

Chapter 4 AMUSEMENTS*

***Cross reference(s)**--Zoning regulation of adult business establishments, § 14-373 et seq.

State law reference(s)--Pinball machines, 8 M.R.S.A. § 441 et seq.

Art. I. In General, §§ 4-1--4-15

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ARTICLE I. IN GENERAL

Sec. 4-1. Chapter 15 provisions apply.

Except to the extent that this chapter contains a contrary provision, all provisions of chapter 15 shall apply to and be additional to the provisions of this chapter.

(Ord. No. 165-06/07, 4-4-07)

Sec. 4-2. Reserved.

Sec. 4-3. Reserved.

Sec. 4-4. Reserved.

Sec. 4-5. Reserved.

Sec. 4-6. Reserved.

Sec. 4-7. Reserved.

Sec. 4-8. Reserved.

Sec. 4-9. Reserved.

Sec. 4-10. Reserved.

- Sec. 4-11. Reserved.**
- Sec. 4-12. Reserved.**
- Sec. 4-13. Reserved.**
- Sec. 4-14. Reserved.**
- Sec. 4-15. Reserved.**

ARTICLE II. AMUSEMENT DEVICES

DIVISION 1. GENERALLY

Sec. 4-16. Definitions.

Words used in this article shall have their common meaning, except that the definitions set forth in chapter 15, or in this section shall apply unless the context clearly indicates a different meaning:

Adult amusement device shall mean and include any device capable of showing by audio or visual reproduction, projection or otherwise, and used primarily to display material containing details, descriptions, or narrative accounts of acts of sexual stimulation, intercourse, or deviation, the dominant theme of which is an appeal to the prurient interest of the listener or viewer within a cubicle or other enclosed area. For the purpose of this article, each separate selection which may be made by the viewer requiring use of a different projection device shall make that projection device a separate adult amusement device.

Amusement device shall mean and include any vending machine, miniature pool and bowling machine, pinball machine, foosball, and any other device mechanical or otherwise which upon payment of a fee or insertion of a coin, disc, or other insertion piece, whether or not also manipulated by the operator, may be used by the public generally as a game, amusement or entertainment, whether or not registering a score and which does not dispense any form of pay-off, prize, or reward, other than an additional free use of the device itself.
(Code 1968, § 904.2; Ord. No. 231-80, 12-22-80)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 4-17. Gambling devices.

Nothing in this article shall in any way be construed to authorize, license or permit any gambling devices whatsoever which are otherwise prohibited or contrary to the law, or for which a license is required by article IV of this chapter.

(Code 1968, § 904.3; Ord. No. 231-80, 12-22-80)

Sec. 4-18. Minors prohibited from using adult amusement device.

No person under the age of eighteen (18) shall be permitted by the licensee to operate an adult amusement device.

(Code 1968, § 904.4; Ord. No. 231-80, 12-22-80)

Sec. 4-19. Standards for denial.

In addition to the provisions of Chapter 15, a license under this Article shall be denied to the following persons:

- (1) To a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction within the immediately preceding five (5) years; or
- (2) To an applicant, other than a corporation, if such applicant or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction within the immediately preceding five (5) years.

(Ord. No. 18-17/18, 8-21-2017)

Sec. 4-20. Reserved.

Sec. 4-21. Reserved.

Sec. 4-22. Reserved.

Sec. 4-23. Reserved.

Sec. 4-24. Reserved.

Sec. 4-25. Reserved.

DIVISION 2. LICENSE*

***Cross reference(s)**--Licenses and permits generally, Ch. 15.

Sec. 4-26. Required.

No person shall keep for public patronage or permit or allow the operation of any amusement device in or on any premises or location under his or her charge, control or custody, without having a license for each such device from the city.
(Code 1968, § 904.1; Ord. No. 231-80, 12-22-80)

Sec. 4-27. Notice and hearing.

The Permitting and Inspections Department shall conduct a public hearing with respect to the grant of any original license issued under this division.
(Code 1968, § 904.5; Ord. No. 231-80, 12-22-80; Ord. 165-15/16, 3-7-2016; Ord. No. 18-17/18, 8-21-2017)

Sec. 4-28. Reserved.

