

DRAFT
Salem Licensing Board
Rules, Regulations, Standards and Procedures for Granting, Conditioning,
Denying, Suspending or Revoking Entertainment Licenses for Adult
Activities

Pursuant to M.G.L Ch. 140 § 183A; the First and Fourteenth Amendments to the Constitution of the United States; and Article 16 of the Massachusetts Declaration of Rights, as amended by Article 77 to the Constitution of the Commonwealth; the Licensing Board (hereinafter “the Board”) hereby promulgates:

Sec. 1. Definitions

1. “*Adult entertainment*” means any dance, amusement, show, display, exhibition, pantomime, modeling or any other like performance of any type for the use or benefit of a member or members of the public or advertised for the use or benefit of a member of the public where such is characterized by an emphasis on the depiction, description or simulation of “specified anatomical areas” as defined herein, or the exhibitions of “specified sexual activities,” also defined herein, or in the case of live adult entertainment performances, which emphasizes and seeks to arouse or excite the patron’s sexual desires. For the purpose of this section, any patron of an adult entertainment business, as defined in this section, shall be deemed a member of the public.
2. “*Exotic Dance Studio*,” also know as topless bar and “adult cabaret,” means a nightclub, bar, restaurant, or similar commercial establishment or any premises or facility to which any member of the public is invited or admitted and where an entertainer provides live performances to any member of the public, which performances are characterized by an emphasis on the depiction, description or stimulation of “specified anatomical areas” or “specified sexual activities,” or which emphasize and seek to arouse or excite the patron’s sexual desires.
3. “*Specified Anatomical areas*” means:
 - a. Less than completely and opaquely covered human genitals, public region, buttocks, anus, or female breast below a point immediately above the top of areolae; or
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
4. “*Specified sexual activities*” means:

- a. The caressing, touching, fondling or other intentional or erotic touching of male genitals, female genitals, public region, buttocks, anus, or female breasts of oneself or of one person by another; or
- b. Sex acts, normal or perverted, actual or simulated, including masturbation, intercourse, oral copulation, flagellation, sodomy, bestiality, or any sexual acts which are prohibited by law; or
- c. Human genitals in a state of sexual stimulation, arousal or tumescence or visual state of sexual stimulation, arousal or tumescence, even if completely and opaquely covered; or
- d. Excretory functions as part of or in connection with any of the activities set fort in subsections (a) through (c) of this section.

Sec. 2. License Required for Adult Entertainment Activities

- 1. Adult entertainment business license required
 - a. No person or entity shall use any property or premises for an adult entertainment business within the city of Salem except those having complied with these Regulations and the owner or operator thereof has obtained an adult entertainment business license from the Board.
 - b. A license for adult entertainment activities may be issued by the Board and only in pursuant to, and in accordance with, the provisions of these Regulations and Massachusetts General Law Chapter 140, Section 183A.
 - c. The application for such license must be in writing and fully and specifically describe the type of adult entertainment activities will be conducted on the premises.
 - d. No license for adult entertainment activities shall be issued to any person convicted of crimes against minors including provisions of G.L.c. 119, § 63 and/or crimes against chastity, morality, decency and good order, specifically G.L.c. 272, §§ 2, 3, 4A, 4B, 6 – 8, 12, 13, and 28.
 - e. The Applicant for said license must be 18 (eighteen) years old or older.
- 2. No License for Adult Entertainment Activities shall be granted if the Board determines that, taken alone or in combination with other licensed activities

on the premises, the activity would adversely affect the public health, safety or order, in that the concert, dance, exhibition, cabaret, or public show cannot be conducted in a manner so as to: (a) protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises. The Board shall consider the activity's proximity to schools, parks, residences, other business establishments which have obtained a License for adult entertainment activities, and/or any establishment licensed under the provisions of G.L.c. 138, Sec. 12.

3. License for Adult Entertainment Activities – Fee Required

The annual fee for a weekday License issued under these Regulations shall be \$100.00.

Sec. 3. License Applications

1. All applications for an adult entertainment business license for places which offer adult entertainment shall:
 - a. be submitted in the name of the person or entity proposing to conduct such adult entertainment on the business premises
 - b. be signed by the applicant and notarized or certified to be true under the penalty of perjury
 - c. be submitted on a form supplied by the city of Salem, along with a nonrefundable application processing fee of \$ 50.00, which shall contain the following information:
 - i. For each applicant: Name, any aliases or previous names, driver's license number, if any, social security number if any, and business, mailing, and residential address, and business telephone number.
 - ii. If a partnership, whether general or limited; and if a corporation: date and place of incorporation, evidence that it is in good standing under the laws of Massachusetts and name and address of any registered agent for service of process.
 - iii. Addresses of the applicant for the five (5) years immediately prior to the date of application

