

## **Title 5 BUSINESS LICENSES AND REGULATIONS**

### **Chapter 5.1 AMUSEMENT DEVICES**

#### **5.1.1 Definitions.**

As used in this chapter, unless the context otherwise indicates, the following terms have the meanings indicated in this section:

**Amusement device** means any amusement machine or device operated by means of a control switch or the insertion of a coin, token, slug, plate, or disc or similar object for the purpose of amusement or skill or for use as a game, whether or not registering a score and for the playing of which a fee is charged. The term does not include vending machines in which are not incorporated gaming or amusement features, nor does the term include any coin-operated mechanical, musical devices.

**Proprietor** means any person who, as the owner, lessee or proprietor, has under control any establishment, place or premises in or at which an amusement device is placed or kept for use or play, or on exhibition for the purpose of use or play.

#### **5.1.2 General Operating Regulations.**

No proprietor may allow any person under the age of sixteen (16) to operate or play any amusement device during any hours that the Kittery public schools, excluding adult education, are in session.

#### **5.1.3 Violations.**

Any person violating any of the provisions of this chapter will, upon conviction, be punished by a fine of two hundred dollars (\$200.00) for each offense and each day such violation exists constitutes a separate offense.

#### **5.1.4 License.**

##### **5.1.4.1 Required.**

No person may engage in the business of being a proprietor of amusement devices unless said person is properly licensed under the provisions of this chapter.

##### **5.1.4.2 Expiration.**

Each license issued under this chapter expires on June 30th of each year.

##### **5.1.4.3 Certification and Display.**

Each license issued under this chapter is evidenced by a certificate issued by the Clerk stating the number and general type of devices licensed, which certificate must be posted in a conspicuous location in the place where the machines are located.

**5.1.4.4 Transferability.**

Each license issued under this section is not transferable to any other person, or from location to location, and is valid only at the location and for the person, firm, corporation or association designated therein.

**5.1.4.5 Age Requirement.**

E. No such license may be granted to any person under the age of twenty-one (21) years nor to any firm, corporation or association whose officers are under said age.

**5.1.5 License—Application, Procedure and Fees.**

**5.1.5.1 Application—Required Information.**

Application for license hereunder is to be filed in writing with the Clerk on a form to be provided by the Town and must specify:

- A. The name and address of the applicant, and, if a firm, corporation, partnership, or association, the principal officers thereof and their addresses;
- B. The address of the premises where the licensed device or devices are to be operated, together with the character of the business as carried on at such place;
- C. A general description of the type of amusement devices to be licensed; for example, pinball machines, pool tables, video games, etc.;
- D. The number of each such type of amusement device for which the applicant seeks to be licensed.

**5.1.5.2 Licensing Procedure.**

The proper license fee must accompany each application. Application for license hereunder is to be first referred by the Clerk to the Council who may make or cause to be made such investigations as they deem necessary. Following a public hearing, the Council must base its approval or disapproval of any application upon the ability of the applicant to meet the general operating regulations contained in this chapter. If the application is approved by the Council, the license is issued by the Clerk, and the Clerk remits the fee to the Town Treasurer. If the license is denied the fee is returned to the applicant.

**5.1.5.3 Fees.**

The annual license fee for each proprietor as herein defined is set out in Appendix A.

**5.1.5.4 Increasing the Number of Devices.**

Any proprietor licensed under the provisions of this chapter may file an application with the Clerk to increase the number of amusement machines so licensed. Upon the granting of such an increase by the Council the applicant must surrender the existing license to the Clerk. The Clerk upon payment of a fee increase calculated as set out in Appendix A, will issue a new license for the remainder of the term of the original license showing the number and types of devices licensed.

### **5.1.6 Revocation of License.**

A. Any such license may be revoked by the Council pursuant to the following:

1. When it has been made to appear to the Council that there has been a violation of this chapter;
2. Improper Persons. When it has been made to appear to the Council that the licensee or any of the officers of the firm, corporation or association are not proper persons to hold such a license;
3. Improper Location. When it has been made to appear to the Council that the premises for which the license was granted is not a proper location.

B. Prior to any revocation as provided herein, the Council shall hold a hearing at which time the licensee and any interested parties may appear and be heard on the issue of revocation. The Council shall promptly issue its decision to the licensee.

## **Chapter 5.2 SPECIAL AMUSEMENT PERMITS**

### **5.2.1 Purpose.**

The purpose of this chapter is to control the issuance of special permits for music, dancing or entertainment in facilities licensed by the state of Maine to sell liquor as required by 28 M.R.S. §1054.

### **5.2.2 Definitions.**

For purposes of this chapter:

**Entertainment** means and includes any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

**Licensee** means and includes the holder of a license issued under the alcoholic beverages statutes of the state of Maine, or any person, individual, partnership, firm, association, corporation or other legal entity, or any agent or employee of any such licensee.

### **5.2.3 Permit Required.**

A. No licensee for the sale of liquor to be consumed on his/her licensed premises may permit on his/her licensed premises any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee has first obtained from the Town a special permit signed by at least a majority of the Town Council.

B. Applications for all special amusement permits are made in writing to the Town Council and must state the name of the applicant; his/her residence address; the name of the business to be conducted; his/her business address; the nature of his/her business; the location to be used; whether the applicant has ever had a license to conduct the business therein described either

denied or revoked and, if so, to describe those circumstances specifically; whether the applicant, including all partners or corporate officers, has ever been convicted of a felony and, if so, the applicant is to describe specifically those circumstances; and any additional information as may be needed by the Town Council in the issuing of the permit, including but not limited to a copy of the applicant's current liquor license.

C. No permit may 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, statutes and regulations of the Town and State of Maine. Upon receipt of the application the Town Council will refer the same to the Code Enforcement Officer for a determination to assure compliance with such ordinances, statutes and regulations. The Code Enforcement Officer shall advise the Council as to determination of the same.

D. The fee for a special amusement permit is set out in Appendix A.

E. The Town Council shall hold a public hearing within fifteen (15) days of the date of the request received at which the testimony of the applicant and that of any interested members of the public is taken. The applicant shall be notified of the hearing date and the Council must cause to be published in a newspaper of general circulation within the Town notice of the hearing at least seven days prior to the hearing date.

F. The municipal officers are to grant a permit unless they find that issuance of the permit will be detrimental to the public health, safety or welfare, or would be in violation of any Town or state ordinance, rules and regulations.

G. A permit is valid only for the license year of the applicant's existing liquor license.

#### **5.2.4 Inspections.**

A. 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 provision or state law, it is the duty of the licensee or the person in charge of the premises to be inspected, to admit any officer, official or employee of the municipality authorized to make the inspection at any reasonable time that admission is requested.

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

C. In addition to any other penalty which may be provided, the municipal officers may revoke the special amusement permit of any licensee in the municipality who refuses to permit any such officer, official or employee to make an inspection or take sufficient samples for analysis, or who interferes with such officer, official or employee while in the performance of his/her duty. Provided,

that no license or special amusement permit may 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.

#### **5.2.5 Suspension or Revocation.**

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

#### **5.2.6 Rules and Regulations.**

The municipal officers are authorized, after public notice and hearing, to establish written rules and regulations governing the issuance, suspension and revocation of special amusement permits, the classes of permits, the music, dancing or entertainment permitted under each class, and 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 are in addition to and must be consistent with all sections of this chapter.

#### **5.2.7 Permit and Appeal Procedures.**

A. Any licensee requesting a special amusement permit from the municipal officers must be notified in writing of their decision no later than fifteen (15) days from the date of the request was received. In the event that a licensee is denied a permit, the licensee must be provided with the reasons for the denial in writing. The licensee may not reapply for a permit within thirty (30) days after an application for a permit has been denied.