***Editor's Note**--Pursuant to Order 165-06/07, passed on 4-4-07 this section was relocated to Section 4-1.

- Sec. 4-29. Reserved.**
- Sec. 4-30. Reserved.**
- Sec. 4-31. Reserved.**
- Sec. 4-32. Reserved.**
- Sec. 4-33. Reserved.**
- Sec. 4-34. Reserved.**
- Sec. 4-35. Reserved.**
- Sec. 4-36. Reserved.**
- Sec. 4-37. Reserved.**
- Sec. 4-38. Reserved.**
- Sec. 4-39. Reserved.**
- Sec. 4-40. Reserved.**

ARTICLE III. ENTERTAINMENT*

***State law reference(s)**--Dances, 8 M.R.S.A. § 161 et seq.; special permit for music, dancing or entertainment, 28 M.R.S.A. § 702.

DIVISION 1. GENERALLY

Sec. 4-41. Purpose.

The purpose of this article is to control the issuance of special permits for entertainment.

(Code 1968, § 907.1; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 165-06/07, 4-4-07; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-42. Definitions.

Terms used in this article shall have their common meaning except that the definitions set forth in chapter 15 and/or in this section shall apply unless the context clearly indicates that a different meaning is intended.

Entertainment shall mean and include any event to which the public is invited or allowed to watch, listen to, or participate in; or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons or guests, including, but not limited to any of the following:

1. Dancing by patrons to live or recorded music;
2. The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ';
3. The playing of background music, except where the background music cannot be heard beyond the limits of the premises on which the music is being played;
4. The presentation of live music whether amplified or unamplified;
5. The presentation of music concerts, or other similar forms of musical entertainment from any source; or
6. Any other live performance, including, but not limited to, presentations by single or multiple performers, such as hypnotists, comedians, dance arts, concerts, dances, live bands, karaoke or other live music.

Indoor Entertainment shall mean entertainment that is conducted within a fully enclosed building or structure, including ensuring that all windows and doors remain closed during the time that entertainment is occurring.

Outdoor Entertainment shall mean entertainment that is conducted outside of a fully enclosed building or structure, or is conducted within a building or structure in any manner such that the sound generated by that entertainment is intentionally projected outside of that building or structure.

(Code 1968, § 907.3; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 165-06/07, 4-4-07; Ord. No. 285-19/20, 7-15-2019)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 4-43. Reserved.

Sec. 4-44. Reserved.

Sec. 4-45. Reserved.

Sec. 4-46. Reserved.

Sec. 4-47. Reserved.

Sec. 4-48. Reserved.

Sec. 4-49. Reserved.

Sec. 4-50. Reserved.

DIVISION 2. LICENSE*

***Cross reference(s)**--Licenses and permits generally, Ch. 15.

Sec. 4-51. Required.

(a) No person shall conduct, or permit to be conducted on a premises, or other location owned or controlled by that person, any entertainment without first obtaining a license as provided in this Article.

(b) *Single Event Entertainment License - Private Property.* A Single Event Entertainment License - Private Property shall allow the licensee to conduct a single indoor or outdoor entertainment event lasting no more than eight hours in one 24-hour period at the premises for which the license is issued. No more than five Single Event Entertainment Licenses may be issued for events at any one premises in any twelve-month period.

(c) *Single Event Entertainment License - Public Property.* A Single Event Entertainment License - Public Property shall

allow the licensee to conduct a single indoor or outdoor entertainment event lasting no more than eight hours in one 24-hour period on City-owned property. Multiple events by the same party and on the same City-owned property may be combined into one license.

(d) *Indoor Entertainment License.* An Indoor Entertainment License shall allow the licensee to conduct indoor entertainment only at the premises for which the license is issued.

(e) *Outdoor Entertainment License.* An Outdoor Entertainment License shall allow the licensee to conduct outdoor entertainment only at the premises for which the license is issued.

(f) *Combined Entertainment License.* A Combined Entertainment License shall allow the licensee to conduct indoor and/or outdoor entertainment at the premises for which the license is issued.

(g) *Expanded Entertainment Addendum.* An Expanded Entertainment Addendum shall be in addition to any entertainment license and shall allow the licensee to conduct after-hours entertainment and/or to exceed the applicable sound limits. Expanded Entertainment Addendum shall be at the sole discretion of the City Manager.

