

Chapter 170

LIVE ENTERTAINMENT AND MINIMUM ATTIRE

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[HISTORY: Adopted by the Town of Bedford as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Standards for adult entertainment businesses — See Ch. 275, § 275-72.

ARTICLE I Clubs and Live Entertainment [Adopted 4-12-2000; amended in its entirety 9-11-2002]

§ 170-1. Opening and closing times.

Private and/or public clubs serving alcoholic beverages, or providing facilities for the consumption of alcoholic beverages, or admitting members of the public for a membership fee or similar charge shall not open before 5:00 a.m. on any day and shall not remain open beyond 1:00 a.m. on the following day.

§ 170-2. License required.

- A. No person, corporation or other entity shall conduct live entertainment, including but not limited to musical entertainment, open to the public, unless an application for a live entertainment license shall first be filed with and approved by the Town Council. The application for a live entertainment license shall be filed in a form prescribed by the Town Council, shall be accompanied by a fee of \$120, or applicable pro rata amount.
- B. The application shall contain certain information and documents, including, but not limited to, the following:
 - (1) The name and address of the person, corporation or other entity applying for a live entertainment license. If the applicant is a corporation or other entity, additional

required information includes the formation date of the corporation or other entity and the address of each of its offices in this state; and

- (2) If the applicant is a person, that person's principal occupation(s) for the last five years; and
 - (3) If the applicant is a corporation or other entity, the name, address and principal occupation for the last five years of every director, president, vice president, treasurer, or clerk of the corporation or other entity, or person occupying a similar status or performing similar functions; and
 - (4) If the applicant is a closely held corporation, partnership, joint-stock company, trust or sole proprietorship, or other entity, the name, address and principal occupation of each trustee, stockholder, partner, or person having any beneficial interests therein; and
 - (5) If the applicant is a publicly held corporation, the name, address and principal occupation of each stockholder owning more than 10% of the outstanding shares; and
 - (6) If the applicant is a subsidiary corporation, the name, address and principal occupation of each stockholder or person having a beneficial interest therein, and the name, address and principal occupation of each stockholder owning more than 10% of the outstanding shares in the corporation or corporations to which it is a subsidiary; and
 - (7) If the applicant is a person, whether said person has been convicted of a crime or otherwise been subject to a criminal or administrative penalty involving the management or operation of a live entertainment club or establishment, or any other felony in this state, the United States, or any other state or foreign country within the past five years; and
 - (8) If the applicant is a corporation or other entity, whether it has been cited or otherwise been subject to any criminal or administrative penalty involving the management or operation of a live entertainment club or establishment. Additionally, whether the officers, directors and/or principals of such applicant corporation or other entity have been convicted of a crime or otherwise been subject to a criminal or administrative penalty involving the management or operation of a live entertainment club or establishment, or any other felony in this state, the United States, or any other state or foreign country within the past five years.
- C. The Town Council, upon receiving a completed application in proper form and fee as set forth in Subsection A of this section, shall forthwith initiate such examination as it shall deem necessary to determine:¹
- (1) That there is a reasonable assurance that the applicant will operate the live entertainment club or establishment in compliance with this article; and

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (2) Whether the applicant has not, or if a corporation or entity its officers, directors and/or principals have not, been convicted of a crime involving the management or operation of a live entertainment club or establishment, or whether the officers, directors and/or principals of such applicant corporation or other entity has not been convicted of a crime or otherwise been subject to a criminal or administrative penalty involving the management or operation of a live entertainment club or establishment, or any other felony in this state, the United States, or any other state or foreign country within the past five years and has not been subject to any injunction or administrative order within the past five years involving the management or operation of a live entertainment club or establishment.
- D. Upon completion of the examination as set forth in Subsection C above, the Town Council shall issue a live entertainment license, or renewal thereof, unless the Town Council affirmatively determines that the requirements of this article have not been met. Upon such determination, the Town Council shall notify the applicant in writing of its decision and findings.
- E. Each holder of a live entertainment license must renew said license and pay annual fees as set forth in Subsection A of this section each year prior to April 30. An applicant who has already provided the information required in Subsection B above, is not required to annually refile such information. However, such an applicant shall file with the renewal application a completed form, prescribed by the Town Council, indicating whether any of the applicant's required information previously filed with the Town Council requires an update. If information requires update, the applicant shall provide the Town Council with the relevant updated information, and the Town Council shall perform the examination described in Subsection C above. In addition, in the event that the licensee is an entity and a change in control of the entity occurs, then the entity must reapply for a license.²
- F. Upon passage, these licensing standards shall apply to all new live entertainment license applications in addition to all renewal applications.

§ 170-3. Conduct.