B. 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 as defined in 30-A MR.S., §2691. 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 that the denial, revocation or suspension was not based by a preponderance of the evidence on a violation of any ordinance, article, bylaw or regulation of the municipality.

#### **5.2.8 Admission.**

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

**5.2.9 Violation—Penalty.**

Whoever violates any of the provisions of this chapter is to be punished by a fine of not more than one hundred dollars (\$100.00) for the first offense to be recovered on complaint to the use of the Town.

**Chapter 5.3 FOOD SERVICE ESTABLISHMENTS**

**5.3.1 Title.**

This chapter is known as the Town victualers, innkeepers and lodging house ordinances, and referred to hereafter as “this chapter.”

**5.3.2 Purpose.**

The purpose of this chapter is to control the issuance of licenses to the various food service establishments in the Town.

**5.3.3 Definitions.**

For the purposes of this chapter, the following definitions apply:

**Innkeeper** means a person who keeps an inn, bed and breakfast establishment, hotel, or motel to provide lodging to travelers and others for compensation.

**Licensing board** means the municipal officers of the Town of Kittery.

**Lodging house** means a building in which three or more rooms are rented, but does not include

- (1) a house where lodgings are rented to persons within the second degree of kindred to the person operating the lodging house;
- (2) the dormitories of charitable, educational or philanthropic institutions; or (3) the emergency use of private dwelling houses at the time of conventions or similar public gatherings.

**Premises** means all lands, buildings, structures, places and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to, or is otherwise used in connection with, any such business conducted on such premises.

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

**5.3.4 License Required.**

No person may operate as a victualer within the Town unless licensed to do so by the Town, unless specifically waived by the Town. Applications for victualers' licenses are to be made in writing upon forms supplied by the Town Clerk and state the name of the applicant; his/her residence and mailing addresses; the name of the business to be conducted; his/her business address; the location(s) to be used; residence and business telephone numbers; and the date of the application. Upon receipt of the application, the Town Clerk shall refer the same to the Code

Enforcement Officer for a determination to assure compliance with the ordinances, statutes and regulations of the Town of Kittery and state of Maine.

### **5.3.5 Hearing.**

A. The Town Council shall hold a public hearing on any original application for a license for food service within thirty (30) days of the date the request was received, at which time the testimony of the applicant and that of any interested members of the public is to be taken. The applicant must be notified of the hearing date.

B. The municipal officers are to grant a license unless they find that issuance of such license will be detrimental to the public health, safety or welfare, or would be in violation of any Town or state ordinance, rules or regulations.

### **5.3.6 Suspensions and Revocations.**

The municipal officers may, after a public hearing, suspend or revoke any license for noncompliance with the ordinances, statutes, and regulations of the Town of Kittery and State of Maine.

### **5.3.7 Fees and Expiration.**

Each person initially licensed as an innkeeper or victualer pays to the Town Clerk a fee as set out in Appendix A. All licenses, unless otherwise provided, are for twelve (12) months' duration. The renewal fee of said victualer's license is as set out in Appendix A.

### **5.3.8 Annual Victualers License Hearing.**

The licensing board shall meet annually during the month of May on a date and at a time and place in the municipality that they determine. At least seven days before the meeting, they must post notices stating the purpose of the meeting in at least two public places in the municipality.

### **5.3.9 Violation—Penalty.**

Any person who violates any of the provisions of this chapter will be punished by a fine of not more than fifty dollars (\$50.00) for the first offense or any subsequent offense, to be recovered on complaint to the use of the Town.

## **Chapter 5.4 GARAGE SALES**

### **5.4.1 Definitions.**

For the purposes of this chapter the following terms, phrases, words and their derivations have the meanings given in this section, or if not defined in this section will be given their ordinary accepted meaning:

**Garage sale** means and includes all general sales, open to the public, conducted from or on a residential premises in any residential zone, as defined by the zoning ordinance, for the purposes of disposing of personal property including, but not limited to, all sales entitled "garage," "lawn," "yard," "attic," "porch," "room," "backyard," "patio," "flea market," or "rummage" sale. The term

“auctions” does not include any land or structures customarily used in the auction business and legally established under the zoning ordinance.

**Personal property** means property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

**5.4.2 Property Permitted to be Sold.**

It is unlawful for any individual to sell or offer for sale, under authority granted by this chapter, property other than personal property.

**5.4.3 Permit Required.**

No garage sale may be conducted unless and until the individual desiring to conduct such sale obtains a permit from the police chief.

**5.4.4 Written Statement Required.**

Prior to issuance of any garage sale permit, the individuals conducting such sale must file a written statement with the chief of police at least five days in advance of the proposed sale, setting forth the following information:

- A. Full name and address of applicant;
- B. The location at which the proposed garage sale is to be held;
- C. The date, or dates upon which the sale is to be held; and
- D. The date or dates of any other garage sales held by them within the current calendar year.

**5.4.5 Permit Conditions.**

The permit sets forth and restricts the time and location of such garage sale. No more than five such permits may be issued to one residence and/or family household during any calendar year.

**5.4.6 Hours of Operation.**

Such garage sale is limited in time to no more than the daylight hours of three consecutive days. If, however, a sale is not held because of inclement weather on the date for which the permit is issued, the chief of police may grant an extension to the applicant for the garage sale to be conducted at the same location for an additional period of time lost to inclement weather.

**5.4.7 Pre-permit Investigation.**

Before issuing a permit, the chief of police may conduct an investigation as may reasonably be necessary to determine if there is compliance with this chapter.

**5.4.8 Display of Permit.**

Any permit in possession of the holder or holders of a garage sale is to be posted on the premises in a conspicuous place.

#### **5.4.9 Advertising.**

A. Signs Permitted. Only the following specified signs may be displayed in relation to a pending garage sale:

1. Two Signs Permitted. Two signs of not more than four square feet are permitted to be displayed on the property of the residence where the garage sale is being conducted.
2. Directional Signs. Two signs of not more than two square feet each are permitted, provided written permission to erect said signs is received from the property owners upon whose property such signs are to be placed. Each sign under this paragraph is to contain the name of the person conducting the sale, or the number of the permit granted for the sale.

B. Time Limitations. No sign or other form of advertisement may be exhibited for more than two days prior to the day such sale is to commence.

C. Removal of Signs. Signs must be removed within forty-eight (48) hours of the end of the period which the sale is allowed pursuant to the permit.

#### **5.4.10 Parking.**

The police or fire department may enforce such temporary controls to alleviate any special hazards and/or congestion created by any garage sale as it deems fit.

#### **5.4.11 Persons Exempted from Chapter.**

The provisions of this chapter do not apply to or affect the following:

- A. Persons selling goods pursuant to an order or process of a court of competent jurisdiction;
- B. Persons acting in accordance with their powers and duties as public officials;
- C. Any sale conducted by any merchant or mercantile or other business establishment from or at a place of business wherein such sale would be permitted by the zoning ordinance or under the protection of the nonconforming use section thereof or any other sale conducted by a dealer or vendor and which sale would be conducted from properly zoned premises and not otherwise prohibited by any other local or state statute or ordinance;
- D. Any bona fide charitable, religious, educational, cultural or governmental institution or organization when the proceeds from the sale are used directly for the institution or organization's charitable purposes and the goods or articles are not sold on a consignment basis.

### **Chapter 5.5 MESSAGE ESTABLISHMENTS**

#### **5.5.1 Authority and Purpose.**

This chapter is known as the Town therapeutic massage ordinance and is enacted pursuant to authority granted to the Town now or hereafter by general law and specifically including 30 M.R.S. §2151, and 22 M.R.S. §454. The purpose of this chapter is to regulate the operation of therapeutic

massage and massage establishments within the Town in order to promote the public health, safety and general welfare.