(Code 1968, § 907.2; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Substitute Ord. No. 310-A-01, § 1, 8-20-01; Ord. No. 165-06/07, 4-4-07; Ord. No. 250-07/08, 5-19-08; Ord. No. 163-11/12, 5-7-12; Ord. No. 165-15/16, 3-7-2016; Ord. No. 18-17/18, 8-21-2017; Ord. No. 285-19/20, 7-15-2019)

***Editor's Note:** Sections 4-51.5 thru 4-51.7 *Moratorium on issuance of late-night entertainment licenses* expired on October 17, 2006, pursuant to Ord. No. 216-05/06, passed on 6-5-06.

Sec. 4-52. Application.

(a) Application for a license under this division shall, in addition to the requirements of Chapter 15, be submitted on forms provided by the City. Applications shall specifically include:

1. The name and contact information of the owner or person in control of the building and/or premises;

2. The name and contact information of the person responsible for the entertainment, who shall be available to respond to inquiries of the City at all times while entertainment is taking place;
3. The location of the premises; and
4. A plan of the premises, giving in detail the dimensions and diagram of space to be used for dancing, seating, toilet rooms, and means of egress.

Applicants must provide all required information and pay all required fees before a license application will be considered.

(b) *Location of Application.* Applications for a Single Event Entertainment License - Public Property shall be submitted to the Parks, Recreation, and Facilities Department for approval. All other applications shall be submitted to the Permitting and Inspections Department.

(c) *Timing of Application.* Applications must be submitted no later than the following:

1. For a Single Event Entertainment License - Private Property or Single Event Entertainment License - Public Property, a complete application, including license fee and noise deposit, must be submitted no later than seven business days prior to the licensed event.
2. For all other licenses, a complete application, including license fee, sound mitigation plan, and review fee, must be submitted no later than four weeks prior to the City Council meeting at which the applicant wishes the application to be considered.

(d) *Noise Deposits.* Applications for a Single Event Entertainment License - Private Property and Single Event Entertainment License - Public Property must include a noise deposit as follows:

1. The noise deposit must be paid before a Single Event Entertainment License will be issued.
2. The noise deposit shall be calculated based on the reasonably anticipated number of attendees:

Anticipated Attendees	Noise Deposit
Less than 200	\$100
200-500	\$250
500-1,000	\$500
1,000+	\$1,000

3. The noise deposit shall be double the amount listed above for any licensee who has forfeited a noise deposit within the previous two years.
4. The noise deposit shall be forfeited automatically, and in the City's sole discretion, if the licensee fails to adequately mitigate any noise impacts of the event after being given notice of the impact by the City and an opportunity to correct.
5. Forfeiture of the noise deposit shall be in addition to any civil penalties or other remedies provided for in this Code, including the denial of a future license.

(e) *Sound Mitigation Plan.*

1. A sound mitigation plan shall be required for the following applications:
 - a. All initial applications for an Outdoor Entertainment License;
 - b. All initial applications for a Combined Entertainment License;
 - c. All initial applications for an Indoor Entertainment License if the licensee did not hold an entertainment license for the premises in the previous license year; and
 - d. All renewal applications that are required to go before the City Council for consideration.
2. A sound mitigation plan shall consist of the following:

- a. The sound mitigation plan must be prepared and certified by a professional sound engineer with appropriate experience and training.
 - b. The sound mitigation plan shall be designed to minimize the impact of entertainment on the surrounding uses, and detail the methods by which the applicant will accomplish those goals.
 - c. The sound mitigation plan shall include, at a minimum, speaker location and direction; sound system details and controls; stage and site layout and direction; any noise cancelling or mitigating measures proposed; and anticipated sound readings at the proposed source of the sound, at a location eight feet (8') from the means of egress located nearest to the noise source and/or eight feet (8') from any outer wall of the premises (for indoor entertainment), at each property line of the premises (for outdoor entertainment), and at the closest residence.
 - d. The sound mitigation plan shall require an on-site monitor when the number of attendees at an entertainment event is expected to exceed, or does exceed, 250. The on-site monitor shall be equipped with a dedicated sound pressure level (SPL) meter, and shall be available to respond to any inquiry of a City official during the time that the entertainment is being conducted.
3. The City and/or its designee will review the sound mitigation plan and will provide written recommendations to the City Council with respect to the proposed sound mitigation plan and license application. The applicant shall pay a sound mitigation review fee, as established by the City Council, to cover the costs of review.
 4. The applicant shall be responsible for the City's cost of reviewing the sound mitigation plan.
 5. Compliance with the sound mitigation plan, as approved by the City Council, shall be a condition of the applicant's license, if granted.

