

## **ORDINANCE: GOVERNING PUBLIC INDECENCY:**

### **SECTION I : PURPOSE:**

This Ordinance is adopted by the Town of Windham for the purpose of upholding and supporting public health, public safety, morals, and public order. The conduct prohibited hereunder is deemed to be contrary to the societal interest in order and morality. In addition, the prohibited conduct has been found and is deemed to have harmful secondary effects on places and communities where it takes place, including crimes of various types, and reduction of property values, not only in the immediate vicinity, but on a community-wide basis.

### **SECTION II : AUTHORITY:**

The Town of Windham, through its legislative body, being the people convened in Town Meeting, adopts this Ordinance under the powers provided in RSA 31:39, as well as any other authority or jurisdiction now existing or hereinafter enacted and conferred by the laws of the State of New Hampshire.

### **SECTION III : DEFINITIONS:**

The following words, when used herein, shall be defined as follows:

- A) "Nudity" shall mean the showing of the male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing of the female breast with less than a full opaque covering of any portion of the nipple, or the depiction of covered male genitals in a discernably turgid state.
- B) "Public Dance or Public Exhibition" - A dance or exhibition that persons generally may attend provided they comply with the terms of admission, including dances or exhibitions without fee, or where a fee is charged. The term shall not include events where the persons who attend have been personally selected and invited.
- C) "Person who owns, leases, or controls property" may include a corporation, trust, limited liability entity, or other form of business entity, as well as the natural person who serves as the principal officer, manager, trustee, or other person directly responsible for the activity on such property.

### **SECTION IV : PROHIBITED CONDUCT:**

- A) No person shall:
  - 1. engage in sexual intercourse,
  - 2. engage in deviate sexual conduct,
  - 3. appear in a state of nudity, or
  - 4. fondle the genitals of him/herself or another person

in any regulated area or environment, as hereinafter described.

- B) No person who owns, leases, or controls property wherein such conduct may be regulated under Section V shall knowingly allow any person to engage in conduct described in Paragraph A above at any time such property is open to the public.

**SECTION V : REGULATED AREA OR ENVIRONMENT:**

The prohibitions in Section IV shall be applicable in any or all of the following places/circumstances:

- A) On or within any public cemetery, park, common, beach, recreation area, library or any other public institution or property of the Town.
- B) On any public way, road, highway, or parking area owned or controlled by the Town.
- C) In any restaurant or food service establishment within the Town.
- D) As part of any public dance or exhibition, or during the conduct or presentation of such dance or exhibition.
- E) On the premises of any roller skating rink or tattooing facility.
- F) In any other location within the Town in which it is determined that the Town may lawfully proscribe or regulate the prohibited conduct.

**SECTION VI : PENALTIES:**

- A) Any person who violates Section IV, Paragraph A shall be fined not less than One Hundred (\$100) Dollars nor more than Five Hundred (\$500) Dollars.
- B) Any person who violates Section IV, Paragraph B shall be fined One Thousand (\$1,000) Dollars.
- C) The penalties set forth herein shall be applicable to each separate violation of the Ordinance. Prohibited conduct which is engaged in at different times, or on different days, shall constitute separate violations of the Ordinance.

**SECTION VII : SEVERABILITY:**

It is specifically the intention of this Ordinance to apply to prohibit as broad a range of prohibited conduct as may be regulated under law. Toward that end:

- A) The declaration or determination that any given prohibition is beyond the authority of the Town to regulate shall not affect the applicability of other sections that may be lawfully enforced.
- B) To the extent that any of the prohibitions herein would otherwise be considered "overbroad" in their application, it is the declared intention to only apply the prohibitions in those circumstances constitutionally permissible.

**SECTION VIII : EFFECTIVE DATE:**

This Ordinance shall become effective immediately upon passage.

**Accepted at Special Town Meeting this 8<sup>th</sup> day of October, 1998.**

**Charles E. McMahon**  
**Douglass L. Barker**  
**Carolyn B. Webber**  
**Margaret M. Crisler**  
**Galen A. Stearns**  
Board of Selectmen