#### **5.5.2 Administration.**

The Town designates the police chief for the Town, or duly appointed representative, as the inspection and licensing officer pursuant to the above authority. The administration and enforcement of these regulations, including, but not limited to, licensing and inspecting hereunder, is performed by the chief of police or his/her duly authorized representative. Any police officer designated by the Town police chief, or the Code Enforcement Officer, may enforce these regulations.

#### **5.5.3 Definitions.**

As used in these regulations, the following words and phrases have the following meanings, unless context clearly demonstrates otherwise;

**Employee** means any individual who renders any service in connection with the operation of a therapeutic massage establishment and receives compensation, including, but not limited to, massagers.

**Patron** means any individual who receives a therapeutic massage.

**Recognized school** means any school or institution of learning which provides for the teaching of the theory, practice, or work of massage, including anatomy, physiology, hygiene, professional ethics and related studies, which is licensed by the Maine State Department of Education or is licensed by the comparable department or agency of any other state wherein the school or institution is located.

**Regulations** means the provisions of this chapter.

**Therapeutic massage** or **massage** means the rubbing, kneading, tapping, compression, vibration, application of friction, or percussion of the human body or parts of it by hand or with an instrument or apparatus.

**Therapeutic massage establishment** means a business establishment where massagers practice massage.

**Therapeutic massager** or “**massage therapist** or **massager** means an individual who administers any form of therapeutic massage for compensation.

#### **5.5.4 Exemptions.**

A. These regulations do not apply to a licensed physical therapist, a licensed athletic trainer, a licensed cosmetologist, or a licensed barber performing functions authorized under the license held, nor do these regulations apply to a licensed physician or chiropractor, or any individual working under the direct supervision of a licensed physician or chiropractor, while engaged in

practicing the healing arts, nurses, beauticians or other health and hygiene professionals who are duly licensed under the laws of this state.

B. These regulations do not apply to the administration of massage for therapeutic purposes in a hospital, nursing home, or other health care facility.

#### **5.5.5 Licenses and Certificates Required.**

A. It is unlawful for any person to operate a massage or therapeutic massage establishment without a valid massage establishment license issued by the chief of police in accordance with the provisions of these regulations.

B. It is unlawful for any person to operate a massage establishment unless each and every massager thereof has a valid massager's license issued by the chief in accordance with the provisions of these regulations.

C. It is unlawful for any individual to work as a massager without having a valid massager's license issued by the chief in accordance with the provisions of these regulations.

#### **5.5.6 Licenses Displayed.**

A. A massage parlor license issued under these regulations must be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued.

B. It is unlawful for any massager to work in, on or about any massage establishment, unless there is displayed in an open and conspicuous place in said massage establishment, a massager's license issued to said massager pursuant to these regulations.

#### **5.5.7 Responsibility of Employer.**

It is unlawful for any person operating a massage establishment to permit or allow an employee, agent or massager thereof, or any person whatsoever, to violate these regulations on the premises of the massage establishment.

#### **5.5.8 Alcoholic Beverages Prohibited.**

No person may sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverages on the premises of any massage establishment for use by employees or patrons.

#### **5.5.9 Entrance, Exits.**

No massage establishment may have an entrance or exit way providing a direct passageway to any other type of business.

#### **5.5.10 Access.**

All massage establishments operating under the authority of these regulations are declared to be public places, and may not, during business hours, have the doors to the exits and entrances of

such establishments locked or obstructed in any way so as to prevent free ingress and egress of persons; provided, however, such doors may be closed.

**5.5.11 Closing Hours.**

No massage establishment may be kept open for any purpose between the hours of eleven p.m. and seven a.m.

**5.5.12 Maintenance of Premises, Sterilization and Cleaning Equipment.**

It is the duty of every person conducting or operating a massage establishment to keep the same at all times in a clean and sanitary condition. All instruments and mechanical, therapeutic and bathing devices or parts thereof that come into contact with the human body are to be sterilized by a modern and approved method of sterilization, before initial use, and any such instruments and devices or parts thereof, after having been used upon one patron, must be sterilized before being used upon another. Towels and linens furnished for use of one patron may not be furnished for use of another until thoroughly laundered.

**5.5.13 Cleanliness and Health of Employees.**

All massagers in a massage establishment must wash their hands thoroughly before administering a massage to each patron accommodated. No individual suffering from a communicable disease may work or be employed in a massage establishment. No individual suffering from a communicable disease to the knowledge of the owner, custodian or employees of a massage establishment may be accommodated as a patron therein.

**5.5.14 Massage Tables.**

The massage is to be performed on a massage table, treatment table or treatment mat. No beds, water mattresses, cots or other equipment designed for sleeping are permitted at the massage establishment.

**5.5.15 List of Employees.**

The massage establishment must keep a list of the names and addresses of all employees, both on duty and off duty, and such list is to be shown to the chief or his/her duly authorized deputy upon request.

**5.5.16 Clothing of Massagers.**

All massagers must be fully clothed with clothing customarily worn by massagers while performing a massage. The massager's clothing is to be kept clean at all times, and soiled clothing may not be worn during the treatment of a patron. The massager's clothing must be opaque. No massager may massage a patron whose genitals are exposed during the treatment; and no patron of a massage establishment may knowingly expose his/her genitals during a massage to a massager.

**5.5.17 Doors, Openings, Locks.**

No massage may be performed within any cubicle, room, booth, or any area within a massage establishment which is fitted with a door capable of being locked. Exterior doors may have locks, but such exterior doors may not be locked while the massage establishment is open for business or while any massage is being performed therein. Nothing contained herein may be construed to

eliminate other requirements of statute or ordinance concerning the maintenance of such premises.

**5.5.18 Supervision.**

A massage parlor licensee must have the premises supervised at all times when open for business. Any massage establishment must have an individual who qualifies as a massager under the terms of these regulations on the premises at all times while the massage establishment is open for business. The massage parlor licensee must personally supervise the massage establishment, and not violate, or permit others to violate, any provisions of these regulations.

**5.5.19 Application for Therapeutic Massage Establishment or Therapeutic Massagers License.**

Any person desiring a therapeutic massage establishment license and/or a therapeutic massager's license shall file a written application with the chief of police on a form to be furnished by the chief.

A. The application must set forth the following information as applicable to either type of the license(s) for which application is made:

1. The name of the applicant and whether the individual, partnership, corporation, or otherwise, and if a corporation, the state of incorporation;
2. The name, style and designation and business address under which the massage establishment is to be operated;
3. The type of license sought, i.e., massage license or massage establishment license;
4. The name, residence addresses and telephone numbers of the manager or other individual to be principally in charge of the operation of the massage establishment;
5. The following personal information must be provided concerning the applicant, if an individual; and each stockholder holding more than ten (10) percent of the stock, and each director, if the applicant is a corporation; and each partner, if the applicant is a partnership; and the manager or other individual principally in charge of the operation of the massage establishment:
  - a. Name, complete residence address and residence telephone numbers,
  - b. Written proof of age by the applicant who must be at least eighteen (18) years of age,
  - c. The massage or similar business history and experience for the previous ten (10) years prior to the date of application, including but not limited to whether or not each individual has previously operated or been involved as an owner or director in the operation of a similar type of business, or has been denied the right to operate such business in any other location, or has had a similar license or permit to operate revoked, or suspended and the reason for such and the business activities or occupations subsequent to such action of denial, suspension or revocation,
  - d. All criminal convictions other than misdemeanor traffic violations, fully disclosing the jurisdictions in which convicted and the offense for which convicted and the date thereof;
6. Authorization for the Town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license;

7. Written declaration by the applicant, given under oath or affirmation, under penalty or perjury, that the information contained in and attached to the application is true and correct, said declaration being duly dated and signed in the Town;
8. A tender of the correct license fee as hereinafter provided;
9. Proof that applicant, if a foreign corporation, is authorized to do business in this state.