(Code 1968, § 907.4; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 285-19/20, 7-15-2019; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-53. Hearings.

(a) A public hearing shall be held prior to issuance of the following:

1. All initial applications for an Outdoor Entertainment License;
2. All initial applications for a Combined Entertainment License;
3. All initial applications for an Indoor Entertainment License if the licensee did not hold an entertainment license for the premises in the previous license year; and
4. All renewal applications that are required to go before the City Council for consideration in accordance with subsection (b) below.

(b) At the request of the City Manager or designee, or at the request of any member of the City Council or the Mayor, a public hearing shall be held prior to the issuance of any renewal under this division other than a Single Event Entertainment License - Private Property or Single Event Entertainment License - Public Property.

(Code 1968, § 907.5; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-54. Appeals.

Appeal from the denial, suspension revocation or issuance with a condition or conditions of an entertainment license to a person shall be taken to the municipal board of appeals within thirty (30) days of such denial, suspension or revocation. The municipal 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, suspension or revocation was arbitrary or capricious. If a license is issued with a condition or conditions and the board concludes that the condition or conditions do not protect the public health, safety or welfare or are arbitrary or capricious, the board shall refer the license back to the city council to determine whether the license will issue without the condition or conditions or whether the application will be denied.

(Code 1968, § 907.6; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 186-02/03, 4-7-03; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-55. Duration.

(a) *Granting of Licenses.* Licenses shall be granted, denied, suspended, revoked, or granted with a condition or conditions as necessary to protect the public health, safety and welfare and in accordance with Chapter 15, except for the following:

1. A Single Event Entertainment License - Public Property shall be granted, denied, suspended, revoked, or granted with conditions at the sole discretion of the Parks, Recreation, and Facilities Department.
2. An Expanded Entertainment Addendum shall be granted, denied, suspended, revoked, or granted with conditions at the sole discretion of the city manager.

(b) *Expiration of Licenses.* Licenses shall be valid for one year from the date they are granted, except in the following situations:

1. Where the licensee holds a state liquor license or a municipal bottle club license, an Indoor, Outdoor, and/or Combined Entertainment License shall be deemed terminated upon expiration or revocation of the respective state license or the municipal bottle club license, as the case may be, prior to the expiration of the one-year period.
2. Where the licensee does not hold a state liquor license or a municipal bottle club license, but does hold a food service establishment license, an Indoor, Outdoor, and/or Combined Entertainment License shall be deemed terminated upon expiration or revocation of the food service establishment license prior to the expiration of the one year period.
3. Chapter 15 notwithstanding, the city council may also grant temporary entertainment licenses for a period of less than one (1) year when, in its sole discretion, it determines that one (1) or more trial periods is necessary to evaluate the impact of the entertainment on the peace and quiet of the neighborhood and on the public health, safety and welfare.

(Code 1968, § 907.7; Ord No. 231-80, 12-22-80; Ord. No. 92-95, 10-16-95; Ord. No. 186-02/03, 4-7-03; Ord. No. 165-06/07, 4-4-07; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-56. Reserved.

***Editor's Note:** Pursuant to Order 165-06/07, passed on 4-4-07 this section was relocated to section 4-1.

DIVISION 3. STANDARDS FOR ENTERTAINMENT PURSUANT TO A LICENSE

Sec. 4-57. Conditions; sound and noise limitation.

(a) Any other provision of this Code notwithstanding, a licensee shall not allow the licensed activity or any other activities on the licensed premises to generate sound or noise that exceeds either of the following standards without an Expanded Entertainment Addendum:

1. Eighty-five (85) dBA; and
2. Ninety-five (95) dBC.

(b) The standards set forth in subsection (a) above shall be measured as follows:

1. For indoor entertainment, measurements shall be taken eight feet (8') from the means of egress located nearest to the noise source and/or 8' from any outer wall of the premises.
2. For outdoor entertainment, measurements shall be taken from the property line of the premises nearest to the noise source and/or nearest to the complainant's location, if any.

(c) A licensee shall not allow the licensed activity to be conducted outside of the following times without an Expanded Entertainment Addendum.

