for consideration or gratuity or the expectation of consideration or gratuity.

Commercial body piercing establishment means any business, firm, location or establishment, in which the business operation consists of making available body piercing in the town for consideration or with the expectation of receiving consideration or any gratuity. This includes retail operations that offer jewelry for sale and body piercing at no additional charge.

~~Contaminated means the presence or reasonably anticipated presence of blood or other potentially infectious materials on a surface or item.~~

~~Contaminated sharps means any contaminated object that can penetrate the skin, including but not limited to needles, scalpels, broken glass, broken capillary tubes and exposed ends of dental wire.~~

~~*Decontaminated* means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles, and the surface or item is rendered safe for handling, use or disposal.~~

~~*Engineering controls* means controls (e.g., sharps disposal containers, self-sheathing needles) that isolate or remove the bloodborne pathogens hazard.~~

~~*Exposure incident* means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or potentially infectious materials that results from the performance of an individual's activities.~~

~~*Handwash facilities* means a facility providing an adequate supply of running potable water, soap and single-use towels or hot-air drying machines.~~

~~*HBV* means hepatitis B virus.~~

~~*HIV* means human immunodeficiency virus.~~

~~*Licensed health care professional* means a person whose legally permitted scope of practice allows him to independently administer medications requiring a prescription by law and conduct examination and treatment to an individual.~~

~~*Other potentially infectious materials* means:~~

~~(1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;~~

~~(2) Any unfixated tissue or organ, other than intact skin, from a human, living or dead; and~~

~~(3) HIV-contaminated cell or tissue culture, organ cultures, and HIV or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.~~

~~*Parenteral* means piercing mucous membranes or the skin barrier through such events as needle sticks, human bites, cuts and abrasions.~~

~~*Personal protective equipment* means specialized clothing or equipment worn by an individual for protection against a hazard.~~

~~*Regulated waste* means liquid or semiliquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semiliquid state if compressed, items that are caked with dried blood or other potentially infectious materials and are capable of releasing materials during handling, contaminated sharps and pathological and microbiological material.~~

~~*Source person* means any individual, living or dead, whose blood or other potentially infectious materials may be a source of exposure to another individual.~~

~~*Sterilize* means the use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores. Sterilization is usually accomplished by steam under pressure, liquid or gaseous chemicals, or dry heat.~~

~~*Universal precautions* means an approach to infection control. All blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.~~

~~*Work practice controls* means controls that reduce the likelihood of exposure by altering the manner in which a task is performed to prevent potential harm.~~

~~(Ord. of 11-7-1996, § 2; Ord. of 8-5-1997)~~

Cross references: Definitions generally, § 1-2.

Sec. 18-67. Purpose.

The purpose of this article is to regulate the operation of commercial body piercers and commercial body piercing establishments in order to promote public health, safety and general welfare.

(Ord. of 11-7-1996, § 1)

~~**Sec. 18-68. Minimum age requirements.**~~

~~No person under 16 years of age shall be pierced by a commercial body piercer. An eligible person who is 16 or 17 years of age shall be accompanied by a parent or legal guardian who shall authorize the procedure, in writing. Every person receiving a commercial body pierce shall provide lawful identification such as a valid driver's license or state identification for the purpose of establishing age eligibility.~~

~~(Ord. of 11-7-1996, § 6.1)~~

Sec. 18-68. Referenced Standards Commercial body piercers and Commercial body piercing establishments shall be operated in compliance with Chapter 209 "Rules Relating to Body Piercing" as promulgated by the State of Maine Department of Health and Human Services as prescribed in MRSA Title 32 § 4326.

~~**Sec. 18-69. Anatomical restriction.**~~

~~No commercial body piercer shall pierce any part of the human body between the midthigh and waist.~~

~~(Ord. of 11-7-1996, § 6.2)~~

Sec. 18-70. Enforcement.

The enforcement of this article shall be with the police department of the town.

(Ord. of 11-7-1996, § 9)

Secs. 18-71--18-95. Reserved.

DIVISION 2. LICENSES

Sec. 18-96. Authority.

The town council is authorized to grant or deny licenses as set forth in this division within the terms of this division.

(Ord. of 11-7-1996, § 3)

Sec. 18-97. Required for commercial body piercing establishment.

No person shall cause or permit commercial body piercing without first obtaining a commercial body piercing establishment license from the town. The fee for such license shall be as specified in the schedule of license, permit and application fees in appendix A of this Code.

(Ord. of 11-7-1996, § 3.1; Ord. of 4-1-2003, § 2)

Sec. 18-98. Required for commercial body piercer.

No person shall work as a commercial body piercer without a commercial body piercer's license from the town. The fee for such license shall be as specified in the schedule of license, permit and application fees in appendix A of this Code.

(Ord. of 11-7-1996, § 3.2; Ord. of 4-1-2003, § 2)

Sec. 18-99. Display.

(a) A valid commercial body piercing establishment license shall be displayed at all times of operation in an open and conspicuous place.

(b) A valid commercial body piercer's license must be readily available to be produced immediately if demanded of the licensee.

(Ord. of 11-7-1996, § 3.3)

Sec. 18-100. Application.

Any person desiring a license pursuant to this division shall file a written, signed application with the town council on a form furnished by the town.

An applicant for a license to operate a commercial body piercing establishment shall first obtain a State License. Possession of a State license does not constitute an obligation for the Town of Old Orchard Beach to grant the local license. The applicant must provide a copy of the most recent satisfactory inspection report from the State of Maine Department of Health and Human Services .

(Ord. of 11-7-1996, § 4; Ord. of 5-21-2002)

Sec. 18-101. Obtaining by fraud.

Any license required by this division that is secured by fraud, deceit or concealment shall be deemed to be null and void.

(Ord. of 11-7-1996, § 4.1)

Sec. 18-102. Inspection required.

~~A licensed health care professional, licensed in the state, must inspect the facility and establish compliance with this article and any other applicable health standard before the commercial body piercer's license or commercial body piercing establishment license is issued. Every six months thereafter, such health care professional shall reinspect the premises for proper piercing technique, to include the preparation of the individual having the body pierced, sanitation, proper disposal of hazardous wastes, and work practice standards to include workplace sanitation. All expenses shall be the responsibility of the applicant.~~

~~(Ord. of 11-7-1996, § 4.2)~~

The State of Maine Department of Health and Human Services shall inspect the premises in accordance with procedures adopted by the Department.

~~**Sec. 18-103. Piercer certification.**~~

~~The applicant for the license required by this division shall provide evidence from a licensed health care professional that he has demonstrated the ability to perform body piercing in compliance with all sections of this article. Such review will be on forms provided by the town. All expenses shall be the responsibility of the applicant.~~

~~(Ord. of 11-7-1996, § 4.3)~~

Sec. 18-104~~3~~. Insurance required.

A certificate of liability insurance in the amount of \$1,000,000.00 is required prior to the issuance of a commercial body piercer's license or commercial body piercing establishment license. The policy must remain valid throughout the year and must be updated at renewal. Cancellation of the policy for any reason shall be considered just cause for the revocation of the license.

(Ord. of 11-7-1996, § 4.4)

Secs. 18-105~~4~~ --18-130. Reserved.

~~DIVISION 3. REQUIRED EQUIPMENT AND PRACTICES~~

Sec. 18-131. Facilities.

~~(a) *Illumination.* At least ten footcandles of light intensity shall be provided at a distance of 30 inches above the floor throughout the body piercing room, and at least 25 footcandles of light shall be maintained at the place and on surfaces, materials and equipment where body piercing is being performed.~~

~~(b) *Floors, walls and ceilings.* All floors, walls and ceilings in a body piercing establishment shall be kept clean and in good repair, presenting a smooth and easily cleanable surface. Studs, joists and rafters shall not be left exposed in waiting areas, toilet rooms or the room where the body piercing is done. Lighting fixtures, decorative materials and material attached to the walls and ceiling shall be kept clean.~~

~~(c) *Toilet facilities.* A toilet and lavatory shall be located in or adjacent to the body piercing room and shall be readily accessible to the piercer at all times of operation. A lavatory with hot and cold running water shall be located in the room where body piercing is performed. Hand cleanser and sanitary towels shall be provided. Toilet rooms shall be vented to the outside of the building. The use of common towels and cups is prohibited.~~

~~(Ord. of 11-7-1996, § 5.1)~~

Sec. 18-132. Instruments and equipment.

~~(a) *Needles.* All needles in a body piercing establishment shall be single use, presterilized, precut, surgical stainless steel, used for one piercing and immediately disposed of in a medical sharps container. All presterilized, precut needles and equipment shall be stored in a closed glass or metal cabinet while not in use. Such cabinet shall be maintained in a sanitary manner at all times. Jewelry inserted at the time of the pierce shall meet the same criteria as the needles.~~

~~(b) *Forceps, clamps, nostril tubes.* All associated equipment and supplies, such as but not limited to forceps, clamps, nostril tubes, wooden-handled cotton swabs, or toothpicks, must be sterilized in an autoclave before each use, securely packaged in sterilization bags or tubes, and stored in a glass or metal sanitary storage cabinet at all times while not in use.~~

~~(c) *Nonsterilized implements.* All implements that come in contact with the skin that are nonautoclavable shall be washed with a detergent soap or common solvent such as isopropyl alcohol and then disinfected with an approved disinfectant such as quaternary ammonia, synergistic compounds (Madacide) or glutaraldehyde (Cidex and Wavicide) prior to the first use and between each use. These products must be used in complete compliance with the manufacturer's specifications and directions. All implements shall be stored in a glass or metal sanitary storage container at all times when not in use.~~

~~(d) *Sterile gloves; handwashing.* A new pair of sterile gloves shall be worn for every procedure. The piercer's hands shall be washed with disinfectant soap and warm water prior to gloving. Gloves must be donned prior to prepping the client. Regloving, with new gloves, shall occur when handling anything other than the client's prep, for each new client and when handling or disposing of any contaminated materials.~~

~~(Ord. of 11-7-1996, § 5.2)~~

Sec. 18-133. Universal precautions.