B. If the applicant seeks a therapeutic massager's license, the application must also be accompanied by the following:

1. Two front face portrait photographs of the applicant taken within thirty (30) days of the date of application and at least two inches by two inches in size;
2. A copy of the diploma, certificate or other similar document or evidence demonstrating that the applicant has successfully completed at least five hundred (500) hours of instruction in massage therapy and related courses at a recognized school as defined in Section 5.5 together with the name and address of the recognized school and the dates of attendance by the applicant. This provision applies to all new applications submitted for a therapeutic massager's license on or after the adoption of this amendment. This amendment does not apply to any person holding a legally valid therapeutic massager's license issued pursuant to this chapter and in good standing as of the date of the adoption of this amendment nor does it apply to the renewal in accordance with all other provisions of this chapter of any such license legally valid and in good standing as of the date of such renewal, except, however, no such license may be renewed after April 1, 1994 unless the applicant is in full compliance with the requirements of this section;
3. A valid health certificate card issued to the applicant pursuant to Section 5.5 of these regulations.

C. The applicant must also provide such other information, identification and physical examination of the person as deemed necessary by the chief to determine the truth of the matters hereinbefore required to be set forth in the application.

#### **5.5.20 Investigation by Police chief.**

Upon receiving the application for a therapeutic massage establishment license or a therapeutic massager's license, the chief shall conduct or have conducted, any necessary investigation into the character and qualifications of the applicant, if an individual, or of the stockholders holding more than ten (10) percent of the stock and of the officers and directors if the applicant is a corporation, or of the partners if the applicant is a partnership, or of the manager or other individual principally in charge of the operation of the massage establishment.

In the case of applications for therapeutic massage establishment licenses, the chief with the assistance of the Code Enforcement Officer shall cause to be conducted an investigation of the premises where the massage establishment is to be carried on, for the purposes of assuring that such premises comply with all requirements as set forth in these regulations and with any applicable municipal or state regulations pertaining to land use and public health, safety and welfare.

**5.5.21 Issuance of License(s).**

The chief is to issue a therapeutic massage establishment license and/or a therapeutic massager's license within thirty (30) days of receipt of a completed application unless he/she finds that:

- A. The correct license fee has not been tendered to the Town, and, in the case of a check, or bank draft, not honored with payment upon presentation.
- B. The operation as proposed by the applicant would not comply with all applicable state and municipal laws including the requirements of these regulations.
- C. The applicant, if an individual, or any of the stockholders holding more than ten (10) percent of the stock or any of the officers or directors, if the applicant is a corporation, or any of the partners if the applicant is a partnership, or the manager principally in charge of the operation of the massage establishment, has been convicted of any felony or a misdemeanor involving moral turpitude on two or more occasions within five years immediately prior to the date of the application.
- D. The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the license application or in any document required by these regulations or any other state or municipal authority.

**5.5.22 Fees.**

The fee for a therapeutic massage establishment license is as set out in Appendix A. The fee for a therapeutic massager's license is as set out in Appendix A.

**5.5.23 Return of fees.**

No portion of any fee collection under these regulations may be returned after a license has been issued.

**5.5.24 Transfer Prohibited.**

Therapeutic massage establishment licenses or therapeutic massagers licenses are not transferable, and such authority as a license confers is conferred only on the licensee named therein.

**5.5.25 License Valid for One Year.**

Each license issued under these regulations is valid for one year only from the date of its issuance as shown thereon.

**5.5.26 Renewal of Licenses.**

Any time after the expiration of eleven (11) months of the term of the license required by these regulations, the licensee thereof may file with the chief a written application to renew such license on a form to be furnished by the chief. Such application must contain the information required herein for an original license to the extent that such information would not be duplicative and such application must be accompanied by a tender of the correct fee as herein provided. The chief shall renew such license application and issue the same unless he/she finds that the requirements of these regulations are not met. Any person presently operating as a massager and/or operating a

massage establishment in Kittery on the date of the effective date of the ordinance codified in this chapter is required to conform to the same within six months from the effective date thereof.

**5.5.27 Obtaining License by Fraud.**

It is a violation of these regulations for any person to knowingly make any false, fraudulent or untruthful statement, either written or oral, in any way knowingly to conceal any material fact, or to give or use any fictitious name in order to secure or aid in securing a license required by these regulations and any such license so secured is void.

**5.5.28 Fraudulent Use of License.**

It is a violation of these regulations for any person to fraudulently make use of, in any manner to his/her own or another's benefit, a therapeutic massage establishment license or a therapeutic massager's license which has not been duly issued to him/her in accordance with the provisions of these regulations.

**5.5.29 Counterfeiting, Changing, Defacing License.**

It is a violation of these regulations for any person to counterfeit or forge, or to change, deface or alter a license required or issued under the provisions of these regulations.

**5.5.30 Suspension.**

Any license issued under these regulations may be suspended for a period not to exceed ninety (90) days by the chief for a violation of these regulations by the licensee.

Such suspension is effective ten (10) days after written notice thereof is given to the licensee.

Such notice is to inform the licensee of the reason(s) for such suspension, the duration of such suspension, the beginning of such suspension, and the right to appeal under the provisions of these regulations.

Such notice may be given by delivering the same to the licensee or by depositing the same in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the licensee at the address stated on the license application and such notice is deemed given upon deposit of the notice in the United States Mail as aforesaid.

This section is cumulative of all other rules, regulations and laws. An appeal, as provided herein, from any suspension hereunder, does not stay such suspension pending such appeal.

**5.5.31 Health Certificate Card.**

The health certificate card required by this chapter may be issued only by a physician licensed to practice in the state of Maine. Such card must attest the fact that the bearer has been actually and thoroughly examined by such physician and that such examination discloses the fact that such person is free from any infectious or contagious disease in a transmittable condition. Such physician must personally sign the health certificate card and briefly set forth the nature and type of examination conducted. Each health certificate card is valid for one year only from the date of its issuance as shown thereon.

**5.5.32 Appeals.**

A. Any person aggrieved by an action or decision of the chief regarding the issuance, nonissuance or suspension of a license required hereunder may, within ten (10) calendar days thereafter, appeal to the Town Council.

B. The appeal to the Town Council is initiated by filing a written appeal setting forth a brief statement of the action from which the appeal is taken and with the Town Clerk for the Town. A copy of the document containing the notice of the action or decision complained of is to be attached to the written appeal. Upon receipt of such written appeal the Town Council shall promptly but no later than twenty (20) days hold a hearing on the appeal and advise all parties of the date, time and place of hearing by mailing notice to each party's last known address. The hearing must be conducted publicly and the testimony be received under oath. The order and method of presentation of the evidence is determined by the Council. The Council shall determine if the applicant complied with the terms of this chapter. After hearing, the Town Council shall promptly issue its decision by majority vote. The decision must set forth the findings of fact by the Town Council and direct the chief to forthwith issue the license or revoke the suspension if the finding is in favor of the applicant.

Any person aggrieved by the decision of the Town Council may appeal such decision to the Superior Court as otherwise provided by law and Rule 80(B) MRCP.

#### **5.5.33 Violation—Penalty.**

Any person who violates any provision of this chapter commits a civil violation and is subject to a fine of one hundred dollars (\$100.00) for each violation. Each day such violation is permitted to exist after notification thereof by the Code Enforcement Officer constitutes a separate case, offense and violation but may be enforced by the Town in a single proceeding. All fines collected hereunder accrue to the benefit of the Town. In addition to the remedy herein provided, the Town may exercise all other legal and equitable remedies appropriate or necessary to enjoin and prevent further violation of this chapter.

