

SPECIAL AMUSEMENT PERMIT ORDINANCE OF
THE TOWN OF SOUTHWEST HARBOR

I. Title, Purpose and Definitions

A. Title

This Ordinance shall be known and may be cited as the "Special Amusement Permit Ordinance of the Town of Southwest Harbor."

B. Purpose

The purpose of this Ordinance is to control, as required by Title 28-A, Section 1054, MRSA, the issuance of Special Permits for music, dancing or entertainment in facilities licensed by the State of Maine, to sell liquor or malt liquor or wine in the Town of Southwest Harbor.

C. Definitions

1. Entertainment. For the purposes of this Ordinance, "entertainment" shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.
2. Licensee. For purposes of this Ordinance, the term "Licensee" shall include the holder of a license issued pursuant to the provisions of Title 28-A, MRSA, Liquors, as amended, or any person, individual, partnership, firm, association, corporation or other legal entity acting as agent or employee of any holder of said license.

II. General Permit

A. Permit Required.

1. No Licensee for the sale of liquor or malt liquor or wine to be consumed on his licensed premises, situated in the Town of Southwest Harbor, shall permit on said licensed premises, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the

Licensee shall have first obtained from the Board of Selectmen of the Town of Southwest Harbor, a Special Amusement Permit signed by At least a majority of the members of said Board.

2. Applications for all Special Amusement Permits shall be made in writing to the said Board of Selectmen of the Town of Southwest Harbor and shall include the following:
 - the name of the applicant;
 - his residence address;
 - the name of the business to be conducted;
 - his business address;
 - the nature of his business;
 - the location to be used;
 - all places of residence of the applicant during the past 5 years;
 - whether the applicant has ever had a license to conduct the business therein described either denied or revoked and, if so, a description of those circumstances specifically;
 - whether the applicant, including all partners or corporate officers, has ever been convicted of a felony, and if so, a description of those specific circumstances; and
 - any additional information as may be needed by the Board of Selectmen of the Town of Southwest Harbor, in the issuing of the permit including but not limited to a copy of the applicant's current liquor license.
3. No permit shall be issued for any thing, or act, or premises, if the premises and building to be used for the purposes do not fully comply with all Ordinances, articles, bylaws, or rules and regulations of the Town of Southwest Harbor.
4. The fee for a Special Amusement Permit shall be fifty dollars (\$50) to cover administrative costs.
5. Within 30 days of the date the request for a Special Amusement Permit is received, the Board of Selectmen of the Town of Southwest Harbor shall, prior to granting a permit and after reasonable notice to the Town and the applicant, hold a public hearing. The testimony of the applicant and that of any interested members of the public shall be taken. Reasonable notice shall mean notification in a newspaper of general circulation at least 7 days prior to the hearing.

6. The Board of Selectmen shall grant a permit unless it finds that issuance of the Permit will be detrimental to the public health, safety or welfare, or would violate Town ordinances, or rules and regulations, articles, or bylaws.
7. A permit shall be valid only for the license year of the applicant's existing liquor license.

B. Classes of Permits. Special Amusement Permits granted by the Board of Selectmen shall be limited to the following classes:

- Class A - Single Instrumentalist without mechanical amplification;
- Class B - Single Instrumentalist and Vocalist without mechanical Amplification;
- Class C - One or more vocalists and/or instrumentalists without mechanical amplification;
- Class D - Any one of the above with mechanical amplification;
- Class E - Dancing with any of the above or accompanied by Music produced by radio or other mechanical device;

And any permit granted shall be for one of the above noted classes. A Licensee shall not permit on the Licensee's premises, any music, dancing or entertainment which exceeds that permitted by the Class of his Permit, during the period for which his Permit is valid as otherwise determined by this Ordinance.

- C. The application for a Special Amusement Permit shall set forth the type of music and entertainment intended by the applicant to be permitted on the licensed premises and whether dancing is permitted.
- D. During the period for which his license is valid, the Licensee may reapply for a new Special Amusement Permit, if he elects to permit dancing, music or entertainment which exceeds that permitted by the current permit. Said re-

Application shall be governed by all the provisions of this Ordinance with respect to applications for a Special Amusement Permit in general including the payment of the permit fee of Fifty Dollars (\$50.00).

E. Inspections

1. The Board of Selectmen shall require an initial inspection of the premises and Licensee for overall ability to comply with the provisions of this Ordinance and for the purpose of imposing conditions on any permit issued.
2. Whenever inspections of the premises used for or in connection with the operation of a licensed business which has obtained a Special Amusement Permit are provided for or required by Ordinance or State law, or are reasonably necessary to secure compliance with any Ordinance provisions or State Law, it shall be the duty of the Licensee or the person in charge of the premises to be inspected, to admit any officer, official or employee of the Town of Southwest Harbor authorized to make the inspection at any reasonable time that admission is requested.
3. In addition to any other penalty which may be provided, the Board of Selectmen may revoke the Special Amusement Permit of any Licensee in the Town who refuses to permit any such officer, official or employee to make an inspection or take sufficient samples for analyses, or who interferes with such officer, official or employee while in the performance of his duty. Provided, that no license or Special Amusement Permit shall be revoked unless written demand for the inspection or sample is made upon the licensee or person in charge of the premises, at the time it is sought to make the inspection.