Universal precautions shall be observed by a body piercer and in a body piercing establishment to prevent contact with blood or other potentially infectious materials.

(Ord. of 11-7-1996, § 5.3)

Sec. 18-134. ~~Acceptable disinfectant products.~~

~~(a) A product used for body piercing must be registered by the Environmental Protection Agency (EPA) as a tuberculocidal disinfectant.~~

~~(b) A solution of 5.25 percent sodium hypochlorite (household bleach) diluted between 1:10 and 1:100 with water is also acceptable for the cleanup of contaminated items or surfaces. Note that sodium hypochlorite solutions stored in closed, opaque bottles should be discarded 30 days after preparation, since their effectiveness after that time is unreliable.~~

~~(c) Equipment and surfaces will be cleaned and disinfected after contact with blood and other potentially infectious materials. Standards of the Occupational Safety and Health Administration (OSHA) are to be implemented for appropriate disinfectants. The Occupational Safety and Health Administration recognizes disinfectants registered by the Environmental Protection Agency as acceptable for decontamination as well as bleach diluted between 1:10 to 1:100 with water (29 CFR 1910.1030(d)(4)(i)).~~

~~(Ord. of 11-7-1996, § 5.4)~~

Sec. 18-135. ~~Disinfectant contact times.~~

~~(a) *Generally.* For the purpose of body piercing, a ten-minute contact time with liquid chemicals is generally required to achieve high level disinfecting.~~

~~(b) *Sterilization.* Sterilization shall be in accordance with the following:~~

~~(1) Instruments or devices in contact with blood or other potentially infectious material or that are used or have been used to break the continuity of the skin, introduced into tissue and coming in contact with blood or other potentially infectious material will be sterile. All instruments as such will be sterilized between persons or contact with any body tissue that may have been exposed to blood or other potentially infectious material. Needles will not be reused and must be sterile before use. Instruments or devices in contact with blood or other potentially infectious material will be sterilized by the following:~~

~~a. Steam sterilization.~~

~~b. Gas sterilization.~~

~~(2) Steam sterilization must be monitored regularly. One method is to check the highest temperature that is reached during sterilization and the length of that time that this temperature is maintained. In addition, heat and steam-sensitive chemical indicators can be used on the outside of each pack. These indicators do not reliably document sterility, but they do show that an item has not accidentally bypassed a sterilization process.~~

~~(3) Sterilization may be completed on-site or proof of a contract of an outside agency shall be provided that meets all standards for sterilization.~~

~~(Ord. of 11-7-1996, § 5.5)~~

Sec. 18-136. ~~Work practice controls.~~

~~(a) For the purposes of this article, engineering and work practice standards shall be used to eliminate or minimize individual exposure. Where exposure is likely personal protective equipment shall be used. Individuals shall ensure handwashing immediately before donning gloves before a procedure and immediately after removal of gloves or other personal protective equipment. Disposable gloves shall never be washed or decontaminated for reuse. Individuals shall ensure that hands and any other skin are washed with soap and water that is nonstanding.~~

~~(b) Contaminated needles and other contaminated sharps shall not be bent. Shearing, cutting or breaking of needles is prohibited. Immediately or as soon as possible contaminated sharps shall be placed in appropriate containers that shall be puncture resistant and leakproof on the sides and bottom.~~

~~(c) Eating, drinking, smoking, applying lip balm or cosmetics, and handling contact lenses are prohibited in work areas where there is a reasonable likelihood of occupational exposure.~~

~~(d) All procedures involving blood or other potentially infectious materials shall be performed in such a manner as to eliminate splattering, splashing, spraying, and generation of droplets of these substances.~~

~~(e) Specimens of blood or other potentially infectious materials shall be placed in a container which prevents leakage during collection, handling, processing, storage, transport, or shipping. The container for storage shall be labeled or color coded according to section 18-137 and closed prior to being stored, transported, or shipped. If outside contamination occurs, the container shall be enclosed in storage for disposal according to section 18-137.~~

~~(f) All regulated waste shall be discarded according to federal, state, and local regulations. Proof of an accepted licensed hazardous waste disposal agency must be presented upon demand.~~

~~(g) All licensed facilities are subject to follow the rules and regulations as stated in Maine Administrative Code, chapter 501, hazardous waste disposal.~~

~~(Ord. of 11-7-1996, § 5.6)~~

Sec. 18-137. Labeling.

~~(a) Fluorescent orange or orange-red warning labels shall be attached to containers of regulated waste and to containers used to store, transport, or ship potentially hazardous materials. The warning label must be fluorescent orange or orange-red and shall contain the biohazard symbol and the word "biohazard" in an adhesive or other method to prevent loss or unintentional removal of the label.~~

~~(b) A regulated waste container (e.g., contaminated sharps containers) with the biohazard label and a red container as described in subsection (a) of this section shall be used for the storage of all regulated waste.~~

~~(c) Regulated waste shall be shipped from the primary site to another licensed site for disposal.~~

~~(Ord. of 11-7-1996, § 5.7)~~

Sec. 18-138. First aid and licensed health care professional required.

~~(a) A first aid kit shall be available on the premises where body piercing is performed. This shall include but not be limited to sterile bandages, first aid tape and skin disinfectant such as povidone/iodine.~~

~~(b) A health care professional licensed to practice medicine in the state shall be contracted with for 24-hour emergency and consult care.~~

~~(Ord. of 11-7-1996, § 5.8)~~

~~Secs. 18-139-1--18-165. Reserved.~~

ARTICLE IV. TATTOOING*

***State law references:** Tattoo artists, 32 M.R.S.A. § 4201 et seq.

DIVISION 1. GENERALLY

Sec. 18-166. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~*Certificate of inspection* means written approval from the health officer that the tattooing establishment has been inspected and meets all of the terms of this article relating to physical facilities, equipment and layout for operation of such business.~~

~~*Health officer* means the town health officer or his authorized representative.~~

Operator means any individual, firm, company, corporation or association that owns or operates an establishment where tattooing is performed and any individual who performs or practices the art of tattooing on the person of another.

Tattoo, tattooed, tattooing refers to any method of placing permanent designs, letters, scrolls, figures, symbols or any other marks upon or under the skin with permanent ink or any other permanent substance resulting in the coloration of the skin by the aid of needles or any other instruments designed to touch or puncture the skin.

(Ord. of 6-3-1981, § 4)

Cross references: Definitions generally, § 1-2.

Sec. 18-167. Referenced Standards Tattoo establishments shall be operated in compliance with Chapter 210 "Rules Relating to Tattooing" as promulgated by the State of Maine Department of Health and Human Services as prescribed in MRSA Title 32 § 4251.

~~**Sec. 18-167. Inspections.**~~

~~The health officer may conduct periodic inspections of any tattooing establishment for the purpose of determining whether such establishment and the persons performing the art of tattooing therein are in compliance with all applicable health sections contained within this article and other pertinent sections of this Code and other ordinances. It shall be unlawful for any person or operator of a tattooing establishment willfully to prevent or restrain the health officer from entering any licensed establishment where tattooing is being performed for the purpose of inspecting such premises, after proper identification is presented to the operator.~~

~~(Ord. of 6-3-1981, § 12)~~

~~**Sec. 18-168. Records.**~~

~~Permanent records for each tattoo patron or customer shall be maintained by the licensee or operator of the tattoo establishment. Before the tattooing operation begins, the patron or customer shall be required personally to enter, on a record form provided for such establishment, the date; his name, address, and age; and his signature. Such records shall be maintained in the tattoo establishment and shall be available for examination by the health officer. Records shall be retained by the operator or licensee for a period of not less than two years. If the business changes ownership or is closed, all such records shall be made available to the health officer.~~

~~(Ord. of 6-3-1981, § 7)~~

~~**Sec. 18-169. Health and sanitary requirements.**~~

~~Each person who operates a tattooing establishment shall comply with the following requirements:~~

~~(1) The room in which tattooing is done shall have an area of not less than 2,500 square feet. The walls, floors and ceiling shall have impervious, smooth and washable surfaces.~~

~~(2) A toilet shall be located in the establishment and shall be accessible at all times that the tattooing establishment is open for business. The lavatory shall be supplied with hot and cold running water, soap and sanitary towels.~~

~~(3) All tables and other equipment shall be constructed of easily cleanable material, shall be painted or finished in a light color with a smooth washable finish, and shall be separated from waiting customers or observers by a panel at least six feet or 1.83 meters high or by a door.~~

~~(4) The entire premises and equipment shall be maintained in a clean, sanitary condition and in good repair.~~

~~(5) The operator shall wash his hands thoroughly with soap and water before starting to tattoo; the hands shall be dried with individual, single-use towels.~~

~~(6) No tattooing shall be done on any skin surface that has a rash, pimples, boils, infections or that manifests any evidence of unhealthy conditions.~~

~~(7) No skin area shall be penetrated, abraded or treated with chemicals for the purpose of removing, camouflaging or altering any blemish, birthmark, scar or tattoo.~~

~~(8) A safety razor with a new, single-service blade for each customer or patron or a straight edge razor may be used and shall be thoroughly cleaned and sterilized before use on each customer or patron.~~

~~(9) The area to be tattooed shall first be thoroughly washed for a period of two minutes with warm water to which has been added an antiseptic liquid soap. A sterile single-use sponge shall be used to scrub the area. After shaving and before tattooing is begun, a solution of 70-percent alcohol shall be applied to the area with a single-use sponge used and applied with a sterile instrument.~~

~~(10) Only petroleum jelly in collapsible metal or plastic tubes or its equivalent, as approved by the health officer, shall be used on the area to be tattooed, and it shall be applied with sterile gauze.~~

~~(11) The use of styptic pencils, alum blocks, or other solid styptics to check the flow of blood is prohibited.~~

~~(12) Inquiry shall be made, and anyone giving a history of recent jaundice or hepatitis may not be tattooed.~~

~~(13) Single-service or individual containers of dye or ink shall be used for each patron, and the container therefor shall be discarded immediately after completing work on a patron. Any dye in which the needles were dipped shall not be used on another person. Excess dye or ink shall be removed from the skin with an individual sterile sponge or a disposable paper tissue, which shall be used only on one person and then immediately discarded.~~

~~(14) After completing work on any person, the tattooed area shall be washed with sterile gauze saturated with an antiseptic soap solution approved by the health officer or a 70-percent alcohol solution. The tattooed area shall be allowed to dry, and petroleum jelly from a collapsible or plastic tube shall be applied, using sterile gauze. A sterile gauze dressing shall then be fastened to the tattooed area with adhesive.~~

~~(Ord. of 6-3-1981, § 5)~~

Sec. 18-170. Care of Instruments.