### **Chapter 5.6 MOBILE FOOD-VENDING UNITS**

#### **5.6.1 Title.**

This chapter is known as the Town lunch wagon, mobile unit or roving diner license ordinance, and is referred to hereinafter as "this chapter."

#### **5.6.2 Purpose.**

The purpose of this chapter is to control the issuance of licenses to lunch wagons, mobile units or roving diners in the Town.

#### **5.6.3 Definition.**

As used in this chapter, **Lunch wagons, roving diners or mobile units** means any mobile vehicle or unit used to prepare, sell or serve food at a number of sites and capable of being moved from its serving site at any time.

**5.6.4 License Required.**

No person may operate any type of lunch wagon, mobile unit or roving diner within the Town unless licensed to do so by the Town, unless specifically waived by the Town. Applications for lunch wagon, mobile unit or roving diner licenses are to be made in writing upon forms supplied by the Town Clerk and state the name of the applicant; residence and mailing addresses; the name of the business to be conducted; business address; the location(s) to be used; residence and business telephone numbers; and the date of the application. Upon receipt of the application, the Town Clerk shall refer the same to the Code Enforcement Officer for a determination to assure compliance with the ordinances, statutes and regulations of the Town of Kittery and state of Maine.

**5.6.5 Hearing.**

A. The Town Council shall hold a hearing on any original application for a license for a lunch wagon, mobile unit, or roving diner within thirty (30) days of the date of the request received, at which time the testimony of the applicant and that of any interested members of the public is to be taken. The applicant must be notified of the hearing date.

B. The municipal officers shall grant a license unless they find that issuance of such license will be detrimental to the public health, safety or welfare, or would be in violation of any Town or state ordinance, rules or regulations.

**5.6.6 Suspensions and Revocations.**

The municipal officers may, after a public hearing, suspend or revoke any license for noncompliance with the ordinances, statutes and regulations of the Town of Kittery and state of Maine.

**5.6.7 Fees and Expiration.**

Every person licensed to operate a lunch wagon, mobile unit or roving diner must pay to the Town Clerk an annual fee as set out in Appendix A. All licenses, unless otherwise provided, are for twelve (12) months duration.

**5.6.8 Lunch Wagons, Mobile Food Units, Roving Diners.**

No lunch wagon, mobile food unit, or roving diner may operate or be stationed in any Town roadways or parks, except at Town-sponsored special events; (A) in such a manner as to obstruct or impede the normal flow of vehicular or pedestrian traffic or to expose any pedestrian to a risk of injury; (B) on any Town sidewalk; or (C) in such a way that any part of the equipment overhangs over private property, unless the owner of the unit has authorization from the property owner in writing.

**5.6.9 Violation—Penalty.**

Any person who violates any of the provisions of this chapter is to be punished by a fine of not more than fifty dollars (\$50.00) for the first offense or any subsequent offense, to be recovered on complaint to the use of the Town.

## **Chapter 5.7 SIDEWALK SALES**

### **5.7.1 Title.**

This chapter is known as the sidewalk sales ordinance.

### **5.7.2 Intent and Purpose.**

A, It is the purpose of this chapter to provide an opportunity for existing merchants in the Town to hold up to five coordinated temporary outdoor sales events per calendar year not to exceed four days in duration in a manner that protects the health, safety and welfare of the public. Cultural, musical, community and educational events are encouraged to take place in conjunction with the sidewalk sales event. It is not the intent of this chapter to authorize transient vending.

B. In return for the privilege of conducting such sales, merchants and landlords are expected to self-police themselves to conduct the sidewalk sales according to their submitted and approved sidewalk sales site plans.

C. This chapter is further intended to specifically prevent traffic congestion, obstructions of emergency vehicle lanes, the unsafe commingling of pedestrians and vehicles that can occur in unregulated, uncoordinated, and unplanned sidewalk sales events.

### **5.7.3 Definitions.**

Terms, phrases and words in this chapter have the meaning given herein or, if not defined, are given their ordinary accepted meaning:

**Garage sale** means and includes all general sales, open to the public, conducted from or on a residential premises in any residential zone, as defined by the zoning ordinance, for the purpose of disposing of personal property including but not limited to, all sales entitled “garage,” “lawn,” “yard,” “attic,” “porch,” “room,” “backyard,” “patio,” “flea market” or “rummage” sale.

**Sidewalk sale** means temporary outdoor retail or food sales for commercial purposes of merchandise normally and legally sold on the premises where the outdoor sales are located. The displaying of merchandise need not be limited to sidewalks locations, but must preserve safe pedestrian, vehicular and emergency vehicle routes.

### **5.7.4 Applicability.**

The regulations of this chapter do not apply to “garage sales,” outdoor sales that have been reviewed and approved by the planning board, temporary fundraising events for nonprofit causes, Town-sponsored events, or other uses legally established under the zoning ordinance. In addition, this ordinance does not apply to sidewalk sales events that have legally existed on a verifiable regular basis as of the date the ordinance codified in this chapter becomes effective.

### **5.7.5 Town Council Approval Required.**

Except for exempted uses listed in Section 5.7.4, no person, business, corporation, partnership, or other legal entity may conduct sidewalk sales within the Town unless:

A. The sidewalk sales activities are conducted on days of the year approved by the Town Council; and

B. Sidewalk sales activities on each property are conducted in conformance with a Town-approved sidewalk sales site plan kept on file that includes all information required in Section 5.7.9 and satisfies the review criteria in Section 5.7.10 to ensure that health, safety and nuisance aspects of the sidewalk sale have been satisfied.

**5.7.6 Submission Requirements for a Town-wide Sidewalk Sales Event.**

Submission of a completed Town-wide sidewalk sales event application indicating:

A. Dates of the year requested for up to a total of five sidewalk sales events per calendar year, of which no single sidewalk sale event may exceed four consecutive days;

B. Proof of broad business community sponsorship for the event as evidenced by signatures of five landlords of tenants engaged in retail trade or merchants primarily engaged in retail trade;

C. Means and timeline of adequately informing the Kittery business community of the opportunity to participate in a Town-wide sidewalk sales event; and

D. Identification of a single contact person coordinating the event, including that person's telephone number and mailing address.

**5.7.7 Town Council Decision on a Town-wide Sidewalk Sales Event.**

The Town Council shall consider whether the application is complete and whether the request is consistent with Section 5.7.2, Intent and purpose, in making its decision. The Town Council may decide to approve, approve with modifications, approve with conditions, disapprove the application or schedule a public hearing to gain public input on the request prior to making a decision.

Modifications may include, but are not limited to, changing the dates or duration of the sidewalk sales event. Conditions may include, but are not limited to, hiring appropriate personnel to manage traffic or prohibiting certain businesses that have violated the Town's regulations regarding sidewalk sales from participating in the event. The Town Council's decision is to be communicated to the applicant's contact person in writing.

**5.7.8 Mall and Individual Business Approval to Participate in a Sidewalk Sales Event.**

Before any business engages in sidewalk sales, an approved site plan must be on record with the Town. The sidewalk sales site plan is to be reviewed by the Town staff in accordance with the standards and procedures set forth in this chapter to protect the health, safety and general welfare of the public.

To apply for sidewalk sales site plan approval, an applicant must complete a sidewalk sales site plan in accordance with Section 5.7.9 and submit it to the Town planner, or in the planner's absence the Code Enforcement Officer.