- iv. Any and all criminal misdemeanor or felony convictions or forfeitures, other than parking offenses or minor traffic violations, including dates of conviction, nature of the crime, name and location of court and disposition for each individual, partner, corporate officer and/or director identified in subparagraph (i) above for the ten (10) years immediately preceding the date of application
- v. A description of the business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of application.
- vi. Whether the applicant or any partner, corporate officer, or director of the applicant, holds any other licenses under this Regulation or any license for similar adult entertainment or sexually oriented business, including motion picture theaters and panoramas, from the city or another city, county or state, and if so, the names and addresses of each other licensed business.
- vii. List the type of concert, dance, exhibition, cabaret or public show or amusement sought to be licensed and shall state whether such public show will include: (a) dancing by patrons, (b) dancing by entertainers or performers, (c) recorded or live music, (d) the use of an amplification system, (e) a theatrical exhibition, play, or moving picture show, (f) a floor show of any description, (g) a light show of any description, or (h) any other dynamic audio or visual show whether live or recorded.
- viii. State whether as part of the concert, dance or theatrical exhibition, cabaret or public show or amusement any person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the pubic area, anus, or genitals, of any simulation thereof, or whether any female person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the breast below the top of the areola, or any simulation thereof.
- ix. The name and location of the proposed adult entertainment business, including a legal description of the property, street address, and telephone number(s), if any, together with the name and address of each owner and lessee of the property.
- x. Two (2) two (2) inch by two (2) inch color photographs of each applicant, taken within six (6) months of the date of the application, showing only the full face of the applicant. The photographs shall be provided at the applicant's expense.

Alternatively, the applicant may be required to submit to a photograph taken at the direction of the clerk.

- xi. In the case of an exotic dance studio, a scale drawing or diagram showing the configuration of the premises for the proposed exotic dance studio, including a statement of the total floor space occupied by the business, and marked dimensions of the interior of the premises. Performance areas, seating areas, manager's office and stations, restrooms and service areas shall be clearly marked on the drawing. The applicant shall further demonstrate conformance with City's zoning ordinance pertaining to the location of a businesses and conformance with these Regulations.
 - xii. Authorization for the city of Salem, its agents and employees to investigate and seek information to confirm any statements set forth in the application.
 - xiii. Identification and/or information, as requested by the clerk, supplemental to that required in a complete application when deemed necessary to confirm statements set forth in the application or determine compliance with these Regulations. The application will be deemed complete when the applicant submits responses to all inquiries on the application form.
 - xiv. A blueprint showing the configuration of the premises for the proposed adult entertainment activity, including a statement of the total floor space occupied by the business, and marked dimensions of the interior of the premises. Performance areas, seating areas, manager's office and stations, restrooms and service areas shall be clearly marked on the drawing.
 - xv. A site plan showing that the premises upon which the adult entertainment activities are to be performed and use of parcels within 500 linear feet of the proposed entertainment facility's lot line.
2. An application shall be deemed complete upon the applicant's provision of all information requested above, including identification of "none" where that is the correct response, and the applicant's verification that the application is complete. The Board may request other information or clarification in addition to that provided in a complete application where necessary to determine compliance with this chapter.
 3. If any person or entity acquires, subsequent to the issuance of a License, a significant interest based on responsibility for management or operation of the licensed premises or the licensed business, notice of such acquisition shall be

provided in writing to the Board, no later than 21 days following such acquisition. The notice required shall include the information required for the original License application.

4. The License, if granted, shall state on its face the name of the person or persons to whom it is issued, the expiration date, the doing-business-as name and the address of the licensed adult entertainment activity. The License shall be posted in a conspicuous place at or near the entrance to the adult entertainment activity so that it can be easily read at any time the business is open.
5. No person granted a License pursuant to this regulation shall operate the adult entertainment activity under a name not specified on the license, nor shall any person operate an adult entertainment activity under any designation or at any location not specified on the license.
6. Upon receipt of the complete application and fee, the clerk shall provide copies to the police, fire, and health departments, and to the Building Inspector, for their investigation and review to determine compliance of the proposed adult entertainment activity with the laws and regulations which each department administers. Each department shall, within 30 days of the date of such application, inspect the application and premises and shall make a written report to the clerk whether such application and premises comply with the laws administered by each department. No License may be issued unless each department reports that the application and premises comply with the relevant laws. In the event the premises are not yet constructed, the departments shall base their recommendation as to premises compliance on their review of the drawings submitted in the application. Any License approved prior to premises construction shall contain a condition that the premises may not open for business until the premises have been inspected and application. A department shall recommend denial of a License under this subsection if it finds that the proposed adult entertainment activity is not in conformance with the requirements of this regulation or other law in effect in the city. A recommendation for denial shall cite the specific reason therefor, including reference to all applicable laws.
7. A License shall only be issued following a public hearing held within forty five (45) days after filing of an application with the Board. Notice of the hearing date, location and time must be provided to the applicant and mailed to all parties of interest within 30 days of receipt of application.
8. The Board shall act within ninety days following a public hearing for which notice has been given by publication or posting and by mailing to all parties in interest, but no less than 10 days' notice to the applicant. Failure by the Board to take final action upon an application for a License within said ninety days following the first date of a public hearing shall be deemed to be a grant of the

permit applied for. Applicants shall receive a decision in writing within 30 days next following the close of the public hearing.