~~(a) *Storing of instruments.* In a tattoo establishment, all clean and ready-to-use needles and instruments shall be kept in a closed glass or metal case or storage cabinet while not in use. Such cabinet shall be maintained in a sanitary manner at all times.~~

~~(b) *Sterilization of instruments.* A steam sterilizer (autoclave) shall be provided for sterilizing all needles and similar instruments before use on any customer, person or patron. Alternate sterilizing procedures may only be used when specifically approved by the health officer. Sterilization of equipment will be accomplished by exposure to live steam for at least 30 minutes at a minimum pressure of 15 pounds per square inch, with a temperature of 240 degrees Fahrenheit or 116 degrees Celsius.~~

~~(c) *Use of instruments.* The needles and instruments required to be sterilized shall be so used, handled and temporarily placed during tattooing so that they will not be contaminated.~~

~~(Ord. of 6-3-1981, § 6)~~

~~Sec. 18-171. Infections.~~

~~No person, customer or patron having any skin infection or other disease of the skin or any communicable disease shall be tattooed. All infections resulting from the practice of tattooing which become known to the operator shall promptly be reported to the health officer by the person owning or operating the tattooing establishment, and the infected client shall be referred to a physician.~~

~~(Ord. of 6-3-1981, § 8)~~

~~Sec. 18-172. Pigments, dyes.~~

~~All pigments, dyes, colors, etc., used in tattooing shall be sterile and free from bacteria, virus particles and noxious agents and substances. The pigments, dyes and colors used from stock solutions for each customer or patron shall be placed in a single-service receptacle, and such receptacle and remaining solution shall be discarded after use on each customer or patron.~~

~~(Ord. of 6-3-1981, § 9)~~

~~Sec. 18-173. Bandages and surgical dressings.~~

~~All bandages and surgical dressings used in connection with the tattooing of a person shall be sterile.~~

~~(Ord. of 6-3-1981, § 10)~~

Secs. 18-174 [68](#)--18-200. Reserved.

DIVISION 2. LICENSE

Sec. 18-201. Required.

It shall be unlawful for any person to engage in the business of operating a tattoo establishment without first obtaining a license to engage in such business in accordance with this division.

(Ord. of 6-3-1981, § 1)

Sec. 18-202. Application fee.

An application for a tattoo establishment license shall be accompanied by a fee as specified in the schedule of license, permit and application fees in appendix A of this Code. Any change of ownership shall require a new application and license, with payment of fees therefor.

(Ord. of 6-3-1981, § 2; Ord. of 4-1-2003, § 2)

Sec. 18-203. Fee.

The license fee for engaging in the business of operating a tattoo establishment within the town shall be as provided in the schedule of license, permit and application fees in appendix A of this Code.

(Ord. of 6-3-1981, § 3; Ord. of 5-19-1982; Ord. of 4-1-2003, § 2)

Sec. 18-204. ~~Certificate of inspection.~~ State License Required

An applicant for a license to operate a tattooing establishment shall first obtain a ~~certificate of inspection from the health officer, State License, indicating the establishment has been inspected and is in compliance with this article.~~ The applicant must provide a copy of the most recent satisfactory inspection report from the State of Maine Department of Health and Human Services .

(Ord. of 6-3-1981, § 11)

Sec. 18-205. Insurance required.

A certificate of liability insurance in the amount of \$1,000,000.00 is required prior to the issuance of a tattooing establishment license. The policy must remain valid throughout the year and must be updated at renewal. Cancellation of the policy for any reason shall be considered just cause for the revocation of the license.

Secs. 18-~~205~~ 206--18-230. Reserved.

ARTICLE V. PARKING LOTS*

*Cross references: Stopping, standing, parking, § 54-141 et seq.

DIVISION 1. GENERALLY

Secs. 18-231--18-255. Reserved.

DIVISION 2. DISPLAY OF RATES

Sec. 18-256. Purpose.

The purpose of this division is to provide information prior to the use of parking lot spaces by the public as to the rates charged by the operator of a parking lot.

(Ord. of 7-8-1968)

Sec. 18-257. Required.

Every licensed operator of a parking lot when in operation shall publicly display a schedule of rates upon a sign not less than three feet in width and four feet in height with six-inch letters posted at each entrance to the parking lot.

(Ord. of 7-8-1968, § 1)

Secs. 18-258--18-~~285~~. 385 Reserved.

~~ARTICLE VI. PERFORMING ARTS FACILITIES*~~

~~*Cross references: Exemptions of noise for licensed performing arts facility, § 26-59.~~

DIVISION 1. GENERALLY

Sec. 18-286. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~L-01 means the A-weighted sound pressure level exceeded one percent of the time.~~

~~LEQ means the level of the mean square A-weighted sound pressure during a stated time period. It represents the equivalent time-varying sound pressure level for a period of time as a single sound pressure level.~~

~~Licensed facility means a performing arts facility which has been granted a license pursuant to this article.~~

~~Licensee includes both the owner and the operator of the licensed facility.~~

~~MAX-L means the maximum root mean square sound pressure level.~~

~~MAX-P means the maximum instantaneous peak sound pressure level.~~

~~Performing arts facility means a facility which includes a fixed permanent structure and which regularly presents events, such as but not limited to sporting events, conventions, trade shows, concerts and performing arts (referred to in this article as "events"), and which provides seating capacity for 5,000 persons or more. The term "performing arts facility" specifically includes the property on E. Emerson Cummings Blvd., formerly known as the ballpark and operated during 1989, 1990 and 1991 as Seashore Performing Arts Center or SeaPac (referred to as the "ballpark").~~

~~Sound pressure means the root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval.~~

~~Sound pressure level means ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.~~

~~(Ord. of 10-1-1991, § 2~~

~~Cross references: Definitions generally, § 1-2.~~

Sec. 18-287. Authority.

~~This article is enacted pursuant to the town's home rule power set forth in article 8, part 2, section 1 of the state constitution Maine and pursuant to the ordinance powers set forth in 30-A M.R.S.A. § 3001.~~

~~(Ord. of 10-1-1991, § 1)~~

Sec. 18-288. Violations; enforcement.

~~(a) Any person who operates a performing arts facility without the license required by this article and any person who owns property upon which a performing arts facility is operated without the license required by this article commits a civil violation punishable by a fine for each day such operation occurs, with each such day constituting a separate violation. Violation by a licensee of any of the provisions of the license agreement shall constitute a civil violation punishable by a fine as provided in section 1-14 for each occurrence of the violation. The civil penalties provided in this section shall be in addition to any liquidated penalty provided for in section 18-357 or set forth in the license agreement and shall be in addition to all other remedies available to the town at law and in equity.~~

~~(b) This article shall be enforced by the town manager or such other municipal official or employee as the town manager shall designate in writing.
(Ord. of 10-1-1991, § 10)
Secs. 18-289--18-315. Reserved.~~

~~DIVISION 2. LICENSE~~

~~Subdivision I. In General~~

~~Sec. 18-316. Required.~~

~~(a) No person shall operate a performing arts facility within the town without first obtaining a license from the town council pursuant to this division.~~

~~(b) No person who owns or controls property within the town shall permit the operation of a performing arts facility on such property without a license from the town council pursuant to this division.~~

~~(Ord. of 10-1-1991, § 3)~~

~~Sec. 18-317. Application.~~

~~(a) An application for a license required pursuant to this division may be submitted at any time after October 15 of the calendar year preceding the calendar year for which the license is sought, but no later than March 1 of the calendar year for which the license is sought. The application shall be made in writing to the town council and shall be accompanied by an application fee in the amount as specified in the schedule of license, permit and application fees in appendix A of this Code, by a proposed license agreement setting forth in detail how the applicant will meet the standards of this division and by such other information as the town council may from time to time require by published rule.~~

~~(b) The town council shall hold a public hearing on the license application within 30 days after receipt of the application and shall render its decision on the application within a reasonable time after the public hearing, but no later than May 1 of the calendar year for which the license is sought.~~

~~(Ord. of 10-1-1991, § 7; Ord. of 4-1-2003, § 2)~~

~~Sec. 18-318. Form.~~

~~A license issued pursuant to this division shall take the form of a written license agreement which shall set forth the date of approval of the license by the town council and all the terms and conditions of the license. The license shall be executed by the town council, by the owner of the licensed facility and by the operator of the licensed facility. The license shall be issued jointly to the owner and operator, if they are different persons, and both together shall be the licensee.~~

~~(Ord. of 10-1-1991, § 6)~~

~~Sec. 18-319. Term.~~

~~Each license issued pursuant to this division shall be valid for a term not to exceed 12 months and shall expire on December 31 of the year in which the license is issued.~~