- A. It shall be unlawful for any adult performer to appear in a state of attire which is less than expressive nudity in a place requiring a live entertainment license as provided for herein.
- B. Under Subsection A, an adult performer who engages in sexual contact and/or sexual penetration; or appears in a state of attire which is less than a state of expressive nudity in a place requiring a live entertainment license as provided herein; or fondles the genitals of himself, herself, another adult performer or person shall be guilty of public indecency, a violation offense.
- C. It shall be unlawful for any nonperforming person to appear in a state of nudity or expressive nudity in a place requiring a live entertainment license as provided for herein, except in a place provided or set apart for nudity.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. Under Subsection C, any nonperforming person in a live entertainment establishment who engages in sexual contact and/or sexual penetration; or appears in a state of expressive nudity; or appears in a state of nudity, except in a place provided or set apart for nudity; or fondles the genitals of himself, herself or another person shall be guilty of public indecency, a violation offense.
- E. Under this § 170-3, a person or entity that permits any or all of the acts in Subsections B through D above to occur in any place under the person's control; or conducts, finances, manages, supervises, directs, or owns all or part of a business and such person or entity permits any or all of the acts in Subsections B through D to occur on the premises of the business shall be guilty of public indecency, a violation offense.

§ 170-4. Definitions.

The following are definitions of certain words as used in this article:

ADULT PERFORMER — Any person in a live entertainment establishment who engages in a mode of expression which constitutes a part of a bona fide live communication, demonstration or artistic performance by such person in a state of expressive nudity wherein such expressive nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression, and as such, is protected by the United States or New Hampshire Constitution, or because it is otherwise protected by the United States or New Hampshire Constitution.

ENTITY — Any proprietorship, partnership, corporation, limited liability company, association, business trust, joint venture, joint-stock company, or other for-profit or not-for-profit organization.

EXPRESSIVE NUDITY —

- A. The public display of the body of an adult performer who wears at a minimum any fully opaque non-flesh-colored covering devices, such as costumes, covering, pasties or g-strings which do not give the appearance of or simulate the genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region, or the nipples or areola of the female breast, which devices, costumes, covering, pasties or g-strings cover the human male or female genitals, pubic hair, the pubic areas and nipples and areola of the female breast. Liquid latex, whether wet or dried, and similar substances which give the appearance of or simulate the body part they are covering, body paint, body dyes and tattoos shall not be considered opaque covering.
- B. Fully opaque non-flesh-colored covering devices, such as costumes, covering, pasties and g-strings that do not simulate or give the realistic appearance of the genitals, pubic hair, natal cleft, perineum, anal region, pubic hair region, or the nipples or areola of the female breast, which devices, costumes, covering, pasties or g-strings cover the human male or female genitals, pubic hair, the pubic areas and nipples or areola of the female breast, shall be considered a minimum adequate level of attire to comply with requirements of the definition of expressive nudity for an adult performer as set forth in this article.

- C. Provided, however, the foregoing notwithstanding, for the current license holders of a Town of Bedford clubs and live entertainment license who have adult performers currently performing, such adult performers shall be permitted to wear pasties of any opaque color and/or pasties that are flesh-colored which simulate or give the realistic appearance of the nipples or areola of the female breast. The provisions in the foregoing sentence shall not apply in the event that i) the business of said current license holders is sold, or ii) there is a conveyance of any of the ownership interests of the license holder (i.e., stock, partnership interests, limited liability company interests, etc.), or iii) there is a change in control of any the individuals who are operating the license holder, or iv) the license of said current license holder is not renewed and that decision, if appealed, is upheld upon final appeal by a court of competent jurisdiction, or v) the building in which the business of the license holder is currently located is expanded, which expansion requires a site plan approval, or vi) the business of the current license holder is moved from its current location. In addition, the provisions of the first sentence of this subsection shall not apply to the adult performers of such a current license holder in a place of business in Bedford that is in addition to the current place of business. For the purposes of this subsection, the words "current" or "currently" shall mean July 18, 2002, the date of posting of this article by the Town of Bedford.

LIVE ENTERTAINMENT ESTABLISHMENT — Business and commercial establishments (whether open to the public at large, or whether entrance is limited by a cover charge or membership requirement), including but not limited to hotels, motels, restaurants, nightclubs, country clubs, cabarets, and indoor and outdoor meeting facilities where live entertainment is provided.

NONPERFORMING PERSON — Any person of or within a live entertainment establishment who is not an adult performer. Nonperforming persons include, but are not limited to, waiters or waitresses, hosts or hostesses, coat-check or door attendants, bartenders, cooks, chefs, janitors, cleaning and maintenance personnel, customers, patrons and clientele.

