

20.0700

**SEXUALLY ORIENTED BUSINESSES
TOWNSHIP OF GRAND HAVEN, MICHIGAN
ord. no. 282 eff. Feb. 15, 1998**

An Ordinance to regulate certain sexually oriented businesses, to address the negative secondary effects of such businesses by requiring dressing rooms, plumbing facilities, and stage or performing area specifications, to permit inspections, and to regulate the operation of such businesses.

THE TOWNSHIP OF GRAND HAVEN, OTTAWA COUNTY, MICHIGAN
ORDAINS:

20.0701 Sec. 1 PURPOSE AND INTENT

The purpose and intent of this Ordinance is to regulate sexually oriented businesses and related activities to promote the health, safety, and welfare of patrons and employees of such businesses, to promote the health, safety, and welfare of the performers at such businesses, and to promote the health, safety, and welfare of the citizens of the Township. The provisions of this Ordinance are not intended, nor shall they have the effect, of imposing a limitation or restriction on the content of any communicative materials, including but not limited to, sexually oriented materials. Additionally, it is not the intent of the provisions of this Ordinance, nor shall they have the effect, to restrict or deny access by adults to sexually oriented materials that are protected by the First Amendment to the United States Constitution or by Article 1, Section 5 of the Michigan Constitution of 1963. Further, it is not the intent of the provisions of this Ordinance, nor shall they have the effect, of denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market. This Ordinance shall not be interpreted as intending to legitimize any activities which are prohibited by federal or state law, or by any other Ordinance of the Charter Township of Grand Haven.

20.0702 Sec. 2 DEFINITIONS

The following words and terms, as used in this Ordinance, shall have the meaning indicated in this Section.

1. “Public Nudity” means the knowing or intentional display of any individual’s genitals, anus, or of a female individual’s breast, in a public place, or at any other place for payment or promise of payment by any person. An individual’s genitals or anus shall be considered to be displayed if it or they are visible; an individual’s genitals or anus shall not be considered to be displayed if they are covered by a fully opaque covering. A female individual’s breast shall be considered to be displayed if the nipple or areola is visible; a female individual’s breast shall not be considered to be displayed if the nipple and areola are covered by a fully opaque covering. Payment or

promise of payment includes the payment of, or promise of payment of, any consideration or admission fee. Public nudity does not include any of the following:

- A. The exposure of a woman's breast while breast-feeding a child, whether the nipple or areola is visible during or incidental to the feeding.
 - B. Any materials which meets or satisfies the definition contained in Section 2 of Act No. 343, of the Public Acts of 1984, as amended, being MCLA 752.362.
 - C. Any sexually explicit visual material, as defined in Section 3 of Act No. 33 of the Public Acts of 1978, as amended, being MCLA 722.673.
 - D. Any display of an individual's genitals or anus, or of a female individual's breast, which occurs as part of the regular curriculum of an educational institution that is funded, chartered, or recognized by the State of Michigan.
2. "Public Place" means any real property, or appurtenance to real property, which is owned by the State of Michigan, by any municipality of this State, a public agency, or by a college or university of this state. The term includes, but is not limited to a structure, enclosure, facility or complex, such as a court, mall, park, or other area, feature of element which is owned or operated by the State of Michigan, or any subordinate unit of government, agency, commission, or instrumentality of the state. "Public Place" shall also mean a business or an educational, refreshment, entertainment, recreation, health, transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.
 3. "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, or association.
 4. "Sexually Oriented Business" means a business or commercial enterprise that conducts or engages in any of the activities hereinafter defined:
 - A. Adult Arcade means any place to which the public is permitted or invited wherein coin-operated, slug-operated, electronically controlled, electrically controlled, or mechanically controlled still picture or motion pictures machines, projectors, or image-producing or image-projecting devices are maintained to show images to five or fewer persons per machine or device at any time, and where the

images so projected, produced or displayed are distinguished or characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

B. Adult Bookstore or Adult Video Store means a commercial establishment that, as one of its business purposes or services, offers for sale or rental for any form of consideration, any one or more of the following:

- 1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations or media which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or,
- 2) Instruments, devices, or paraphernalia that are designed for use in connection with Specified Sexual Activities.

A commercial establishment may have other business purposes or services that do not involve the offering for sale or rental of the material identified in paragraphs a or b, above, and still be categorized as an Adult Bookstore or Adult Video Store. The sale or rental of such material shall be deemed to constitute a business purpose or service of an establishment if it comprises forty percent (40%) or more of the establishment's gross revenues, or if such materials occupy forty percent (40%) or more of the floor area or visible inventory within the establishment.

C. Adult Cabaret means a nightclub, bar restaurant, or similar commercial establishment that regularly features:

- 1) Persons who appear in a state of nudity;
- 2) Live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities;
- 3) Films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities; or,
- 4) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

- D. Adult Motel means a hotel, motel or similar commercial establishment that:
- 1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and has a sign visible from the public right-of-way that advertises the availability of any of the above;
 - 2) Offers a sleeping room for rent for a period of time that is less than twelve (12) hours; or
 - 3) Allows a tenant or occupant of a sleeping room to offer it for rent or other consideration for a period of time that is less than twelve (12) hours.
- E. Adult Motion Picture Theater means a commercial establishment which, for any form of consideration, regularly and primarily shows films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- F. Adult Theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features a person or persons who appear in a state of nudity, or that regularly features live performances that are characterized by exposure of Specified Anatomical Areas or Specified Sexual Activities.
- G. Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date of another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- H. Escort Agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its business purposes or services, for a fee, tip, or other consideration.
- I. Nude Model Studio means any place where a person who displays Specified Anatomical Areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by

other persons, who pay money or any form of consideration, but does not include an educational institution funded, chartered or recognized by the State of Michigan.