~~(Ord. of 10-1-1991, § 4)~~

~~Sec. 18-320. Transferability.~~

~~A license issued pursuant to this division shall not be transferable. If ownership of the licensed facility is transferred or the licensed facility is changed to a different operator, the license shall expire immediately on the date of the transfer or change.
(Ord. of 10-1-1991, § 5)~~

~~**Sec. 18-321. Revocation or suspension.**~~

~~The town council may suspend or revoke a license issued pursuant to this division upon finding that the licensee has continued to violate one or more of the provisions of the license agreement after having been notified of and ordered to correct such violation. The town council may suspend or revoke a license only after the licensee has been given notice and an opportunity to be heard. If a suspension occurs, the licensee must receive notice of the proposed suspension at least seven days prior to the suspension hearing. If a revocation occurs, the licensee must receive notice of the proposed revocation at least 14 days prior to the revocation hearing. A decision by the town council to suspend a license shall not take effect until seven days after a licensee has actual notice of the decision. A decision by the town council to revoke a license shall not take effect until 14 days after the licensee has actual notice of the decision. The town council may, however, shorten any of the time periods prescribed in this section if the council finds that an emergency posing an imminent threat to the public health, safety and welfare exists and requires immediate action. The decision of the town council to suspend or revoke a license is not appealable to any other board or agency within the town.~~

~~(Ord. of 10-1-1991, § 9)~~

~~Secs. 18-322-18-345. Reserved.~~

~~**Subdivision II. Standards for Issuance**~~

~~**Sec. 18-346. Scope.**~~

~~(a) The town council shall not issue a license pursuant to this division unless the licensee agrees to operate the performing arts facility in accordance with the standards in this subdivision and is willing to execute the license agreement. The town council may attach such conditions to the license as it deems necessary to secure the licensee's compliance with the licensing standards in this subdivision. Such conditions may include provisions in the license agreement whereby the licensee is subject to liquidated monetary penalties payable to the town when quantifiable and measurable standards are violated, provided the licensee has a right to appeal any such liquidated penalty to the town council. The licensing standards of this subdivision shall be incorporated into and become a part of the license agreement, and failure to comply with those standards shall constitute a violation of this article and of the license agreement.~~

~~(b) Before issuing a license pursuant to this division, the town council shall determine that the operation of the performing arts facility will comply with the standards in this subdivision.~~

~~(Ord. of 10-1-1991, § 8)~~

~~**Sec. 18-347. Compliance required.**~~

~~The operation of the licensed performing arts facility will be in compliance with state and federal law and all ordinances and lawful rules and regulations enacted and promulgated by the town.~~

~~(Ord. of 10-1-1991, § 8(a))~~

Sec. 18-348. ~~Alcoholic beverages.~~

~~(a) If the licensee intends to sell or permit the sale of alcoholic beverages within the licensed performing arts facility, the licensee will restrict the times and locations of such sales so that alcoholic beverages are sold only during events and so that public safety and order will not be impaired, and the licensee will comply fully with state laws regulating the sale and consumption of alcoholic beverages.~~

~~(b) At the ballpark, the following restrictions shall apply:~~

~~(1) No alcoholic beverages may be sold at the facility before 12:00 noon Monday through Saturday and before 1:00 p.m. on Sunday. No alcoholic beverages may be sold at the facility after 10:00 p.m. on any day, except that alcoholic beverages may be sold until 10:30 p.m. to the premium seating, also known as sky boxes, located at the top of the pavilion in the grandstand. Alcoholic beverages may be sold and consumed only in the fenced-in portion of the facility, which does not include the parking lot.~~

~~(2) Alcoholic beverages not for sale may be dispensed in those portions of the facility not open to the general public only if the licensee has first secured written approval of the town council, which retains the right to set such terms and conditions as, in its sole discretion, it deems appropriate, and to rescind such approval at any time.~~

~~(3) The licensee will exercise due diligence and exert his best efforts to prevent the unauthorized consumption of alcoholic beverages on any part of the facility and to prevent patrons of the facility from using, consuming, bringing in, or otherwise obtaining alcoholic beverages in any manner not authorized by this division. Nothing in this division shall preclude the licensee from implementing more restrictive rules for the sale and consumption of alcoholic beverages.~~

~~(Ord. of 10-1-1991, § 8(b))~~

~~**Cross references:** Alcoholic beverages, ch. 6.~~

Sec. 18-349. ~~Limitations on dates.~~

~~Between May 15 and Labor Day of the calendar year for which the performing arts facilities license is issued, the licensee may conduct events on any day of the week. At all other times of the year, events may be conducted only on Fridays, Saturdays and Sundays, unless permission to conduct an event on another day is obtained from the town council at least 30 days prior to the event. The licensee and the town council will determine jointly and incorporate into the license agreement the maximum number of events to occur during the term of the license.~~

~~(Ord. of 10-1-1991, § 8(e))~~

Sec. 18-350. ~~Impact on adjoining areas.~~

~~The licensee will schedule events at the licensed performing arts facility so that they do not have an adverse impact on the areas adjoining the facility and on the community. For purposes of this section, any event which occurs in whole or in part prior to 9:00 a.m. or after 10:00 p.m. on Monday, Tuesday, Wednesday or Thursday; any event which occurs in whole or in part prior to 9:00 a.m. or after 10:30 p.m. on a Friday or Saturday; and any event which occurs in whole or in part prior to 1:00 p.m. or after 10:00 p.m. on a Sunday will be presumed to create an adverse impact, unless the applicant can demonstrate to the contrary. All events must conclude no later than the hours set forth in this section. However, if unavoidable delays occur because of weather or transportation problems, events may be extended, provided the licensee promptly notifies the chief of police or the police officer in charge of security for that event that a delay will occur.~~

~~(Ord. of 10-1-1991, § 8(d))~~

~~Sec. 18-351. Attendance limits.~~

~~The licensee will limit attendance to that number of persons which can be accommodated in the licensed performing arts facility in a safe and orderly fashion without creating adverse impacts on the areas adjoining the facility and on the community. The licensee will also limit attendance as required by any order of the state department of environmental protection or board of environmental protection. In addition, at the ballpark, the licensee will limit attendance based on the availability of parking as follows:~~

~~(1) The licensee will limit attendance to a maximum of 12,500 persons at any event until such time as a minimum of 2,500 additional parking spaces are created at the licensed facility or on additional land adjacent to the licensed facility approved in advance by the town council or at one or more of the following acceptable off-site parking locations: the high school, but not including the Loranger Junior High School, the Jameson School or the town little league field, or, if the licensed facility is owned or operated by Seashore Performing Arts Center, Inc., property owned by Dale A. Blow with direct access to Vallee Lane, provided that property is approved for parking purposes and adequate barriers are erected to ensure that pedestrian and vehicular traffic may enter and exit the parking area safely and only at the Vallee Lane entrance/exit. Before any such off-site parking is utilized, the licensee will clear and make reasonably suitable for on-site parking as much of the land on the premises of the licensed facility as is suitable for parking purposes. Upon the creation of such additional parking spaces, maximum attendance may increase to 15,000 persons at any event, and, upon completion and actual use of an additional access road to the licensed facility, maximum attendance may be increased to 17,500 persons at any event.~~

~~(2) The licensee will further limit attendance to ensure that the following minimum parking requirements are met: The licensee will provide one on-site parking space for each 3.5 tickets sold or one parking space at an acceptable off-site parking location as described in subsection (1) of this section for each three tickets sold.~~

~~(Ord. of 10-1-1991, § 8(e))~~

~~Sec. 18-352. Off-street parking.~~

~~The licensee of the performing arts facility will provide off-street parking adequate to serve the maximum attendance permitted at any event, and any off-street parking located outside the licensed facility will be in locations which shall not create public safety hazards or cause an adverse impact on the areas adjacent to the licensed facility. Parking will be located on impervious surfaces, lined and striped, and all parking areas will be well lighted. At the ballpark, parking will also comply with the specific requirements of section 18-351.~~

~~(Ord. of 10-1-1991, § 8(f))~~

~~**Cross references:** Stopping, standing, parking, § 54-141 et seq.~~

~~Sec. 18-353. Police protection, emergency medical services and private security services.~~

~~(a) The licensee will provide, at his expense, police protection, emergency medical services and private security services for each event at the licensed performing arts facility, with the numbers of such police, medical and security personnel for each event to be determined according to the maximum attendance anticipated for the event. An ambulance, other than a town rescue ambulance, will be present at the licensed facility~~

~~from one-half hour before the event until one-half hour after the conclusion of the event unless the police officer in charge of security directs differently. No earlier than 48 hours and no later than 24 hours prior to the time of each event, the licensee will meet with the police chief and provide the chief of police with a current box office audit report of the number of tickets then sold or otherwise distributed together with an estimate of the number of additional ticket sales anticipated up to and including the time of the event, and the chief of police shall then determine the numbers of police, medical and security personnel necessary for the event. Unless the chief of police directs otherwise, police and security personnel will ordinarily be assigned to each event as follows:~~

~~(1) Uniformed police officers in the following numbers:~~

- ~~a. Two officers for attendance up to 3,500.~~
- ~~b. Eight officers for attendance of 3,501 to 6,000.~~
- ~~c. Twelve officers for attendance of 6,001 to 10,000.~~
- ~~d. Thirteen officers for attendance of 10,001 to 12,000.~~
- ~~e. Fifteen officers for attendance in excess of 12,000.~~

~~At least two of the uniformed police officers shall be stationed within the interior of the facility.~~

~~(2) Private security personnel in the following numbers:~~

- ~~a. Fifteen security personnel for attendance up to 3,500.~~
- ~~b. Thirty security personnel for attendance between 3,501 and 7,500.~~
- ~~c. Forty security personnel for attendance between 7,501 and 10,000.~~
- ~~d. Fifty security personnel for attendance in excess of 10,000.~~

~~(b) Within 48 hours after the event, the licensee will provide the town with the final box office statement used by licensee to settle with performers as verification of actual attendance. The licensee will reimburse the town for the town's actual cost of all police and public safety services and equipment provided by the town within five business days of receipt of the town's bill.~~

~~(Ord. of 10-1-1991, § 8(g))~~

Sec. 18-354. Inclusive list of events.