NUDE or NUDITY —

- A. The showing of the human male or female genitals, pubic hair or pubic area, or certain portions of the buttocks (see minimum level of attire in the Subsection B below) with less than a fully opaque covering, or the showing of the female breast below a horizontal line across the top of the areola. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed in whole or in part. Nudity shall include the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum, anal region, pubic hair region, or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola. Body paint, body dyes, tattoos, liquid latex, whether wet or dried, and similar substances shall not be considered opaque covering. Provided, however, this definition shall not include "expressive nudity," as that term is defined above, shall not be considered nudity as defined herein.

- B. The following shall be considered a minimum adequate level of attire to comply with requirements in this article: the wearing of at least a fully opaque material which covers the genitals, natal cleft, perineum, anal region, the anal cleft, pubic hair region, and the female breast below a horizontal line across the top of the areola at its highest point. An example of this minimum adequate level of attire is a bathing suit with a top covering the breast as stated above (for women) and a T-back (three inches wide) bottom.

PERSON — Any live human being aged 10 years of age or older (it being recognized that the protection of minors of certain ages, including human beings under 10 years of age, with regard to activities governed by this article, are covered statutes of the State of New Hampshire).

PLACE PROVIDED OR SET APART FOR NUDITY — Any place in which nudity or exposure is necessarily and customarily expected outside of the home and sphere of privacy constitutionally protected therein, including but not limited to enclosed single-sex public rest rooms, enclosed single-sex functional shower, locker and/or dressing room facilities, enclosed motel and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals, art school nude modeling classes, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and sphere of privacy constitutionally protected therein.

PLACE REQUIRING A LIVE ENTERTAINMENT LICENSE — Includes business and commercial establishments (whether open to the public at large, or whether entrance is limited by a cover charge or membership requirement), including but not limited to hotels, motels, restaurants, nightclubs, country clubs, cabarets, and indoor and outdoor meeting facilities where live entertainment is provided.

SEXUAL CONTACT — The intentional touching, whether directly, through clothing, or otherwise, of another person's sexual or intimate parts, including breasts and buttocks.

SEXUAL PENETRATION —

- A. Sexual intercourse; or
- B. Cunnilingus; or
- C. Fellatio; or
- D. Anal intercourse; or
- E. Any intrusion, however slight, of any part of the person's body or any object manipulated by the person into the genital or anal openings of another's body.

§ 170-5. Violations and penalties.

Any person or entity found guilty in a court of competent jurisdiction of any provision of this article may be subject to a fine not to exceed \$1,000 for each violation. Furthermore, any person or entity may be fined for each day that a violation of this article continues, if found guilty of said violation.

§ 170-6. Enforcement.

The Town Council is hereby given authority to enforce the provisions of this article pursuant to RSA 47:17. The Town Council shall be empowered to revoke or not renew said license for violation of any Town of Bedford ordinance or regulation, and to take action in any court of competent jurisdiction in law or in equity to enjoin the violation of any Town of Bedford ordinance or regulation, or for any other relief which may be appropriate.

ARTICLE II
Minimum Attire in Public Places
[Adopted 11-6-2002]

§ 170-7. Title.

This article shall be known as the "Town of Bedford Minimum Attire in a Public Place Ordinance."

§ 170-8. Intent.

It is the intent of this article to protect and preserve the health, safety welfare of the citizens of Bedford, by prohibiting a person from appearing or being nude or causing another person to appear or be nude in a public place, except:

- A. When such person appears nude in a place provided or set apart for nudity, provided that:
 - (1) Such person is nude for the sole purpose of performing the legal function(s) that is customarily intended to be performed within such place provided or set apart for nudity; and
 - (2) Such person is not nude for the purpose of obtaining money or other financial gain for such person or for another person or entity; or
- B. When the conduct of being nude cannot legally be prohibited by this article because it constitutes expressive nudity as that term is defined in § 170-10 below.

§ 170-9. Types of violations; exceptions.

- A. A person in a public place who appears in a state of nudity other than for the sole purpose of performing the legal function(s) that is customarily intended to be performed within a place provided or set apart for nudity shall be guilty of violation of this article, a violation offense.
- B. A person or entity, who permits the prohibited conduct set forth in Subsection A above to occur in any place under the person's control; or conducts, finances, manages, supervises, directs, or owns all or part of a business and such person permits such prohibited conduct on the premises of the business shall be guilty of violation of this article, a violation offense.

- C. The prohibitions set forth in Subsections A and B above on minimum attire in a public place shall not apply to:
- (1) Any child under 10 years of age; or
 - (2) Any female exposing a breast in the process of breastfeeding an infant; or
 - (3) Any circumstances arising under the exceptions set forth in § 170-8A and B.

§ 170-10. Definitions.

The following are definitions of certain words as used in this article and in other articles of the ordinances of the Town of Bedford when specifically referenced in such other ordinances:

ADULT PERFORMER — Any person in a live entertainment establishment who engages in a mode of expression which constitutes a part of a bona fide live communication, demonstration or artistic performance by such person wherein such expressive nudity is expressive conduct incidental to and necessary for the conveyance or communication of a genuine message or public expression, and as such, is protected by the United States or New Hampshire Constitution, or because it is otherwise protected by the United States or New Hampshire Constitution.