**5.7.9 Sidewalk Sales Site Plan Submission Requirements.**

The site plan submitted for approval must include all of the following information:

- A. Title of sidewalk sales site plan, including name and address of applicant, the person responsible for preparing such drawing, and the signature of the owner, or authorized representative, of the property;
- B. Approximate north arrow, scale, assessor's map and lot number in the lower right-hand corner of the plan, and date that plan was prepared;
- C. General layout of buildings, parking area, circulation lanes, and location of curb cuts;
- D. The exact location of temporary outdoor sales and display area, including the location and size of tents or other temporary structures;
- E. Location and width of unobstructed handicapped-accessible pedestrian routes and sidewalks. The means used to identify and designate the pedestrian routes so they do not become obstructed or lead pedestrians into the routes of vehicles (for example, temporary fencing, cordoning, traffic cones, pavement striping, etc.) must also be noted on the plan;
- F. Location and width of vehicle circulation and any fire and emergency lanes, showing access and egress. The means used to identify and designate the vehicle lanes so they do not become obstructed by shoppers or merchandise must also be noted on the plan;
- G. Number of parking spaces temporarily obstructed by the sidewalk sales event activities and number of total parking spaces available during the sidewalk sales event;
- H. Location of employee parking or overflow parking, if specially provided for;
- I. Location of any temporary structures or places of public assembly for musical, cultural, educational, or community events; and
- J. The name and telephone number of a contact person available during the sidewalk sales event to remedy any day-of-the-sale problems or correct violations of the submitted site plan.

**5.7.10 Review Standards.**

The site of the sidewalk sales must be designed to accommodate expected patrons without danger to the public health or safety and to prevent unacceptable traffic delays caused by traffic congestion. To this end the following standards must be satisfied:

- A. Pedestrian and vehicular routes are to be clearly marked and identified on the plan. If walkways and vehicular lanes are altered from the current routes, the plan is to explain the means used to identify and mark such revised routes on the site (for example, by using traffic cones, temporary fencing, painted or chalked lines on pavement, and roping off areas);

- B. Unobstructed five-foot-wide handicapped accessible pedestrian routes must be provided;
- C. Unobstructed nineteen (19) foot wide two-way vehicular routes or thirteen (13) foot wide one-way vehicular routes must be provided;
- D. Safe and logical traffic routes on the site as well as to and from the site must be provided; and
- E. Adequate parking must be provided so that parking does not obstruct the safe flow of traffic or create hazards for pedestrians. Up to ten (10) percent of the normally required number of parking spaces may be temporarily obstructed by sidewalk sales event activities if suitable arrangements are made to free up parking spaces normally used for employee parking or if environmentally suitable temporary overflow parking areas are provided.

**5.7.11 Town Staff Decision for Approval of a Sidewalk Sales Site Plan.**

Within five business days, or within forty-eight (48) hours (exclusive of weekends and holidays) if a sidewalk sales event is scheduled to occur sooner, of receiving a complete application for sidewalk sales site plan approved by the Town planner, or in the planner's absence the Code Enforcement Officer, shall render a decision. The decision may be to approve; approve with modifications; approve with conditions; or, disapprove a sidewalk sales site plan. The decision is to be based strictly on the review criteria listed in Section 5.7.10.

Failure to render a decision within the prescribed time limit constitutes an approval for the next approved sidewalk sales event.

Approved sidewalk sales site plans will be kept on file and are valid for future Town Council-approved sidewalk sales events without reapplication if the sidewalk sales activities on the site remains consistent with the approved plan.

Applicants are to be informed in writing of a decision to disapprove a sidewalk sales site plan.

Approved site plans are to be signed and dated by the reviewer along with the notation: "approved site plan for sidewalk sales during an approved sidewalk sales event," and kept on file.

**5.7.12 Permits Required—Signs, Tents and Other Structures.**

No special permit is required for conducting sidewalk sales in accordance with the Town-approved sidewalk sales site plan on a Town Council-approved sidewalk sales event date.

All temporary signs and banners must be permitted by the Code Enforcement Officer in accordance with **Article X of Chapter 16.8**. One temporary sign or banner per participating site in addition to that normally allowed may be permitted for each sidewalk sales event. Sign applications, accompanied by application fees, for such additional signage are to be made to the Code Enforcement Officer well in advance of the actual sidewalk sales event.

All temporary structures, such as tents, that will be removed at the conclusion of the sidewalk sales event and are shown on the Town-approved sidewalk sales site plan do not require

building/regulating activity permits. Other temporary structures require building/regulating activity permits.

**5.7.13 Temporary Closing of Public Street.**

The requested closing of any public street requires approval by the Town Council.

**5.7.14 Appeals Procedure.**

Any person aggrieved by any decision regarding the site plan review for an approved sidewalk sales event may appeal the decision to the Town Manager. Such appeal must be instituted within thirty (30) days after the receipt of a written decision to deny the sidewalk sales site plan.

**5.7.15 Enforcement.**

It is the intent of this chapter that sidewalk sales activities will be self-policed by merchants and landlords of retail merchants. In the event self-policing is not successful, the Code Enforcement Officer or other person duly authorized by the Town is to enforce the provisions of this chapter. The Code Enforcement Officer is to order the correction or abatement of all violations of this chapter. Uncorrected violations are to be reported to the Town Council upon the next application for approving a sidewalk sales event.

**5.7.16 Violations.**

Merchants conducting outdoor sales and display of merchandise that have not been approved by the planning board or in compliance with this chapter is a violation of the sidewalk sales ordinance codified in this chapter and the land use and development code of the Town, codified in Title 16 of this code.

**5.7.17 Penalties for Violations.**

When any violation of any provision of this chapter is found to exist, the Town attorney, or the CEO as provided by M.R.C.P. Rule 80K, upon notice from the Town Manager, are authorized and directed to institute any and all appropriate actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of the chapter, the same to be brought in the name of the Town.

Any person, firm or corporation (including tenants in retail malls) being the owner of or having control or use of any building or premises who violates any of the provisions hereof, is guilty of a civil violation, and the Town has those remedies including fines as are provided and allowed by 30-A, M.R.S. §4452. Each day such violation is permitted to exist after notification constitutes a separate offense. All fines collected hereunder accrue to the Town.

**5.7.18 Conflict with Other Laws.**

With the exception of the regulation of temporary outdoor sales and display of retail merchandise in the zoning ordinance, this chapter does not affect the provisions or requirements of any other federal, state or local ordinance.

## **Chapter 5.8 TAXICABS**

### **5.8.1 Authority and Purpose.**

This chapter is known as the Town ordinance to regulate and license the operation of taxicabs within the Town of Kittery and is enacted pursuant to the authority granted to the Town now or hereafter by general law including 30-A M.R.S. §3009. The purpose of this chapter is to regulate the number and operation of taxicabs and those operating taxicabs within the Town through a licensing procedure in order to promote the general welfare and public safety.

### **5.8.2 Definitions.**

The following words and phrases when used in this chapter have the meanings as set out herein unless the context clearly demonstrates otherwise:

**Operation within the Town of Kittery** means the act or business of picking up person(s) in a taxicab within the Town for transportation to locations within or outside the Town. Operation within the Town does not include the discharge of a person(s) from a taxicab within the Town provided the origination of that person(s)'s trip occurred outside the Town.

**Operator** means a person who operates a taxicab.

**Owner** means a person owning any taxicab used in the taxi business.

**Taxicab** means a motor vehicle used for transportation of person(s) for compensation excluding buses, carpools, and vehicles commonly referred to as stretch limousines.

**Taxicab business license** means the permission or license granted to a person allowing that person to operate a taxicab company within the Town when such license is required under the terms of this chapter.

**Taxicab operator license** means the permission or license granted to an individual allowing that individual to operate a taxicab within the Town when such license is required under the terms of this chapter.