~~(a) On or before March 1 of the year for which the performing arts facility license is issued, the licensee shall submit to the town council an inclusive list of all events which might be scheduled at the licensed facility during the forthcoming season.~~

~~(b) Upon written request from the licensee certifying that the inclusive list contains trade secrets, the town shall treat the inclusive list as confidential information and shall discuss it only in executive session, to the extent permitted by state law. The licensee will defend and indemnify the town, its officers and employees if a challenge to the confidentiality of the inclusive list is brought by any person.~~

~~(c) The inclusive list shall describe for each possible event the name of the performer, the number of patrons anticipated, the type of entertainment, the dates and locations of the two most recent performances by the performer, the name of a person who can provide additional information about the two most recent performances, and other relevant background information relating to the proposed event.~~

~~(d) Within 30 days of its receipt of the inclusive list, the town council shall advise the licensee of any events which the council determines would pose an unusual threat to the public health, safety or welfare and request that the licensee remove those events from the schedule. The council's determination shall be based solely upon a finding that a previous performance by a particular performer has resulted in serious public health, safety or welfare problems, such as but not limited to riot, property damage within the community, personal injuries or death, or substantial illegal activities. The council's determination shall not be based on the views of any of its members concerning the~~

~~content of the performer's material. If the licensee is unwilling to remove an event, the licensee shall, within ten days of receiving the council's request, notify the council that he desires a meeting with the council. At such meeting, the council, with the advice of the chief of police, shall prescribe such additional security requirements as the council considers necessary to conduct the event without endangering the public health, safety and welfare. Failure of the licensee to implement such additional security requirements shall constitute a violation of this article and of the license agreement.
(Ord. of 10-1-1991, § 8(h))~~

~~Sec. 18-355. Final schedule of events.~~

~~(a) On or before May 1 of the year for which the performing arts facility license is issued, the licensee shall meet with the chief of police and shall provide the chief with a final schedule of events listing each event, the date and time of a scheduled event, the performer scheduled for that date, the anticipated number of patrons and the type of entertainment. The chief shall inform the licensee if the minimum security required pursuant to this subdivision and the license agreement is inadequate for any particular event and shall order the additional security which the chief deems necessary to protect the public health, safety and welfare. If the licensee disagrees with the chief's order, the licensee may request review by the town council, and the order of the town council shall be final. Failure of the licensee to abide by any order by the chief of police or by the town council pursuant to this section shall constitute a violation of this article and of the license agreement.~~

~~(b) The licensee will notify the town council in advance of changes or modifications to the final schedule of events for the purpose of allowing the town council to request additional public safety and security precautions for particular events. If there are modifications or changes to the final schedule of events, the procedures set forth in subsection (a) of this section shall be repeated for each changed or modified event.
(Ord. of 10-1-1991, § 8(i), (j))~~

~~Sec. 18-356. Notice of sellout.~~

~~When the performing arts facility licensee learns that a particular event is likely to be sold out, the licensee will exercise due diligence to inform the general public that tickets will not be available for sale at the time of the event. At a minimum, the licensee will broadcast announcements in the communications media serving the entire marketing area for the facility.
(Ord. of 10-1-1991, § 8(k))~~

~~Sec. 18-357. Sound control.~~

~~(a) The licensee will control the level of sound emanating from the licensed performing arts facility so as to avoid the creation of a nuisance and adverse impacts on adjoining areas and on the community. At the ballpark, the licensee may meet this standard by utilizing the following procedure to control sound generated by each event which involves the live or electronically or mechanically produced performance of music (referred to as "concert"):~~

~~(1) The licensee will establish three sound measurement locations at or near the property boundary of the licensed facility, one in the vicinity of Lucette Avenue, one in the vicinity of Dirigo Drive and one in the vicinity of Fern Park Avenue, with the precise locations to be approved by the town council. For each measuring location, the licensee will install, either at the measuring location or within the licensed facility, an integrating sound level meter meeting the measurement instrumentation requirements set forth in~~

~~subsection (a)(4) of this section. The licensee will control sound emanating from the licensed facility so that for each concert the following limits are not exceeded at any of the three sound measuring locations:~~

~~a. Ten-minute LEQ: 62 dBA.~~

~~b. L-01: 77 dBA per ten-minute LEQ period.~~

~~c. MAX-L: 80 dBA at any time.~~

~~As an alternative, the licensee may establish a sound measurement location at the control board and, using the same sound measurement techniques and protocols utilized under this section, control sound so that the level measured at the control board does not exceed 104 dBA. The sound level measurements will be taken continuously from one-half hour before the scheduled commencement of the performance until one-half hour after the conclusion of the performance. The limits of this subsection shall not apply to periods of setup, warmup or equipment testing occurring before a concert, provided that the total of such periods does not exceed one hour in any calendar day. The licensee will maintain a written record of all sound measurements at the three sound measuring locations and submit a sound measurement data report to the town council within 48 hours after each concert, together with the affidavit of the person taking such measurements stating affirmatively that such measurements are true and accurate and were taken in compliance with the procedures of subsection (a)(4) of this section. The limits set forth in this subsection are based upon the operation of the ballpark as an outdoor, unenclosed facility and may be revised by amendment to this article if the facility becomes partially or wholly enclosed.~~

~~(2) The licensee will permit up to three town representatives designated in advance by the town council to be present at all concerts for the purpose of observing and verifying the sound level measurements. If, at any time during a concert, the limits of subsection (a)(1) of this section are exceeded, the designated town representatives will promptly issue a warning to the manager of the licensed facility, who will take immediate measures to reduce the sound levels so that the limits are not exceeded again during the concert. At all times during each concert, the manager of the licensed facility or his designee will be available to receive, through radio, telephone or in-person communication, such warning from the designated municipal officials. If any of the limits is exceeded during the second successive ten-minute LEQ period after the warning or during any ten-minute LEQ period thereafter, each such incident exceeding a limit after the initial warning shall constitute a violation of this article, and the licensee will pay to the town liquidated penalties as follows:~~

~~a. First violation, \$1,000.00.~~

~~b. Next violation in the same concert, \$2,000.00.~~

~~c. Each subsequent violation in the same concert, \$5,000.00.~~

~~If the licensee incurs three or more liquidated penalties in each of three or more concerts during the term of the license agreement, the town council shall immediately schedule a hearing under section 18-321 to determine why the license should not be suspended or revoked. At such hearing, the licensee will be required to explain the causes of such violations, identify steps the licensee will take to implement corrective measures for future concerts and demonstrate that the licensee will be able to conduct future concerts at the licensed facility without violating the sound level limits.~~

~~(3) The licensee may appeal liquidated penalties to the town council by filing a written notice of appeal no less than 48 hours after the conclusion of the concert. Within five days after receipt of such appeal, the town council will hear the appeal and may reduce or rescind the liquidated penalties if the council finds that the licensee made a good faith attempt to avoid violating the limits and, despite the licensee's efforts, the violation occurred, or if the council finds that the violation was unavoidable. The term~~

~~"unavoidable" means that the sound level could not be adjusted at the control console without altering the content of the performance because the concert was not employing electronic amplification and that the violation was not anticipated by the licensee in advance of the concert.~~

~~(4) The procedures for determining compliance with subsection (a)(1) of this section shall be as follows:~~

~~a. Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound.~~

~~b. An integrating sound level meter shall meet all of the type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983 and the type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).~~

~~c. An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirement of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.~~

~~d. A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.~~

~~e. The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards or its successor agency.~~

~~f. Field calibrations shall be recorded before and after each concert and not less than once every two hours during each concert or at shorter intervals if recommended by the manufacturer.~~

~~g. The microphone shall be positioned at a height of approximately four to five feet above the ground and oriented in accordance with the manufacturer's recommendations.~~

~~h. Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet.~~

~~i. The sound measurement data report shall include the following:~~

~~1. The dates, days of the week and hours of the day when measurements were made.~~

~~2. The wind direction and speed, temperature, humidity and sky condition.~~

~~3. Identification of all measurement equipment by make, model and serial number.~~

~~4. The most recent dates of laboratory calibration of sound level measuring equipment.~~

~~5. The dates, times and results of all field calibrations during the measurements.~~

~~(b) The town council may, in its sole and exclusive discretion, authorize an alternative system of meeting the standards of this section, provided the council concludes that such alternative system will effectively achieve compliance with the standards. Any such alternative system shall be set forth in detail in the license agreement required by section 18-318. In order to evaluate the effect of any such alternative during the term of the license agreement, the council may also require that all or part of the sound measuring system described in this section be utilized as well, until such time as the alternative system is proven to be effective in meeting the standard of this section.~~

~~(Ord. of 10-1-1991, § 8(l); Ord. of 5-17-1994; Ord. of 2-20-2001)~~

Sec. 18-358. Training and education of employees.