Sec.4. Denial of Application for License; Conditional Approval

In order to deny an entertainment license application the Board must possess substantial evidence that the granting the license application at the premises specified:

1. would lead to or cause an offense under any applicable law, code, ordinance or regulation; or
2. would lead to the creation of a nuisance or otherwise endanger the public health safety or order by unreasonably increasing pedestrian or vehicular traffic in the area in which the premises is located; or
3. increasing the incidence of illegal or disruptive conduct in the area in which the premises is located; or
4. unreasonably increasing the level of noise in the area in which the premises is located;

The Board, prior to denying a license application, shall ascertain that the anticipated harm is significant and that the likelihood of its occurrence is not remote.

Conditional Approval. The Board may issue conditional entertainment licenses, and such conditions may relate to:

1. compliance with applicable laws or ordinances; or
2. public safety, health, or order; or
3. steps required to be taken to guard against creation of a nuisance or to insure adequate safety and security for patrons or the affected public

Every original entertainment license which is approved by the Board shall include a condition requiring the applicant to secure Certificates of Use and Occupancy and Inspection for the structure in which the license will be exercised, and to secure the approval of the Salem Fire Department as a place of assembly and for the approval of decorations, seating, other furnishings and interior finishes.

The Board may impose conditions upon an existing license upon finding, after a hearing preceded by ten days notice to the licensee, that conditions exist which would have justified imposition of the conditions upon the license when granted.

Sec. 5. Regulations of Adult Entertainment Activities

1. No sign or other matter or visual material, of any nature whatsoever, which is visible from the street or from any other external vantage point, shall contain any photographs, silhouettes, pictorial representations, or language, depicting or in any manner referencing any adult paraphernalia, nudity, or sexual excitement.
2. Admission to the premises must be restricted to persons eighteen (18) years of age or older, and if the establishment is licensed to serve alcoholic beverages, admission must be restricted to persons twenty-one (21) years of age or older.
3. Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal, measured at 30 inches from the floor and on 10- foot centers is hereby established for all areas of the adult cabaret where members of the public are admitted.
4. A managerial employee shall be on duty on the premises at all times that such premises are open to the public. The name of the managerial employee shall be prominently posted during business hours. Such managerial employee shall be responsible for compliance with the provisions of this Regulation and any and all other, applicable ordinances or provisions of law.
5. The licensee shall keep the license at the location cited thereon, and, shall surrender it to any person designated by the Board and shall display it to any person requesting to see it.
6. The licensee, his agents, principles and partners shall be able to adhere to the terms and conditions of the license.
7. A current list of all employees shall be available upon request of authorized agents of the Board.
8. The licensee shall allow any person designated by the Board including the Salem Police to enter, to inspect, to view any exhibition or show, and to participate in any amusement.
9. The licensee shall hire at his own expense a police and fire detail as the Board shall require.
10. The licensee shall obtain all leases and permits as required to occupy said location lawfully
11. The licensee shall conform to the applicable provisions of the Salem Zoning Ordinance and State building code, obtaining a Certificate of Use and Occupancy from the Director of Inspectional Services if so required by these codes.

12. No physical renovations shall be made unless a plan is submitted and approved by the Board.
13. No increase in the capacity of the licensed premises will be valid unless a petition is fully filed by the licenses and approved by the Board
14. No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the establishment, with the exception that persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the premises or to equipment on the premises, may be permitted into nonpublic areas to the extent required to perform their said jobs or duties.
15. No establishment shall permit, suffer or tolerate the solicitation and/or performance of prostitution, unlawful distribution and/or use of controlled substances, and/or other illegal activities, by any of its employees or patrons, or by any other person on the premises. Such "other illegal activities" include, but are not limited to, any adult entertainment activities which are not included within the establishment's License.
16. As required by the Salem Fire Chief, the licensee shall maintain unobstructed means of egress and means of access, and shall remove combustible materials
17. The licensee shall not allow any person to obstruct aisles, passageways, landings, or stairways.
18. The Salem Fire Chief shall approve the substances and position of the following decorations: seating and other furnishings, interior finishes, 35 mm or larger film, smoking areas, and easily accessible fire fighting apparatus.
19. The licensee shall allow members of the Fire Department, in case of fire to exercise exclusive control and direction of his employees and of means and apparatus for extinguishing the fire
20. No device or electronic equipment shall be utilized by any licensed premises for the purpose of signaling employees that agents of the Board are present.
21. Any police complaints and/or reports presently on file, shall continue in force until disposed of by this Board.
22. Recordkeeping Requirements:
 - a. All papers, records, and things required to be kept pursuant to these Regulations, or to any other provision of law, shall be open to inspection without notice by the Board and its agents during the hours when the

premises are open for business. The purpose of such inspections shall be to determine whether the papers, records, and things meet the requirements of these Regulations and/or any other provision of law.