F. Regulation of Noise

1. An applicant for a Special Amusement Permit hereunder shall, as part of his application, demonstrate his ability to prevent the emanation of excessive noise from the premises sought to be licensed brought about by music, dancing or entertainment, except for radio or other mechanical device excluded under Title 28-A, 1054, MRSA, or amendments thereto.

2. Sources of noise contemplated by this section shall include musical instruments, sound modification or amplification devices used in connection with musical instruments and or other similar devices which produce, reproduce or amplify sound created by musical instruments. Sources of noise shall further include any noise or sound produced Directly or indirectly by applicant's music, dancing or entertainment Except for those mechanical devices specifically excluded under Title 28-A.
3. Sources of noise shall be required to be muffled so as not to be objectionable due to intermittence, beat, frequency, shrillness or intensity or volume.
4. For the purpose of this Ordinance the licensee or his authorized representative, shall not permit the use of loud and unreasonable noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health or safety of individuals, or which results in disturbing the peace and tranquility of the neighborhood.
5. The maximum permissible sound pressure level of any continuous, regular, frequent, intermittent or periodic source of noise produced by any activity regulated by this Ordinance shall not exceed the following Sound Pressure Level Limits during the same time period indicated:

(Sound pressure levels measured in dB (A)'s &/or dB (C)'s)

7:00 a.m. to 8:00 p.m.	55 dB (A) or 67 dB (C)
8:00 p.m. to 7:00 a.m.	50 dB (A) or 62 dB (C)

Sound pressure levels shall be measured at the lot line or any distance beyond the lot line of the source premises from which the noise being measured is emanating, and at a height of at least four feet (4') above the surface of the ground.

6. For the purpose of determining noise levels as set forth in this Ordinance the following procedures shall be used:
 - a. all personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation;
 - b. instruments used to determine sound level measurements shall conform to the Standards of A.S.I. Type I or Type II meters.

G. Permit Procedures

1. Any Licensee requesting a Special Amusement Permit from the Board of Selectmen shall be notified in writing of its decision no later than Fifteen (15) days from the date his application was heard.
2. In the event that a Licensee is denied a permit, the Licensee shall be provided with the reasons for the denial in writing.
3. The Licensee may not reapply for a permit within thirty (30) days after denial of an application, except with the consent of the Board of Selectmen. The reasons for denial must be corrected before reapplication.

H. Suspension or Revocation of a Permit

1. The Board of Selectmen may, after a public hearing preceded by notice to interested parties, suspend, or revoke any Special Amusement Permits which have been issued under this Ordinance on the grounds that the music, dancing or entertainment so permitted constitutes a detriment to the public health, safety or welfare, or violates any Town ordinances, articles, bylaws or rules and regulations.
2. Upon complaint (s) of any person(s) that there are grounds to revoke said Permit, and said complaint(s) having been found by the Board of Selectmen to be valid, after hearing as hereinbefore provided, the Board of Selectmen may warn the licensee that unless the cause(s) of said complaints are removed forthwith, that said Permit will be revoked or suspended after a subsequent hearing concerning same.

I. Rules and Regulations

1. The Board of Selectmen are hereby authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension and revocation of Special Amusement Permits and placing other limitations on these activities required to protect the public health, safety and welfare. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises, and the hours during which the permitted activities are permitted. Such rules and regulations shall be additional to and consistent with all sections of this Ordinance.

2. Rules and regulations available to the Selectmen:
 - a. To require Licensee to have doors and windows closed at a particular time;
 - b. To require police officer attendance if necessary;
 - c. To require the Local Fire Inspector to inspect the premises prior to the issuance of a license.

J. Appeal Procedures

1. Any Licensee who has requested a Permit and has been denied, or whose Permit has been revoked or suspended, may, within thirty (30) days of the denial, suspension or revocation, appeal the decision in Title 30-A, Section 2691, MRSA, as amended.
2. The Board of Appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety, or welfare; or that the denial, revocation or suspension was arbitrary or capricious or was not based by a preponderance of the evidence, on a violation of any Ordinance, article, bylaw, or rule or regulation of the Town.

III. Admission:

- A. Licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor Licenses who have been issued a Special Amusement Permit may charge admission in the designated areas approved by the Town.

IV. Penalty, Separability

- A. Penalty.
 1. Whoever violates any of the provisions of the Ordinance shall be deemed guilty of a criminal offense and upon conviction thereof, shall be penalized by a fine of not more than \$500 for the first offense, and \$1,000 for subsequent offenses.

2. Any violation of this Ordinance or any provision thereof, shall be deemed a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

B. Separability

The invalidity of any provision of this Ordinance shall not invalidate any other part.