~~The licensee of the performing arts facility will at his own expense provide reasonable training and education for his employees, his contract staff, and his public safety and security personnel in order to preserve the public safety, health and order and will provide the town council with written certification of the training and education of such personnel.~~

~~(Ord. of 10-1-1991, § 8(m))~~

~~Sec. 18-359. Access for monitoring event.~~

~~The licensee will allow town representatives designated by the town council reasonable access to the licensed performing arts facility during events for the purpose of monitoring sound level readings and observing the licensee's compliance with the standards of this article and with the license agreement. Nothing in this article or in the license agreement will in any way limit the ability of police, fire and other public safety personnel to enter the licensed facility during events for the purpose of protecting the public safety.~~

~~(Ord. of 10-1-1991, § 8(n))~~

~~Sec. 18-360. Toilet facilities.~~

~~For each event at a performing arts facility, the licensee will provide toilet facilities which meet the requirements set forth in section 38-203(4) pertaining to mass public gatherings.~~

~~(Ord. of 10-1-1991, § 8(o))~~

~~Secs. 18-361--18-385. Reserved.~~

ARTICLE VII. ICE CREAM TRUCKS*

***Cross references:** Traffic and vehicles, ch. 54.

State law references: Vendors and itinerant sales, 32 M.R.S.A. § 4501 et seq.

DIVISION 1. GENERALLY

Sec. 18-386. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Ice cream truck means a motor vehicle utilized as the point of retail sales of prewrapped or prepackaged ice cream, frozen yogurt, frozen custard, flavored frozen water or similar frozen dessert products.

(Ord. of 6-15-1999, § 1)

Cross references: Definitions generally, § 1-2.

Sec. 18-387. Exemption from zoning.

An ice cream truck licensed under this article and operated in compliance with this article shall not be considered a land use subject to regulation under chapter 78 pertaining to zoning.

(Ord. of 6-15-1999, § 4)

Sec. 18-388. Permitted sales location.

Sales from ice cream trucks shall occur only on public ways with a speed limit of 25 miles per hour or less located within residential districts under chapter 78 or on private ways or private property with the consent of the owner of the private way or private property.

(Ord. of 6-15-1999, § 3(1); Ord. of 2-19-2002, § 3(1))

Sec. 18-389. Prohibited locations.

(a) No ice cream truck shall make any sales within 500 feet of a restaurant, retail store selling prepackaged food items or a fixed place of business having a victualer's license issued by the town.

(b) No ice cream truck shall make any sales within 500 feet of any public school or public recreation area owned or operated by the town, with the exception of East Grand Avenue from Walnut Street, north, to the Scarborough town line.

(c) No ice cream truck shall make any sales from the railroad tracks to the ocean, easterly or westerly to the Scarborough and Saco lines except on private ways or private property with the consent of the owner of the private way or private property. No ice cream truck shall make any sales on Route 5, Saco Ave.; Route 98, Cascade Road; Temple Avenue; Portland Avenue; or the Ross Road.

(d) No ice cream truck shall stop at any time for the purpose of making sales in any area where parking is prohibited by the town in chapter 54 or in any area posted as a no parking zone by the town.

(Ord. of 6-15-1999, § 3(2); Ord. of 2-19-2002, § 3(2))

Sec. 18-390. Length of stop.

No ice cream truck shall stop for the purpose of making sales for more than 15 minutes in any single location.

(Ord. of 6-15-1999, § 3(3))

Sec. 18-391. Manner of stops.

Ice cream trucks shall pull as far as practicable to the side of the right-of-way when stopping for the purpose of making sales and shall operate four-way flashers when so stopped. In no event shall an ice cream truck stopped for the purpose of making sales prevent the passage of other motor vehicles on the right-of-way.

(Ord. of 6-15-1999, § 3(4))

Sec. 18-392. Rubbish receptacle required.

Each ice cream truck shall provide a rubbish receptacle for the use of its customers. Prior to leaving each stop, the operator of the ice cream truck shall remove any litter left at the stop by customers.

(Ord. of 6-15-1999, § 3(5))

Sec. 18-393. Hours of operation.

Ice cream trucks may stop for the purpose of making sales only between the hours of 11:00 a.m. and 8:00 p.m.

(Ord. of 6-15-1999, § 3(6))

Sec. 18-394. Insurance required.

Each ice cream truck shall be insured under a policy of public liability insurance in an amount of not less than \$300,000.00 with the town named as an additional insured on the policy.

(Ord. of 6-15-1999, § 3(7))

Sec. 18-395. Limits on products sold.

Only prewrapped or prepackaged food items may be sold from an ice cream truck. Nonfrozen items such as prepackaged soft drinks, candy, chewing gum and snack food may be sold from an ice cream truck, provided the principal product sold is ice cream and/or similar frozen dessert products.

(Ord. of 6-15-1999, § 3(8))

Secs. 18-396--18-420. Reserved.

DIVISION 2. LICENSE

Sec. 18-421. Required.

No person shall operate an ice cream truck in the town without the license as provided by this division. A separate license is required for each ice cream truck.

(Ord. of 6-15-1999, § 2(1))

Sec. 18-422. Application.

Application for an ice cream truck license shall be submitted to the license administrator on the same form as provided by article II of this chapter.

(Ord. of 6-15-1999, § 2(2))

Sec. 18-423. ~~Public hearing; limitation on number issued.~~ License required.

Ice cream truck licenses shall be issued by the town council. ~~after a public hearing. Only two such licenses shall be issued annually. If more than two are applied for at one time, the approval of the two licenses to be issued shall be by lottery as established by the town council. Of the two licenses issued, one license shall be reserved for a town resident, if a town resident applies for a license.~~

~~(Ord. of 6-15-1999, § 2(3); Ord. of 2-19-2002, § 2(3))~~

Sec. 18-424. Expiration; fee.

(a) Licenses issued under this division shall expire ~~on April 30 of each year~~ as referenced in section 18-31, subsection b (i).

(b) The fee for each license shall be as specified in the schedule of license, permit and application fees in appendix A of this Code for each ice cream truck licensed. ~~Payment of a pro-rata license shall be prohibited for any license issued under this division.~~

(Ord. of 6-15-1999, § 2(4); Ord. of 4-1-2003, § 2)

Sec. 18-425. Suspension or revocation.

Licenses issued under this division may be suspended or revoked by the town council after notice and hearing for violation of any of the sections of this article.

(Ord. of 6-15-1999, § 2(5))

Secs. 18-426--18-450. Reserved.

ARTICLE VIII. MASSAGE ESTABLISHMENTS*

*Cross references: Zoning, ch. 78.

State law references: Massage therapists, 32 M.R.S.A. § 14301 et seq.

DIVISION 1. GENERALLY

Sec. 18-451. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disqualifying criminal conviction means any conviction for any criminal offense punishable by imprisonment for any period of time, whether or not the sentence was imposed or served, but not including any conviction which is shown to have been set aside on appeal or collaterally or for which a pardon, certificate or rehabilitation or the equivalent under the law of the sentencing jurisdiction has been granted or which is not rationally related to the purpose of licensing massage establishments.

Massage means any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body with the hands or other parts of the body or with the aid of any instrument or device.

Massage establishment means any business, including but not limited to a sole proprietorship, in which the business operation consists of providing or making available massage in the town for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place or business within the town limits.

Massage therapist means any person who performs a massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

Patron means any person who receives a massage.

Recognized school means any school or institution of learning which has for its purpose the teaching of the theory, method, profession and work of massage therapy and is recognized or certified by this state or any other state. Schools offering a correspondence course not requiring actual attendance of class shall not be deemed a recognized school.

(Ord. of 6-18-1991, art. I, § 2)

Cross references: Definitions generally, § 1-2.

Sec. 18-452. Purpose.

The purpose of this article is to regulate the operation of massage establishments in order to promote public health, safety and general welfare.

(Ord. of 6-18-1991, art. I, § 1)

Sec. 18-453. Exemptions.

The following shall be exempt from this article, if duly licensed by and while practicing in accordance with the laws of this state: physicians, physicians assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, barbers, cosmetologists, beauticians and other health and hygiene professionals.

(Ord. of 6-18-1991, art. I, § 3)

Sec. 18-454. Enforcement.

The enforcement of this article shall be with the police department.

(Ord. of 6-18-1991, art. V, § 4)

Sec. 18-455. Massage tables.

All massages shall be administered on a massage table, treatment table or treatment mat.

(Ord. of 6-18-1991, art. I, § 4)

Sec. 18-456. Maintenance and cleaning.

Every person who conducts or operates a massage establishment shall keep the establishment at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind or parts thereof that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

(Ord. of 6-18-1991, art. I, § 5)

Sec. 18-457. Prohibited activities.

(a) No massage therapist shall administer a massage to a patron whose genitals are exposed.

(b) No massage therapist shall administer or agree to administer a massage to the genitals or anus of a patron.

(c) No massage therapist shall administer a massage unless he is fully clothed with nontransparent clothing of the type customarily worn by massage therapists while administering a massage.

(Ord. of 6-18-1991, art. I, § 6)

Sec. 18-458. Closing hours.

No massage establishment shall be kept open for massage purposes between the hours of 10:00 p.m. and 6:00 a.m.

(Ord. of 6-18-1991, art. I, § 7)

Sec. 18-459. Supervision.

At all times when open for business, a massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and ensure that no violations of this article occur.

(Ord. of 6-18-1991, art. I, § 8)

Sec. 18-460. List of employees.

The massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the chief of police or member of the police department upon request.

(Ord. of 6-18-1991, art. I, § 9)

Secs. 18-460--18-485. Reserved.

DIVISION 2. LICENSES

Sec. 18-486. Required.

(a) *Authority to issue or deny.* The town council is authorized to grant or deny licenses as set forth in this division within the terms of this division.

(b) *Massage establishment license.* No person shall operate a massage establishment without first having obtained a valid massage establishment license from the town. A separate license shall be required for each such establishment.

(c) *Massage therapist license.* No person shall work as a massage therapist without a valid massage therapist license or a combined massage establishment/therapist license.

(d) *Combined massage establishment/massage therapist license.* A sole practitioner who employs no massage therapist other than himself may apply for a combined massage establishment/massage therapist license in lieu of both a massage establishment license and a massage therapist license.