1. Outdoor entertainment, Sunday through Thursday: 8 a.m. to midnight;
2. Outdoor entertainment, Friday through Saturday: 8 a.m. to 1 a.m. the following day; and

3. Indoor entertainment: 8 a.m. to 1 a.m. the following day.

(Ord. No. 34-95, 7-5-95; Ord. No. 186-02/03, 4-7-03; Ord. No. 23-10/11, 9-13-10; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-57.1. Sound oversight committee.

(a) There shall be a sound oversight committee of four (4) members appointed by the city council. One (1) member shall be a city employee nominated by the city manager; one (1) member shall be a police officer nominated by Portland's Downtown District board; and one (1) member shall be an entertainment licensee nominated by the nightlife oversight committee. The police officer shall be the chair of the sound oversight committee and shall be a non-voting member, except that the police officer shall cast the tie-breaking vote in the event of a tie.

(b) The sound oversight committee shall meet with applicants and licensees when referred to the committee either by the city council or by the nightlife oversight committee. The sound oversight committee shall make recommendations to the applicant or licensee regarding actions it can take to mitigate noise and shall make any recommendations regarding noise mitigation it deems necessary to the city council for consideration.

(c) When a licensee exceeds the standards in §4-57 of this Article, the police department shall notify the licensee to meet with the sound oversight committee within five (5) business days from the date of the written notification, or such other time as is agreed upon by the sound oversight committee, to identify ways in which the noise problems which have been identified can be mitigated. The sound oversight committee shall notify any complainants with respect to that licensee in the previous twelve months of the date and time of the meeting.

The licensee shall agree to take effective measures to address the noise issues as recommended by the sound oversight committee, which measures shall be memorialized in a written agreement at the conclusion of the meeting with the sound oversight committee and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the sound oversight committee. Failure to implement the plan in a timely fashion or to comply with all recommendations in the plan will result in a recommendation by the sound oversight committee to

the city council to place conditions on or revoke the establishment's entertainment license.

If the same licensed establishment on a subsequent occasion again exceeds the standards in §4-57 of this Article, then the sound oversight committee is under no obligation to meet with the licensee but may make recommendations to the licensing authority to place conditions on or revoke the entertainment license.

(d) The sound oversight committee may also meet with liquor license applicants upon referral by the city council or the nightlife oversight committee and may recommend noise mitigation measures to liquor licensees upon referral by the Portland police department or the city council.

(Ord. No. 23-10/11, 9-13-10; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-57.5. Restricted locations.

Notwithstanding any other provision of this article, no new licenses shall be issued in the B-3c zone to drinking establishments and chemical-free night clubs, as defined in section 14-47. For purposes of this section, renewal of an existing license by the party holding the license on the date of enactment shall not be considered a new license. Any transfer of ownership shall be considered a new license.

(Ord. No. 47-97, 8-4-97)

Sec. 4-58. Penalties.

In addition to suspending or revoking a license, the city may prosecute violations in court. A violation of this division shall be punished by a fine of five hundred dollars (\$500.00) for a first offense, one thousand dollars (\$1,000.00) for a second offense and two thousand dollars (\$2,000.00) for a third or subsequent offense regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this division by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, attorneys' fees and investigative costs.

(Ord. No. 34-95, 7-5-95)

Sec. 4-59. Applicability.

This division shall not apply to events held: (a) in a class in which instruction in music is given for hire; (b) school-sponsored events under supervision of school authorities; (c) City-sponsored events under the supervision of City authorities.

(Ord. No. 34-95, 7-5-95; Ord. No. 285-19/20, 7-15-2019)

Sec. 4-60. Severability.

The provisions of section 1-14 of this Code shall apply to this division.

(Ord. No. 34-95, 7-5-95)

***Editor's Note**-Pursuant to Council Order No. 63, 06/07 passed 10-16-06, the moratorium issued for late-night entertainment expired on November 20, 2006.

- Sec. 4-61. Reserved.**
- Sec. 4-62. Reserved.**
- Sec. 4-63. Reserved.**
- Sec. 4-64. Reserved.**
- Sec. 4-65. Reserved.**
- Sec. 4-66. Reserved.**
- Sec. 4-67. Reserved.**
- Sec. 4-68. Reserved.**
- Sec. 4-69. Reserved.**
- Sec. 4-70. Reserved.**

ARTICLE IV. GAMING*

***State law reference(s)**--Beano or Bingo, 17 M.R.S.A. § 301 et seq.

DIVISION 1. GENERALLY

Sec. 4-71. Legislative findings and purpose.