- b. Each establishment shall maintain and retain for a period of two years the name, address, and age of each person employed or otherwise retained or allowed to perform on the premises as an adult entertainer, including independent contractors and their employees, as an entertainer. This information shall be open to inspection by the Board and its agents, without prior notice, during hours of operation of the business.

23. Inspections. In order to insure compliance with these Regulations all areas of the premises which are open to members of the public shall be open to inspection by the Board and its agents, without prior notice, during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the premises are operated in accordance with the requirements of these Regulations. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with these Regulations.

24. Salem Police Officers are authorized as agents of the Licensing Board to inspect places of public entertainment licensed or required to be licensed by said board. Such officers may report to the Board such information as may be relevant to the standards procedures outlined in this regulation.

Sec. 6. Suspension or revocation of License: Other Remedies

- 1. Suspension/Revocation; Generally. Upon notice and a hearing, the Board may suspend or revoke any License issued under the provisions of these Regulations, upon a finding, supported by a preponderance of the evidence, of anyone or more of the following:
 - a that the applicant has failed to meet anyone or more of the requirements of these Regulations, or no longer meets anyone or more of the requirements of these Regulations, or that the applicant has made a false, misleading or fraudulent statement of material fact on the application for the License;
 - b that the applicant or the establishment is in violation of anyone of more provisions of these Regulations ; and/or
 - c that the applicant or the establishment in violation of anyone or more provisions of any other law governing the operation of the business of the establishment, including, but not limited to, any law, rule or regulation pertaining to the service of alcoholic beverages upon the premises, or to the licensure therefore.

2. Suspension/Revocation; Specifically. The Board may revoke or suspend a license for an exhibition, show, or amusement upon finding, after a hearing preceded by ten days notice to the licensee, that conditions exist which would have justified denial of the original application for such license.
 - a. The Board may, after a hearing preceded by ten days notice to the licensee, suspend or revoke a license for an exhibition, show, or amusement on a ground having to do with public morality or decency if there has been a final judicial determination that such exhibition, show, or amusement is obscene, or if there has been a final judicial determination that the course of maintaining such exhibition show, or amusement the licensee has violated the provisions of 29A or 29B of Chapter 272 of the Massachusetts General Laws.
 - b. The Board may, without any administrative hearing, utilize the standards established above and suspend a license for an exhibition, show, or amusement for not more than three calendar days, provided that no such suspension shall be effective unless and until a judicial proceeding instituted by the Board approves the validity of the license suspension. Such approval must take place within one working day of the day when the Board so suspends the license under this paragraph. If and when a judicial proceeding approves the license suspension, within one working day of such approval the Board shall hold a hearing to determine whether to continue the suspension. Notice of this hearing shall be given to the licensee in writing. If the Board after such a hearing decides to continue the suspension, such suspension may be continued for a period not to exceed eleven days from the day when the Board first suspended the license pursuant to this paragraph. Suspension of the license beyond this eleven day period may only take place only after 10 days notice of a hearing and a full hearing on the matter.
3. Public Nuisance. Any adult entertainment activity operated, conducted, maintained, permitted or suffered in violation of these Regulations or any other applicable provision of law shall be, and the same is, declared to be unlawful and a public nuisance. The city attorney may, in addition to or in lieu of any other remedies set forth in these Regulations, commence an action to enjoin, remove or abate such nuisance in the manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment activity contrary to the provisions of the Regulations or any other applicable provision of law.
4. Additional Remedies. The Remedies prescribed in these Regulations are not exclusive, and the City may seek any other relief, civil and/or criminal, that the law provides for any violation of such ordinance

Sec. 7. Miscellaneous

1. Nothing contained herein shall be construed as limiting the power and authority of the City to otherwise regulate the use of land, structures or buildings in accordance with other Regulations, Ordinances or provisions of the Massachusetts General Laws.
2. Severability. If any of the provisions of these rules and regulations or their application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of such Rules and Regulations or the application of such other provisions, which can be given effect without the invalid provision or application thereof, and for this purpose the provisions of these rules and regulations are severable.