(Ord. of 6-18-1991, art. II, § 1; Ord. of 2-1-1994)

Sec. 18-487. Application/Insurance required

(a) Any person desiring a license pursuant to this division shall file a written, signed application with the license administrator on a form to be furnished by the license administrator. A front-face photograph of the applicant must be filed with the application for the license.

(b) A certificate of liability insurance in the amount of \$1,000,000.00 is required prior to the issuance of a massage therapist, massage establishment and combination massage establishment/ Massage therapist license. The policy must remain valid throughout the year and must be updated at renewal. Cancellation of the policy for any reason shall be considered just cause for the revocation of the license.

(Ord. of 6-18-1991, art. III, § 1; Ord. of 5-21-2002(1))

Sec. 18-488. Basic proficiency/Referenced Standards

(a) Each applicant for a license required pursuant to this division shall show proof of basic proficiency in the field of massage therapy which may be satisfied by evidence that the applicant is currently certified as a massage therapist An applicant for a license for a Massage therapist, massage establishment and combination massage establishment/ Massage therapist shall first obtain a State License issued by the State of Maine Department of Professional & Financial Regulation pursuant to 32 M.R.S.A. ~~§§ 14306-A and 14306-B.~~ 14306-C.

Possession of a State license does not constitute an obligation for the Town of Old Orchard Beach to grant the local license.

(b) Massage therapist, massage establishment and combination massage establishment/ Massage therapist shall be operated in compliance with Chapter 100 through and including 400--Rules Relating to Massage Therapists as promulgated by the State of Maine Department of Professional & Financial Regulation as prescribed in MRSA Title 32 § 14302(2)

Ord. of 6-18-1991, art. III, § 2; Ord. of 2-1-1994)

Sec. 18-489. Fees.

The fees for a therapeutic massage establishment license, a massage therapist license and combined massage establishment/massage therapist license shall be as specified in the schedule of license, permit and application fees in appendix A of this Code.

(Ord. of 6-18-1991, art. II, § 3; Ord. of 2-1-1994; Ord. of 4-1-2003, § 2)

Sec. 18-490. Obtaining by fraud.

- (a) No person shall make any false, untruthful or fraudulent statement, either written or oral, or in any way conceal any material fact or give or use any fictitious name in order to secure or aid in securing a license required by this division. All names, including but not limited to maiden name, ever used by the applicant must be noted on the application.
 - (b) Any license secured by fraud, deceit or concealment shall be deemed null and void.
 - (c) No person shall make use of, in any manner, to his own or another's benefit, any license which has not been duly issued to him in accordance with this division.
- (Ord. of 6-18-1991, art. III, § 3)

Sec. 18-491. Standards for denial.

- (a) *Massage establishment license.* The town council may deny a license for a therapeutic massage establishment if it finds that:
 - (1) The applicant does not have the legal right to occupy the premises for which the license is sought.
 - (2) The business or activity is not or the premises are not in compliance with other local ordinances.
 - (3) The applicant is a corporation that is not registered to do business in this state.
 - (4) Any principal officer of the corporation or any person having an actual ownership interest or management authority therein or to an applicant, if other than a corporation, has a disqualifying criminal conviction within the immediately preceding five years.
 - (b) *Massage therapist, combined massage establishment/massage therapist.* The town council may deny a license for a massage therapist, combined massage establishment/massage therapist for the following reasons:
 - (1) An applicant has been given a disqualifying criminal conviction at any time during the five years immediately preceding the application; or
 - (2) An applicant is not at least 18 years of age.
 - (c) *Records.* The town council shall make and the license administrator shall keep a written record of each decision to deny an application for any license under this division.
- (Ord. of 6-18-1991, art. IV, § 1; Ord. of 2-1-1994; Ord. of 5-21-2002(1))

Sec. 18-492. Display.

- (a) A valid massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued.
 - (b) A valid massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.
- (Ord. of 6-18-1991, art. II, § 2; Ord. of 2-1-1994)

Sec. 18-493. Grounds for suspension or revocation.

- (a) *All licenses.* In addition to the grounds for denial as set forth in section 18-491(a) and (b), any license issued pursuant to this division may be suspended or revoked upon a determination that the licensee:
 - (1) Failed to notify the license administrator of any change in material facts set forth in the application for such license; or
 - (2) Violated any section of this article, this Code or any other town ordinance.
- (b) *Massage establishment or combined establishment/therapist license.* In addition to subsection (a) of this section, either a massage establishment license or combined

establishment/therapist license may be suspended or revoked upon a determination that the licensee:

- (1) Permitted any person to perform massage without a valid license to do so;
- (2) Permitted or allowed an employee or massage therapist to violate any section of this article on the premises of the establishment or in the course of conduct of the business of the establishment; or
- (3) Knowingly permitted any violation of 17-A M.R.S.A. §§ 851--855. Such knowledge shall be presumed if there have been two or more convictions for any such offense within any one-year period. The applicant or licensee may rebut such presumption by showing that:
 - a. Due diligence was exercised to prevent the recurrence of any such offense; and
 - b. Despite such diligence, he did not know and could not reasonably have known of any subsequent offense.

(Ord. of 6-18-1991, art. IV, § 2; Ord. of 2-1-1994; Ord. of 5-21-2002(1))
Secs. 18-494--18-520. Reserved.

ARTICLE IX. CAMPGROUNDS*

***Editor's note:** An amendment adopted April 21, 2009, amended Article IX in its entirety to read as herein set out. Former Art. IX, §§ 218-521--18-529, pertained to similar subject matter, and derived from Ord. of 3-3-1992, § I(A--C), II--V; T.M. of 5-15-1944, § 2, 5(3), 6, 7.

Cross references: Campground overlay district, § 78-1221 et seq.

Sec. 18-521. Title.

This article shall be known and may be cited as the "Ordinance for Campgrounds and Recreational Vehicles."

(Ord. of 4-21-2009(1))

Sec. 18-522. Definitions.

The words, terms and phrases used in this article are defined in section 78-1, definitions.

(Ord. of 4-21-2009(1))

Sec. 18-523. Purpose.

The purpose of this article is to:

- (a) Promote the health, safety, and general welfare of the town residents;
- (b) Provide safety from fire and other elements;
- (c) Provide light and air;
- (d) Prevent overcrowding of real estate;
- (e) Prevent housing development in unsanitary areas;
- (f) Provide an allotment of land area in new developments sufficient for all the requirements of community life;
- (g) Conserve natural resources; and
- (h) Provide adequate public service, as an integral part of a comprehensive plan for municipal development.

(Ord. of 4-21-2009(1))

Sec. 18-524. Compliance with zoning.

Campgrounds and recreational vehicles subject to this article shall also comply with the requirements and regulations contained in chapter 78 pertaining to zoning. (Ord. of 4-21-2009(1))

Sec. 18-525. Habitation and maintenance of recreational vehicles.

(a) It shall be unlawful for any person to maintain a recreational vehicle in the town, outside a campground which is duly licensed under this article, except as specifically permitted in this section.

(b) It shall be permissible for a bona fide guest of a resident to allow one recreational vehicle unit to camp or park in his yard adjacent to such person's house for a period of time not to exceed 15 days unless granted more time by the town council, provided that the person occupying such dwelling house shall have granted permission to the recreational vehicle occupants to use the householder's toilet facilities.

(c) Removal of the wheels or other transporting device, except the temporary detachment of a towing unit, from any recreational vehicle shall be construed as converting it into a permanent structure subject to all the requirements of the building code, health, and sanitary regulations. It shall be permissible, however, for the owner to jack up and support a recreational vehicle on temporary blocks or jacks, in order to take the weight off the tires, provided the wheels are not removed therefrom. This paragraph does not apply to park models and pick-up coaches located in campgrounds.

(d) A recreational vehicle may be parked or stored in the town regardless of the other subsections of this section, provided that it shall not be used for living or sleeping purposes during such time it is so stored or parked and provided, moreover, that it shall not be a nuisance and does not constitute a fire hazard.

(e) No toilet, sink, shower or other plumbing fixture contained in a recreational vehicle shall be used unless it discharges into a sewer connected to the municipal wastewater treatment facility, an approved subsurface wastewater disposal system, or a holding tank built into the recreational vehicle. A portable holding tank may be used temporarily provided it is designed and constructed specifically for the purpose of containing wastewater, is airtight and is secured from spilling. Holding tanks, whether built into the recreational vehicle or portable, must be emptied regularly by discharging their contents into a campground dumping station or other lawful dumping station or by delivering their contents to a wastewater hauler for lawful disposal.

(Ord. of 4-21-2009(1))

Sec. 18-526. Criteria for the establishment and licensing of campgrounds.

Campgrounds may be established in the districts where they are permitted under the terms of chapter 78, provided that:

(a) No person shall establish, own or operate a campground without a license issued [annually as outlined in Section 18-31 of this ordinance](#) by the town council for which the applicant shall pay the required fee pursuant to section 18-32. Such license shall only be issued if the campground is found to conform to all requirements of this article and other pertinent local ordinances and state laws and codes.

(b) Renewal of campground licenses shall occur only after the fire chief, building inspector and electrical and plumbing inspectors sign an approval form provided by the license administrator indicating compliance with all applicable codes. Such form shall also contain a provision to be signed by the assessor that compliance with subsection (c) of this section has been met.

~~(d)~~ (c) It shall be the responsibility of the campground owner to file a complete list of all recreational vehicles and any additions which are located stored in the campground ~~on~~ April 1 of in the current year. Such list shall be filed no later than March 1 of each year. Failure to file this list shall constitute a violation of this article, and no license shall be issued or renewed until compliance is indicated.

(Ord. of 4-21-2009(1))

Sec. 18-527. Time of operation.

Campgrounds shall be open only from April 1 to October 31 of any year. From November 1 to March 31 of the succeeding year, operators shall vacate all customers and shall close water and electrical systems for the winter months.