ENTITY — Any proprietorship, partnership, corporation, limited liability company, association, business trust, joint venture, joint-stock company, or other for-profit or not-for-profit organization.

EXPRESSIVE NUDITY —

- A. The public display of the body of an adult performer who wears at a minimum any fully opaque non-flesh-colored covering devices, such as costumes, covering, pasties or g-strings which do not give the appearance of or simulate the genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region, or the nipples or areola of the female breast, which devices, costumes, covering, pasties or g-strings cover the human male or female genitals, pubic hair, the pubic areas and nipples and areola of the female breast. Liquid latex, whether wet or dried, and similar substances which give the appearance of or simulate the body part they are covering, body paint, body dyes and tattoos shall not be considered opaque covering.
- B. Fully opaque non-flesh-colored covering devices, such as costumes, covering, pasties and g-strings that do not simulate or give the realistic appearance of the genitals, pubic hair, natal cleft, perineum, anal region, pubic hair region, or the nipples or areola of the female breast, which devices, costumes, covering, pasties or g-strings cover the human male or female genitals, pubic hair, the pubic areas and nipples or areola of the female breast, shall be considered a minimum adequate level of attire to comply with requirements of the definition of "expressive nudity" for an adult performer.

NUDE or NUDITY —

- A. The showing of the human male or female genitals, pubic hair or pubic area, or certain portions of the buttocks with less than a fully opaque covering, or the showing of the

female breast below a horizontal line across the top of the areola. (See minimum level of attire in Subsection B below.) This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed in whole or in part. Nudity shall include the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum, anal region, pubic hair region, or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola. Body paint, body dyes, tattoos, liquid latex whether wet or dried, and similar substances shall not be considered opaque covering. This definition shall not include "expressive nudity," as that term is defined above, and "expressive nudity" shall not be considered nudity as defined herein.³

- B. The following shall be considered a minimum adequate level of attire to comply with requirements in this article: the wearing of at least a fully opaque material which covers the genitals, natal cleft, perineum, anal region, the anal cleft, pubic hair region, and the female breast below a horizontal line across the top of the areola at its highest point. An example of this minimum adequate level of attire is a bathing suit with a top covering the breast as stated above (for women) and a T-back (three inches wide) bottom.

PERSON — Any live human being aged 10 years of age or older (it being recognized that the protection of minors of certain ages, including human beings under 10 years of age, with regard to activities governed by this article are covered statutes of the State of New Hampshire).

PLACE PROVIDED OR SET APART FOR NUDITY — Any place in which nudity or exposure is necessarily and customarily expected outside of the home and sphere of privacy constitutionally protected therein, including but not limited to enclosed single-sex public rest rooms, enclosed single-sex functional shower, locker and/or dressing room facilities, enclosed motel and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals, art school nude modeling classes, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and sphere of privacy constitutionally protected therein.

PUBLIC PLACE — Any locations frequented by the public, or where the public is present or likely to be present, including but not limited to:

- A. All outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including but not limited to streets, sidewalks, business and commercial establishments; and
- B. All buildings and enclosed theaters, dance halls, banquet halls, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied; and
- C. A restaurant, bar, or other establishment serving food or drink; and

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. An auditorium, convention center, lecture hall, or other place of public gathering; and
- E. A bakery, grocery store, clothing store, shopping center, or other sales or rental establishment; and
- F. A laundromat, bank, barbershop, beauty shop, office of an accountant or lawyer, or other service establishment; and
- G. A terminal, depot, or other station used for specified public transportation; and
- H. A golf course, park, playground, beach or other public place of recreation; and
- I. A nursery, elementary, secondary, undergraduate or postgraduate private school, or other place of education; and
- J. A day-care center, senior citizen center, homeless shelter, or other social services center establishment; provided, however, that such locations shall only be deemed to be public places during the time periods that the public is present or likely to be present and shall exclude those portions of any such locations in which the public is not permitted.

§ 170-11. Violations and penalties.

Any person or entity not exempt from this article under the provisions set forth in § 170-8, 170-9C or 170-10, and found guilty in a court of competent jurisdiction of any provision of this article may be subject to a fine not to exceed \$1,000 for each violation. Furthermore, any person, corporation or entity may be fined for each day that a violation of this article continues, if found guilty of said violation.

§ 170-12. Enforcement.

The Town Council is hereby given authority to enforce the provisions of this article pursuant to RSA 47:17. The Town Council shall be empowered to take action in any court of competent jurisdiction in law or in equity to enjoin the violation of any Town of Bedford ordinance or regulation, or for any other relief which may be appropriate.