It is the sense of the city council, having the power to consent to the operation or conduct of any beano or game of chance within the city, that such consent should be conditioned and exercised in accordance with the standards set forth in chapter 15, as modified by this article.

(Code 1968, § 909.1; Ord. No. 231-80, 12-22-80)

Sec. 4-72. Definitions.

Terms used in this article shall have their common meaning, except that definitions set forth in chapter 15 or in this section shall apply unless the context clearly indicates that a different meaning is intended.

Beano shall mean and include bingo, any other form of lotto, or any other activity defined as being bingo or beano by the applicable licensing provision of the state for which the consent of the city council is required.

Game of chance shall mean and include any game, contest, scheme, or device other than beano where a person stakes or risks something of value and in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestant or participant may be a factor therein, or any game of chance, machine, raffle, or otherwise, defined and licensed as such by the applicable licensing provision of the state for which the consent of the city council is required.
(Code 1968, § 909.2; Ord. No. 231.80, 12-22-80)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

- Sec. 4-73. Reserved.**
- Sec. 4-74. Reserved.**
- Sec. 4-75. Reserved.**
- Sec. 4-76. Reserved.**
- Sec. 4-77. Reserved.**
- Sec. 4-78. Reserved.**
- Sec. 4-79. Reserved.**
- Sec. 4-80. Reserved.**

DIVISION 2. LICENSE*

***Cross reference(s)**--Licenses and permits generally, Ch. 15.

Sec. 4-81. Applications and fees.

Applications for a state license to conduct beano or a game of chance shall be deemed sufficient applications for the purpose of chapter 15 if accompanied by the fees prescribed therein. Upon compliance with this article and chapter 15, the Permitting and Inspections Department shall signify the consent of the city council to such application.

(Code 1968, § 909.3; Ord. No. 231-80, 12-22-80; Ord. No. 165-15/16, 3-7-2016; Ord. No. 18-17/18, 8-21-2017)

Sec. 4-82. General provisions to apply.

Except to the extent that this division contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this division.

(Code 1968, § 909.4; Ord. No. 231-80, 12-22-80)

ARTICLE V. NUDITY IN LICENSED BUSINESSES

DIVISION 1. GENERALLY

Sec. 4-83. Purpose.

The purpose of this article is to regulate nudity as a form of commercial activity. It has been enacted for purposes of promoting and protecting the general welfare, public safety and public order of the city and its citizens. It is not intended to suppress or inhibit free exchange of ideas or artistic expression.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-84. Definitions.

Terms used in this article shall have their common meanings except that the definitions set forth in chapter 15 and/or in this section shall apply unless the context clearly indicates that a different meaning is intended.

Dancer shall mean a person under a licensee's control and dancing on the licensee's premises to entertain patrons, including patrons performing in a licensee-sponsored event.

Nude shall mean:

- (a) To show the human male or female genitals, pubic hair, buttocks, perineum or anus with less than a fully opaque covering; or
- (b) To show any portion of the female breasts at or below the areola thereof with less than a fully opaque covering.

Theater shall mean:

- (a) A building, playhouse, hall, or other place having a permanent stage upon which moveable scenery and theatrical or vaudeville or similar performances are given and permanently affixed seats so arranged that a body of spectators can have an unobstructed view of the stage; or
- (b) A building, room, hall, or other place whose primary function is to present movies or motion pictures and which has a permanent movie screen and permanently affixed seats so arranged that a body of spectators can have an unobstructed view of such screen.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

DIVISION 2. LICENSE

Sec. 4-85. Required.

(a) No person shall permit public nude activity on the premises of any business subject to license under the Portland City Code without a nude activity license from the city, whether provided by professional entertainer(s), employees, or any other person, and without regard as to whether any compensation is paid by the management of the establishment in which the activity is performed.

(b) There shall be no physical contact on the premises between any patron and dancer. For the purposes of this section, physical contact does not include incidental touching between a dancer and patron, of a business or social nature, i.e., a handshake or the brief contact that occurs while a patron is giving a tip to a dancer.

(c) The licensee shall provide on the premises a separate dressing room and toilet facilities for use by dancers only.

(d) Dancers on the premises who remove any garments shall not toss or throw those garments at any patron.