J. Sexual Encounter Center means a business or commercial enterprise that, as one of its business purposes or services, offers for any form of consideration any of the following:

- 1) Any physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- 2) Activities between male and female persons, or between persons of the same sex, when one or more of the persons is in a state of nudity.

5. “Specified Anatomical Areas” are defined as:

- A. Less than completely and opaquely covered human genitals, pubic region, buttock or anus; or female breast immediately below the top of the areola; or,
- B. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

6. “Specified Sexual Activities” means and includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or breast;
- B. Sex acts, normal or perverted, actual or simulated, including but not limited to intercourse, oral copulation, or sodomy;
- C. Masturbation, actual or simulated; or,
- D. Excretory functions as part of or in connection with any of the activities set forth in paragraph 1, 2, or 3 above.

20.0703 Sec. 3 REQUIREMENTS

1. No person younger than eighteen (18) years of age shall enter into or be permitted to remain on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
2. Any sexually oriented business which offers live entertainment shall provide:

- A. A dressing area for performers which has direct access to and from the dressing area and the performance area or stage, so that the performer may enter the performance area or stage without entering the area from which the patrons view the performance; the dressing area must be separate from and not freely accessible from areas of the business to which patrons or customers have ready access, and also it must contain hot and cold running water, toilet facilities, and must also be handicap accessible to the extent required by the Americans with Disabilities Act, as amended.
- B. A performance area or stage which is at least twelve (12) inches above the area from which patrons view the performance.
- C. Signs must be posted which notify patrons of the sexually oriented business that contact between the patrons and any employee, owner, independent contractor, or performer who displays Specified Anatomical Areas or who performs Specified Sexual Activities is prohibited. At a minimum, at least two such signs must be displayed on the premises of the sexually oriented business. The required signs must be situated in the area of the sexually oriented business in which patrons are admitted to the sexually oriented business and in which patrons are served beverages, if any. The signs must be at least twenty-four inches (24”) by thirty-six inches (36”) in size, and contain the following notice:

NOTICE: Physical contact between patrons and performers who display Specified Anatomical Areas or who perform Specified Sexual Activities is prohibited by Grand Haven Charter Township ordinance. Violators will be prosecuted.

The notice must be printed in bold face type which is at least twenty-four (24) points in size.

- 3. An employee, owner, independent contractor, or performer of any kind, who displays Specified Anatomical Areas or performs Specified Sexual Activities, shall not have any physical contact with a patron of the sexually oriented business in regards to or to receive tips or gratuities. Physical contact with a patron includes, but is not limited to, any contact between the employee, owner, independent contractor, or performer of the sexually oriented business and a patron in which the patron touches any part of the employee’s, owner’s, independent contractor’s, or performer’s body, or if the patron causes something in his or her direct control to touch any part of the employee’s, owner’s, independent contractor’s, or performer’s body.

4. An operator of a sexually oriented business shall permit the Township Ordinance Enforcement Official and his or her agents, including any law enforcement official, to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the requirements of this Ordinance, of any other Township ordinance, or of any other law or regulation.
5. No employee, owner, independent contractor, or performer shall engage in any act of public nudity, unless that person is in or on the performance area or stage area.
6. No patrons shall be permitted to engage in any act of public nudity.

20.0704 Sec. 4 PROHIBITED CONDUCT; AIDING AND ABETTING

No person shall operate a sexually oriented business in any manner which violates a provision of this Ordinance. No person shall aid, assist, abet, or encourage any other person to engage in or commit any act which violates a provision of this Ordinance.

20.0705 Sec. 5 NUISANCE PER SE

Any act which is a violation of this Ordinance is deemed to be a nuisance per se. Nothing in this Ordinance shall prohibit the Township or any other interested party from seeking such other relief as may be permitted by law or equity regarding the existence of a nuisance.

20.0706 Sec. 6 PENALTY

Any person who violates a provision of this Ordinance shall be responsible for a municipal civil infraction, and upon admission or determination of responsibility thereof, shall be subject to a fine of not more than five hundred dollars (\$500.00), plus court costs. Each day that a violation occurs shall be considered to be a separate violation. The issuance of a citation for a municipal civil infraction shall not in any way limit the Township in seeking enforcement of the provisions of this Ordinance, including, but not limited to, requesting a civil restraining order from any court of competent jurisdiction.

20.0707 Sec. 7 SEVERABILITY

Each provision or portion of this Ordinance shall be deemed to be severable. Should any section, subsection, paragraph, subparagraph, sentence, or clause be declared to be unconstitutional or invalid, such declaration shall not affect the validity of this Ordinance as a whole or of the remainder of the Ordinance.

20.0708 Sec. 8 EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after its publication in the manner provided by law.
(ord. no. 282 eff. Feb. 15, 1998)