(Ord. of 4-21-2009(1))

Sec. 18-528. Registers.

The campground owner or agent shall keep and maintain a register of guests renting or occupying sites. Such register shall be maintained in the following manner:

(a) The register shall specify the date and time of arrival, the name of the owner of the recreational vehicle and towing unit, the state in which the recreational vehicle and towing unit are registered and the number of the vehicular license. Registration information for guests renting or occupying sites for the full duration of the summer season may be kept in a register separate from the short-term guests.

(b) The register shall be signed by the person renting sites or by someone under their direction.

(c) The campground owner or agent shall keep and preserve the record for five years showing the date of registration and duration of occupancy of each site.

(Ord. of 4-21-2009(1))

Sec. 18-529. Sanitary facilities.

(a) *Water supply.* The campground's water supply shall conform to applicable laws and rules relating to water supplies, including the requirements of the most up-to-date State of Maine campground regulations.

(b) *Sewage disposal.* All sewage disposal methods, shall conform to all laws and rules relating to sewage disposal, including the requirements of the most up-to-date State of Maine campground regulations.

(c) *Dumping station.* All dumping stations shall conform to applicable laws and rules relating to dumping stations, including the requirements of the most up-to-date State of Maine campground regulations.

(d) *Individual sewer risers.* The sewer riser pipe shall have at least a three-inch (7.6 cm) diameter and shall be conveniently located. These risers may be cast iron, Schedule 40, PVC or ABS plastic and shall be capped when not in use.

(e) *Service buildings.* Service buildings containing the necessary toilet/privy and other plumbing fixtures specified shall be provided in all campgrounds.

(1) Service buildings shall be conveniently located within a radius of 500 feet to the sites to be served. Campgrounds shall be exempt from the 500 foot radius requirement with regard to camping sites that will be occupied by a self-contained recreational vehicle on sites that provide water and sewer connections.

(2) Service buildings shall conform to the following schedule:

TABLE INSET:

No. of Campsites*	Toilets		Urinals
	Men	Women	Men
1--15	1	1	1
16--30	1	2	1
31--45	2	2	1
46--60	2	3	1
61--100	3	4	1

TABLE INSET:

No. of Campsites*	Sinks		Showers**	
	Women	Men	Women	
1--15	1	1	1	1
16--30	2	2	1	1
31--60	3	3	1	1
61--80	4	4	2	2
81--100	4	4	3	3

* This column is the summation of all sites without complete water and sewer hookups plus one-fourth the total number of sites with complete water and sewer hookups.

* For parks having more than 100 sites, there shall be provided one additional toilet and lavatory for each sex per each additional 40 and one additional men's urinal per each additional 100 sites.

** Showers may be located in several service buildings or one centrally located shower building.

(3) Toilets shall be located in separate compartments.

(4) Warm and cold water or a mixture of warm and cold water shall be furnished to every sink, bathtub, and shower, and cold water shall be furnished to every toilet, urinal, flushing rim sink and laundry fixture.

(5) The floors, walls and ceiling of the sanitary building shall be kept clean and in good repair. The toilets, sink and showers shall be cleaned and disinfected daily. The fixtures shall be maintained in good repair.

(Ord. of 4-21-2009(1))

Sec. 18-530. Garbage disposal and vermin control.

(a) All refuse must be stored in vermin proof containers of sufficient number and capacity so as to prevent any refuse from overflowing, and the containers shall be located on the premises so as not to create a potential fire hazard.

(b) Campgrounds shall be maintained free of accumulations of debris. All garbage and rubbish shall be disposed of on a regular basis so as not to create a health hazard.

(c) Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Extermination methods and other measures to control insects

and rodents shall conform with the requirements of the State Department of Human Services and other state or federal rules.

(Ord. of 4-21-2009(1))

Sec. 18-531. Safety requirements.

(a) Fires shall be permitted only in specifically designated locations and in fireplaces approved by the fire chief. Fires shall not be allowed under conditions and at times determined unsafe by the fire chief.

(b) It shall be the duty of the health officer to enforce all health and sanitation regulations, it shall be the duty of the building inspector to enforce all building code regulations and ordinances, and it shall be the duty of the police department to maintain law and order in all campgrounds.

(c) If at any time a campground is found to be in violation of any of the sections of this article or other pertinent town ordinances or state laws, any duly constituted officer or agent of any town department charged with the duty to inspect such campgrounds or maintain order therein shall notify the licensee of such campground of such condition. If the violation is not corrected to the satisfaction of the department complaining, within a reasonable time after notification, not exceeding 48 hours, the license for such campground may be suspended or revoked by the town council, following the procedures of section 18-39 of article II of this chapter, on the recommendation of the department making the complaint.

(Ord. of 4-21-2009(1))

Secs. 18-532--18-~~555~~. [580](#). Reserved.

~~ARTICLE X. AUCTIONS*~~

~~*State law references: Auctioneers, 32 M.R.S.A. § 284.~~

~~DIVISION 1. GENERALLY~~

~~Secs. 18-556--18-580. Reserved.~~

~~DIVISION 2. PERMIT~~

~~Sec. 18-581. Required.~~

~~No person shall maintain, operate or conduct an auction within the town limits without first having obtained a permit from the town council. No such permit shall be issued to conduct an auction more than one regular business day in any calendar month to any person or for any particular location.~~

~~(Ord. of 5-5-1960, § 1)~~

~~Sec. 18-582. Fee.~~

~~The fee for such permit as may be issued under this division shall be as specified in the schedule of license, permit and application fees in appendix A of this Code; all charitable organizations shall be exempt.~~

~~(Ord. of 5-5-1960, § 1)~~

~~Sec. 18-583. Contents.~~

~~The permit issued under this division shall specify the date and location of the auction, shall describe generally the types of merchandise that may be auctioned thereunder, and shall contain whatever reasonable restrictions the issuing authority may deem fit to impose.~~

~~(Ord. of 5-5-1960, § 1)~~

~~**Sec. 18-584. Penalty for failure to obtain.**~~

~~Any person who maintains, operates or conducts an auction in the town without first having obtained a permit as provided in this division or any person who maintains, operates or conducts an auction in a manner which does not conform to the permit issued to him shall be subject to a fine as provided in section 1-14.~~

~~(Ord. of 5-5-1960, § 1)~~

~~**Sec. 18-585. Public hearing.**~~

~~All auction permits shall be posted for ten days prior to a public hearing held by the license board, in order that opposing views may be heard, and only then may the town council, acting as license board, grant or deny such permit for an auction.~~

~~(Ord. of 5-5-1960, § 1; Ord. of 8-24-1972)~~

~~Secs. 18-586--18-600. Reserved.~~

ARTICLE X. VICTUALERS

DIVISION 1. GENERALLY

Sec. 18-581. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Victualer means a person who serves food or drink prepared for consumption by the public.

Sec. 18-582. Referenced Standards Victualer's establishments shall be operated in compliance with Chapter 200 "State of Maine Food Code 2001" as promulgated by the State of Maine Department of Health and Human Services as prescribed in MRSA Title 22 § 2496.

Secs. 18-583--18-606. Reserved.

~~**ARTICLE XI. HEAD SHOPS**~~

~~**Sec. 18-601. Definitions.**~~

~~As used in this article, the following terms have the following meanings:~~

~~*Drug paraphernalia* has the meaning as in 17-A M.R.S.A. § 1111-A.~~

~~*Head shop* means a building or place where drug paraphernalia is sold or offered for sale or where merchandise is displayed for the purpose of sale and/or for the purpose of promoting sales and where either the nature of the merchandise or the nature of some of the merchandise and the context in which it is displayed would indicate to a reasonably knowledgeable person that some of the merchandise is equipment, products or materials designed or marketed for use as drug paraphernalia. An establishment which meets this definition is considered a head shop, notwithstanding that it may also sell or display other types of merchandise.~~

~~(Ord. of 5-5-09, § 1; Ord. of 6-16-09, § 1)~~

~~Sec. 18-602. Establishment and operation of head shops prohibited.~~

~~During the time this article is in effect, no person shall establish or operate a head shop.~~

~~(Ord. of 5-5-09, § 2; Ord. of 6-16-09(2), § 2)~~

~~Sec. 18-603. Applications not to be accepted or acted upon.~~

~~During the time this article is in effect, no official, officer, board, body, agency, agent or employee of the Town of Old Orchard Beach shall accept, process or act upon any application for any approval relating to the establishment or operation of a head shop.~~

~~(Ord. of 5-5-09, § 3; Ord. of 6-16-09(2), § 3)~~

~~Sec. 18-604. Enforcement, violation and penalties.~~

~~This article shall be enforced by the Code Enforcement Officer of the Town of Old Orchard Beach. Any person who violates section 18-602 of this article shall be subject to civil penalties and other remedies as provided in 30-A M.R.S.A. § 4452.~~

~~(Ord. of 5-5-09, § 4; Ord. of 6-16-09(2), § 4)~~

~~Sec. 18-605. Effective date.~~

~~This article takes effect immediately upon adoption and shall expire on November 2, 2009, unless earlier extended, repealed or modified by the Old Orchard Beach Town Council.~~

~~(Ord. of 5-5-09, § 5; Ord. of 6-16-09(2), § 5)~~

~~Sec. 18-606. Applicability.~~

~~Notwithstanding the provisions of 1 M.R.S.A. § 302, this article shall apply to any proposal to establish or operate a head shop, whether or not an application or a proceeding to establish or operate a head shop would be deemed a pending proceeding under 1 M.R.S.A. § 302.~~

~~(Ord. of 5-5-09, § 6; Ord. of 6-16-09(2), § 6)~~

Per Order of the Municipal Officers this 6th day of April, 2010.

A True Copy

Attest:

s/Kim M. McLaughlin

Kim M. McLaughlin, Town Clerk