

## **PUBLIC INDECENCY ORDINANCE**

### **TOWN OF MEDWAY**

Ordinances of the Town of Medway (General Offenses) Public Indecency, prohibiting certain conduct in public places, providing definitions relating thereto, and providing penalties for the violators thereof, including fines, and declaration of public nuisance, as appropriate.

**WHEREAS** the Selectmen of the Town of Medway have, at various times expressed its findings that certain lewd, immoral activities carried on in public places for profit are highly detrimental to the public health, safety and welfare, and lead to the debasement of both women and men, promote violence, public intoxication, prostitution and other serious criminal activity; and

**WHEREAS**, Selectmen, have expressed its intention to limit or restrict such lewd immoral activities, to provide penalties for violations thereto and, in appropriate cases to declare the locations of such activities to be a public nuisance subject to abatement; and

**WHEREAS**, Selectmen are fully aware of and fully respects the fundamental constitutional guarantees of free speech and free expression and realizes that restrictions of such freedoms must be carefully drafted and enforced so that speech and expression are not curtailed beyond the point at which it is essential to further the town's interest in public health, safety and welfare; and

**WHEREAS**, over the years, various statutes and court interpretations have been enacted and decided which compel periodic re-evaluation and revision of Town ordinances.

**WHEREAS**, Selectmen specifically wishes to adopt the concept of Public Indecency prohibited by the laws of the state, which was approved by the U. S. Supreme Court in Barnes vs. Glen Theatre Inc., et al 111 Sup. Ct. 2456 (1991), for the purpose of limiting a recent increase in nude live entertainment within the Town, which activity adversely impacts and threatens to impact the public health, safety and welfare by providing an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, the spread of sexually transmitted diseases and other deleterious effects.

**NOW THEREFORE, BE IT ENACTED BY THE, SELECTMEN OF THE TOWN OF MEDWAY, MAINE AS FOLLOWS:**

**Section 1.** Ordinances of the Town of Medway (Indecency and Immorality), entitled Public Indecency, to read as follows:

1. A person who knowingly or intentionally, in a public place:
  - a. Engages in sexual intercourse

- b. Engages in deviate sexual intercourse as defined by the Maine Crimes Code
- c. Appears in a state of nudity, or
- d. fondles the genitals of himself; herself or another person commits Public Indecency, a Summary Offense.

**2. "Nudity"** means the showing of the human male genital, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.

**3. "Public Place"** includes all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including such places of entertainment: taverns, restaurants, clubs, theaters, dance halls, banquet halls, or party rooms.

**4.** The prohibition set forth in Section 1 (c) shall **not apply** to:

- a. Any child under ten (10) years of age; or
- b. Any lactating female exposing a breast in the process of breastfeeding an infant less than two (2) years of age.

**5.** In addition to the specific penalties provided in this ordinance, it is hereby declared that any building, portion of a building, or enclosed place regularly used for the prohibited display of public nudity is a public nuisance, subjecting the owner, proprietor or other operator thereof to any and all actions authorized by the State of Maine for the abatement of public nuisances.

**6. CONSTRUCTION AND SEVERABILITY** - It is the intention of the Town of Medway that the provisions of this ordinance be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights consistent with the purposes of this ordinance. Should a court of competent jurisdiction determine that any part of this ordinance, or any application or enforcement of it is excessively restrictive of such rights or liberties then such portion of the ordinance, or specific application of the ordinance, shall be severed from the remainder, which shall continue in full force and effect.

**7. PROHIBITED SITES** – An adult use establishment may not be sited within 1,000 feet of the lot lines of any of the following: (a) a church, synagogue or other house of religious worship (b) a public or private elementary or secondary school.

An adult use establishment must be 1,000 feet from any residential building via path of travel from the date of occupancy by licensed permit which pertains to: (a) a lot zoned

residential or used as a residence. (b) A public park /public or private recreational facility or site (c) a lot on which another adult use establishment is sited.

**8. PENALTY** - Whoever violates this ordinance, either by commission of a public indecency, or by the promotion or maintenance of public indecency as property owner, proprietor or manager of a business, shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not more than One Thousand Dollars (\$1,000.00). Each day such violation continues is a separate offense

**Section 2.** That all Ordinances and parts thereof conflicting herewith be and the same are hereby repealed.

**Section 3.** That this Ordinance shall become retro active to July 25, 2005 after final passage and approval by the Town of Medway.

We do hereby certify that the above ordinance was finally passed by the Town Selectmen on \_\_\_\_\_(date).

**SIGNED** \_\_\_\_\_

**Town Clerk**

**THIS ORDINANCE APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2005.**

\_\_\_\_\_

**Town Selectmen**

\_\_\_\_\_

**Town Selectmen**

\_\_\_\_\_

**Town Selectmen**

\_\_\_\_\_

**Town Selectmen**

\_\_\_\_\_

**Town Selectmen**