**Taxicab vehicle license** means the permission or license granted by the Town Council to the owner of any taxicab used in the taxi business authorizing said vehicle to engage in the taxi business.

### **5.8.3 License Required.**

Except as allowed under Section 5.8.9, no person may operate a taxicab within the Town as defined in Section 5.8.2 without first obtaining all licenses as required by this chapter.

### **5.8.4 Application for a Taxicab Operator License.**

#### **5.8.4.1 Taxicab Operator License.**

An application for a taxicab operator license is to be filed with the Town Clerk upon forms provided by the Town Clerk. The application must be verified under oath or affirmation and provide the following information:

- A. The name and address of the applicant;
- B. Any prior experience in the transportation of passengers by the applicant;
- C. Proof of a valid motor vehicle operator's license;
- D. The applicant's prior traffic and police record if any;
- E. The applicant must also execute a consent form issued by the Town Clerk to allow the police department to investigate and verify the information submitted in the application.

**5.8.4.2 Application for Taxicab Vehicle License.**

An application for a taxicab vehicle license may be filed with the Town Clerk upon forms provided by the Town Clerk. The application must be verified under oath and provide the following information:

- A. The name and address of the owner of the company and vehicle together with the address of the business office or principal place of business to be maintained by the owner within the Town;
- B. Evidence that the vehicle to be licensed has been inspected by an inspecting station licensed by the State of Maine certifying that the vehicle has passed inspection within thirty (30) days prior to the date of the application;
- C. Adequate proof showing the vehicle to be currently registered as a taxicab by the state of Maine.

**5.8.4.3 Application for Taxicab Business License.**

An application for a taxicab business license must be filed with the Town Clerk upon forms provided by the Town Clerk. The application must be verified under oath and provide the following information:

- A. The name and address of the owner(s) of the taxicab business together with the name and address of the business, the business office or principal place of business to be maintained by the owner(s) within the Town;
- B. Any prior experience in the transportation of passengers;
- C. The number of vehicles to be initially licensed as taxicabs.

**5.8.5 Issuance of a license—Duration—Annual fee.**

**5.8.5.1 Taxicab Operator License.**

A. Upon receipt of a completed application for a taxicab operator license, the Town Clerk shall forthwith refer the same to the chief to verify the information set forth therein and to report on the same together with the chief's recommendation to the Town Clerk concerning the fitness of the applicant to hold a taxicab operator license.

- B. The report is to be issued to the Town Clerk by the chief within seven days. Unless the chief determines from his/her investigation that the applicant would not be qualified to hold a taxicab operator license, the chief must recommend approval.
- C. Upon receipt of a completed application and pending receipt of the chief's report and recommendation, the Town Clerk is to issue a temporary taxicab operator license as provided by subsection D of this section which allows the applicant to operate a taxicab until the Town Clerk takes final action to approve or disprove the application.
- D. Upon receipt of the report and recommendation from the chief, the Town Clerk must approve or deny the application. If approved, the Town Clerk issues a taxicab operator license for the current year.
- E. The initial application fee for each license constitutes the first year's license fee and said license is in effect for the remainder of the calendar year in which the license is issued. If the application is denied, the applicant has a right to appeal to the Town Council provided a notice of appeal is filed with the Town Clerk within five days of the date of denial.
- F. A timely appeal must be heard by the Town Council within thirty (30) days of the date of appeal. The applicant must be given at least seven days' notice of the hearing date, and be allowed to present whatever relevant evidence or testimony the applicant desires.
- G. After hearing the Town Council may grant or dismiss the appeal. If the appeal is granted, the Town Clerk is to be directed to issue the appropriate license. If the appeal is denied, the Town Council must make written findings of fact and reasons for the denial within ten (10) days of the date of denial. The applicant has all rights of appeal to the Superior Court as may be provided by law.

#### **5.8.5.2 Taxicab Business License.**

- A. Upon receipt of a completed application for a taxicab business license, the Town Clerk is to refer the same to the Town Council to hold a public hearing to consider the application within twenty (20) days from its receipt from the Town Clerk. The Town Council must give at least seven days' prior notice of the hearing to the applicant who may present whatever relevant evidence or testimony the applicant desires.
- B. In deciding to grant or deny the pending application, the Town Council shall take into consideration  
the number of taxicabs already in operation;  
whether existing taxicab transportation is adequate to meet the public need;  
the probable effect of increased service on local traffic conditions;and  
the character, experience and responsibility of the applicant.
- C. If the Town Council finds that further taxicab service in the Town is required by the public convenience and necessity and that the applicant is fit, willing and able to perform such transportation

and conform to all other provisions of this chapter and any regulations promulgated by the Town Council hereunder, then the Council will direct the Town Clerk to issue the taxicab vehicle license under consideration.

D. If the application is denied, the Town Council must make written findings of fact and reasons for the denial within ten (10) days of the date of denial. The applicant has all rights of appeal to the Superior Court as may be provided by law.

#### **5.8.5.3 Taxicab Vehicle License.**

Once a taxicab business license is approved by the Town Council all taxicab vehicle licenses as applied for in Section 5.8.5.2 may be issued by the Town Clerk after review of the taxicab vehicle license application. The Town Clerk may refer the application for a taxicab vehicle license to the chief to confirm the veracity of the information supplied in the application. No more than five taxicab vehicle licenses are to be issued by the Town Clerk in any calendar year without prior approval of the Town Council.

#### **5.8.5.4 Temporary License Pending Application.**

The Town Clerk may issue up to three taxicab operator licenses to any taxicab business duly licensed under the terms of this chapter. This license allows the holder thereof to operate a taxicab under the terms of this chapter for a period not to exceed three consecutive days. The holder of the temporary taxicab operator license may thereafter apply to the Town Clerk pursuant to Section 5.8.5.1 for a taxicab operator license. The purpose of this temporary license is to allow the operation of a taxicab on a limited temporary basis until the taxicab operator can apply to the Town Clerk for a permanent taxicab license pursuant to the terms of this chapter.

#### **5.8.5.5 Initial Application.**

Each application for a taxicab business license must be accompanied by a non-refundable application fee as set out in Appendix A. Each application for a taxicab vehicle license must be accompanied by a nonrefundable application fee as set out in Appendix A. Each application for a taxicab operator license must be accompanied by a nonrefundable application fee as set out in Appendix A.

The initial application fee for each license constitutes the first year's license fee and said license is in effect for the remainder of the calendar year in which the license is issued.

#### **5.8.5.6 License Renewal.**

1. Once a taxicab vehicle license or taxicab operator license has been issued by the Town Clerk a new license for every calendar year thereafter may be issued by the Town Clerk upon payment of the fees as set forth in subsection 5.8.5.5 of this section unless the license for the preceding year has been revoked. Said renewal fee must be received by the Town Clerk no later than the fifteenth day of December of each year immediately preceding the effective year of the renewed license.
2. A taxicab business license may be renewed on a yearly basis by the Town Council pursuant to the same procedure required for the granting of a taxicab business license.

**5.8.6 Insurance.**

No taxicab vehicle license may be issued for any taxicab until proof of liability insurance coverage in an amount at least equal to the minimum insurance requirements required by the state of Maine for the operation of a taxicab vehicle has been submitted to the Town Clerk.

**5.8.7 Suspension and Revocation of Licenses.**

A. A license issued under the provisions of this chapter may be revoked or suspended by the Town Council if the holder thereof has (1) violated any of the provisions of this chapter, (2) has violated any ordinances of the Town, or the laws of the United States or the state of Maine, the violations of which reflect unfavorably on the fitness of the operator to offer public transportation.

B. Prior to suspension or revocation, the holder must be given notice of the proposed action to be taken and have an opportunity to be heard before the Town Council at the hearing to consider suspension or revocation.