(e) The licensee shall, at his own expense, post a security guard or an individual authorized to act as a law enforcement officer (whether full-time or part-time and whether on-duty or off-duty) at each entrance and exit to the premises during each performance by dancers on the premises and for one-half hour after each such performance.

(f) No patron under twenty-one (21) years of age shall be permitted on the premises or portion of the premises where a performance by dancers is conducted during any such performance. (Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-86. Application.

Application for license under this division shall, in addition to the requirements of chapter 15, contain a plan of the premises showing the location, frequency and times of the nude activity.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-87. Hearings.

A public hearing shall be held by the city council prior to issuance of any license under this division.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-88. Duration/suspension and revocation.

A license shall be granted, denied, suspended or revoked in accordance with chapter 15 and this section unless suspended or revoked by a court, but it shall be deemed terminated upon expiration or revocation of any other license for the premises prior to the expiration of the one-year period. A license suspension shall be for a minimum of three (3) business days and a maximum of forty-five (45) business days following conviction or determination of a first offense under this article or chapter 15, and during the suspension period no other applications shall be accepted by the city. Conviction or determination of a second offense at any time shall result in revocation, and the city shall not accept a subsequent application from the same applicant or anyone related to the applicant by blood, marriage, or business for a period of two (2) years, or at any time within the two-year period if the city

determines that the purpose of the application is to circumvent the provisions of this section or section 4-94. After the two-year period, an application will be subject to the availability, if any, of a license.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-89. Minors prohibited.

No person under the age of eighteen (18) shall be permitted visual or physical access to activity licensed pursuant to this division.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-90. Prohibited activity.

No licensee shall permit any person to show the human male or female genitals, pubic hair, perineum or anus with less than a fully opaque covering.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-91. Location.

(a) *Proximity requirements.*

- (1) The premises shall be at least one thousand (1,000) feet from the principal entrance of any other premises licensed pursuant to this division.
- (2) The principal entrance of licensed premises shall be at least one thousand (1,000) feet from any public or private school, school dormitory, church, chapel or parish house in existence as such at the time the application is made.
- (3) Licensed premises may not be located within a residential zone, and the principal entrance of a licensed premises shall be at least one thousand (1,000) feet from any residential zone.

(b) *Method of measurement.* The distance must be measured from the main entrance of the premises, as measured in a straight line, without regard to intervening structures or objects.

(b) Notwithstanding any other provision of this Code, no nude activity license shall be issued for, and no nude activity shall be permitted in, any zone other than the B-4 zone.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95; Ord. No. 185-97, 1-22-97)

Sec. 4-92. General provisions to apply.

Except to the extent that this division contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this division.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-93. Exceptions.

(a) This division shall not apply to a theater or similar establishment which is primarily devoted to theatrical performances or the presentation of movies.

(b) This division shall not apply to any act authorized or prohibited by any statute of the state.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-94. Penalty.

The violation of any provision of this division shall be punished by a fine of one thousand dollars (\$1,000.00) for a first offense, one thousand five hundred dollars (\$1,500.00) for a second offense and two thousand dollars (\$2,000.00) for a third or subsequent offense regardless of the time between offenses. Violations shall also be punished by license suspension for a minimum of three (3) business days and a maximum of forty-five (45) business days for a conviction or determination of a first offense, and license revocation for a conviction or determination of a second or subsequent offense. Any revocation shall be applied in accordance with section 4-88. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this division by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, reasonable attorneys' fees and reasonable investigative costs.

(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-95. Application of violations to liquor licenses.

Any violation of this division may result in the nonrenewal by the city council of the liquor license held by the violator

at the time the council first considers the liquor license following adjudication under this division.
(Ord. No. 217-95, 4-3-95)

Sec. 4-96. Severability.

The provisions of section 1-14 of this Code shall apply to this division.
(Ord. No. 176-92, 3-16-92; Ord. No. 217-95, 4-3-95)

Sec. 4-97. Prohibition on the issuance of new licenses.

Notwithstanding any other provision of this Code, no new nude activity licenses shall be issued after March 3, 1997. For purposes of this section, renewal of an existing license by the party holding the license on the date of enactment shall not be considered a new license. Existing licenses shall remain subject to the regulations set forth in this article, in addition to all other applicable state and local requirements.
(Ord. No. 225-97, 3-17-97)