**5.8.8 Notices.**

When notice is required to be given to an applicant or holder of a license issued pursuant to this chapter and notice by mail is used, the Town Clerk is to use the address set forth in the application on file. Proof of a certified or registered mailing to said address creates the presumption of receipt by the applicant on the expiration of three days from the date of mailing.

**5.8.9 Reciprocity with Other Municipalities.**

In the event that any other municipality permits taxicab vehicles duly licensed pursuant to this chapter to pick up fares within that municipality for delivery to destinations outside that municipality then Kittery permits taxicab vehicles duly licensed under any ordinance existing in that municipality to pick up fares from Kittery for delivery to destinations outside of Kittery without being licensed under the terms of this chapter. In all other respects no taxicab may pick up fares within Kittery unless duly licensed and conforming to the terms of this chapter.

**5.8.10 Violation—Penalty.**

The police department has the primary duty to enforce this chapter. Any person violating any provisions of this chapter must pay a fine not exceeding fifty dollars (\$50.00) for the first such offense in any calendar year, and one hundred dollars (\$100.00) for each subsequent offense in the same calendar year; and any person who violates any of the provisions of this chapter, in addition to said penalty, becomes subject to suspension or revocation of any license issued under this chapter or the right to operate a taxicab within the Town.

**5.8.11 Additional regulations.**

The Town Council may promulgate additional regulations governing the operation of taxicabs and taxicab operators including regulations governing the maximum number of taxicab vehicle licenses to be issued and regulations temporarily or permanently suspending any provisions of this chapter should Kittery fail to have adequate licensed taxi vehicles providing service within the Town. Such

regulations, when adopted, have the same force and effect as if set forth as additional provisions within this chapter.

## **Chapter 5.9 LICENSES FOR VIEWING BOOTHS IN ADULT ENTERTAINMENT ESTABLISHMENTS**

### **5.9.1 Definitions.**

Except as specifically defined in this section, the words and phrases used in this chapter carry their customary dictionary meanings unless otherwise clearly indicated by the text.

**Adult entertainment establishment** is defined as set forth in Section 16.2.2 of the Town Code.

**Common area** means any room, rooms, hallways, passageways, or other areas accessible to patrons and customers within the adult entertainment establishment.

**Operator** means any person, partnership, company, corporation or other entity operating, conducting or maintaining an adult entertainment establishment.

**Viewing booth** means and includes any booth, cubicle, room or stall within the premises of an adult entertainment establishment used to view or display any adult-oriented materials including but not limited to films, movies, photographs, books, magazines, slides, periodicals or other printed matter, DVDs, videocassettes or reproductions of any kind, or for the use of any devices or paraphernalia which are designed for or used in connection with specified sexual activities as defined in Section 16.2.2 of the Town Code.

### **5.9.2 Licensing required.**

No person operating an adult entertainment establishment may keep for public, customer or patron use or permit or allow the use of any viewing booth without first obtaining a license to do so from the Town Council as provided in this section.

#### **5.9.2.1 Licensing Procedure, Hearing, and Term.**

Applications for a license required by this chapter are to be made in writing to the Town Council on forms to be provided by the Town Clerk's office setting forth the name and address of the applicant, owner and operator, the name and address of the business, the number of viewing booths to be licensed, and any other information deemed necessary and relevant by the Town. Upon the filing of an application, the police chief and/or the fire chief and the Code Enforcement Officer are to inspect the premises for compliance with this chapter and any other applicable provisions of any Town or state statute, rule, regulation, or ordinance including the life safety and electrical codes and report their findings along with recommendations, if any, to the Town Council at the hearing to be held on the application. The Town Council must grant a license for a viewing booth(s) only upon finding, after a public hearing, that all provisions of this chapter are met. Licenses issued pursuant to this chapter are for a term of one year and may be renewed from year to year by the Council upon application and after public hearing.

**5.9.2.2 License Fee.**

The license must specify the number of viewing booths permitted. The annual license fee for each viewing booth is twenty dollars (\$20.00).

**5.9.2.3 Suspension or Revocation of License.**

The Town Council may, after notice to the licensee and hearing, suspend or revoke any viewing booth license issued under this chapter upon a finding that the licensee has violated any of the provisions of this chapter.

**5.9.2.4. Notice of Decision.**

Any denial, suspension or revocation by the Town Council must be in writing setting forth its findings and conclusions and must include notification of the right to appeal. A decision is deemed to be made for purposes of appeal periods as of the date the written decision is dated and issued to the applicant. Proof of mailing to the applicant at the address appearing on the application or the latest address on file with the Town Clerk constitutes the date from which an appeal period commences.

**5.9.2.5 Appeals.**

Any aggrieved party may appeal from any final decision of the Town Council to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

**5.9.3 Physical Layout of Adult Entertainment Establishment.**

Any adult entertainment establishment having viewing booths available for customers, patrons or any other individuals must comply with the following requirements:

**5.9.3.1 Access.**

Viewing booths must be accessible to and from all common areas within the interior of the adult entertainment establishment. There must be no doors, drapes, curtains, or other closures separating any portion of the common area from any viewing booth.

**5.9.3.2 Construction.**

Every viewing booth must meet the following construction requirements:

- A. Each viewing booth must be arranged so that it is separated from adjacent viewing booths by a solid wall with no view into any adjacent booth.
- B. Each viewing booth must be so arranged that at least one side is totally open to an adjacent common lighted area so that there is an unobstructed, continuous, open view from the adjacent common area into the entire interior portion of the viewing booth. No viewing booth may have any door, drape, curtain, or any other closure over or covering any portion of the open side.
- C. All walls must be solid and without any openings, extending from the floor to a height of not less than six feet and must be light-colored, nonabsorbent, smooth-textured and easily cleanable.
- D. The floor of each viewing booth must be light-colored, nonabsorbent, smooth-textured and easily cleanable.

E. The adjacent common area to the viewing booth must be equipped with overhead lighting fixtures of sufficient intensity to illuminate all areas of the adjacent common area to the same level of illumination as that maintained in the common areas of the premises where merchandise is displayed for sale or view.

**5.9.3.3 Occupants.**

No more than one individual is allowed to occupy a viewing booth at any one time.

**5.9.4 Responsibility of Operator for Compliance.**

Every act or omission by an employee of the adult entertainment establishment constituting or allowing a violation of the provisions of this chapter is deemed the act or omission of the operator if such act or omission occurs with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct to assure compliance with this chapter, and the operator may be punished for such act or omission in the same manner as if the operator committed the act or caused the omission resulting in a violation of this chapter.

**5.9.5 Inspection.**

All adult entertainment establishments located within the Town of Kittery providing viewing booths to its customers, patrons, and other individuals are to be open to inspection at all reasonable times by the police department and/or the Code Enforcement Officer, or such other persons as the Town Council may designate to monitor compliance with this chapter.

**5.9.6 Violation—Penalties.**

Any person, partnership, company, corporation, or other entity which is found to have violated this chapter is subject to punishment by a fine not exceeding two hundred dollars (\$200.00) for each such violation. Each day that each such violation of this chapter continues constitutes a separate offense, punishable by the imposition of an additional fine not to exceed five hundred dollars (\$500.00) for each such separate violation. Any enforcement actions will be brought in the name of the Town and all fines recovered inure to the benefit of the Town.

**5.9.7 Compliance for Presently Operating Viewing Booths.**

Any adult entertainment establishment lawfully operating viewing booths as part of its business enterprise as of the date of the adoption of this chapter is allowed to continue operation without a license as required in this chapter for a period of sixty (60) days from the effective date of this chapter. At the end of this sixty (60) day period, all viewing booths must be licensed under this chapter. Continued unlicensed operation constitutes a violation of this chapter.