

**SEXUALLY ORIENTED BUSINESS ORDINANCE
CITY OF MACKINAC ISLAND, MICHIGAN
Ord. No. 446 Effective May 10, 2010**

An ordinance amending the City of Mackinac Island Zoning Ordinance with respect to sexually oriented businesses.

THE CITY OF MACKINAC ISLAND ORDAINS:

Section 1. Purpose.

An ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City of Mackinac Island, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City of Mackinac Island. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

Section 2. Definitions.

For purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

1. ***“Adult Bookstore or Adult Video Store”*** means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas”.

A “principal business activity” exists where the commercial establishment:

- (a) has a substantial portion of its displayed merchandise which consists of said items, or
- (b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
- (c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
- (d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

(e) maintains a substantial section of its interior business space for the sale or rental of said items;
or

(f) maintains an "adult arcade", which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas".

2. **"Adult Cabaret"** means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

3. **"Adult Motion Picture Theater"** means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

4. **"Characterized by"** means describing the essential character or quality of an item. As applied in this Article, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

5. **"City"** means the City of Mackinac Island.

6. **"Employ, Employee, and Employment"** describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premise for repair or maintenance of the premises or for the delivery of goods to the premises.

7. **"Establish or Establishment"** shall mean and include any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

(c) The addition of any sexually oriented business to any other existing sexually oriented business.

8. **"Influential Interest"** means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business; or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

9. ***"Nudity or a State of Nudity"*** means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.
10. ***"Operate or Cause to Operate"*** shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who operates the business or is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.
11. ***"Person"*** shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.
12. ***"Premises"*** means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee as described in the application for a sexually oriented business license.
13. ***"Regularly"*** means and refers to the consistent and repeated doing of the act.
14. ***"Semi-Nude or State of Semi-Nudity"*** means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.
15. ***"Sexual Device"*** means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, an physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.
16. ***"Sexual Device Shop"*** means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.
17. ***"Sexual Encounter Center"*** shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.
18. ***"Sexually Oriented Business"*** means an "adult bookstore or adult video store", an "adult cabaret", an "adult motion picture theater", a "sexual device shop", or a "sexual encounter center".

19. ***"Specified Anatomical Areas"*** means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

20. ***"Specified Criminal Activity"*** means any of the following specified offenses, as amended from time to time, for which less than eight (8) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(a) Criminal sexual conduct (MCL 750.520a – 750.520g), child sexually abusive activity (MCL 750.145c), computer crimes against children (MCL 750.145d(1)(a));

(b) Prostitution-related offenses (MCL 750.448 – 750.449a);

(c) Offenses related to obscenity (MCL 752.365) and material harmful to minors (MCL 750.142 – 750.143);

(d) Indecent exposure (MCL 750.335a);

(e) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;

(f) Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.

21. ***"Specified Sexual Activity"*** means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

22. ***"Substantial"*** means at least thirty percent (30%) of the item(s).

23. ***"Viewing Room"*** shall mean the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

Section 3. Location of Sexually Oriented Businesses.

(a) Sexually oriented businesses shall not be required to obtain a conditional use permit or special use permit.

(b) It shall be unlawful to establish, operate, or cause to be operated, a sexually oriented business in the City of Mackinac Island in any zoning district other than the commercial district.

(c) No sexually oriented business may be established, operated, or maintained within the following areas:

- (1) An area within 500 feet of a residential zoning district.
- (2) An area within 500 feet of a building used for residential purposes.
- (3) An area within 500 feet of a church.
- (4) An area within 500 feet of a school.
- (5) An area within 500 feet of a governmental building.
- (6) An area within 500 feet of any other sexually oriented business.

(d) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) or zoning district identified in subsection (c) above.

(e) No sexually oriented business may be established, operated, or maintained in the City of Mackinac Island if a person with an influential interest in the business has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

(f) No sexually oriented business may be established, operated, or maintained in the City of Mackinac Island if a person with an influential interest in the business has, in the previous five (5) years, had an influential interest in another sexually oriented business that (at a time during which the applicant had the influential interest in the other sexually oriented business) was declared by a court of law to be a nuisance.

Section 4. Unlawful Activities; Scienter Required; Penalty; Equitable Remedies.

(a) Nothing contained in this ordinance is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or municipal ordinance. It is unlawful and a violation of this ordinance for an operator to knowingly or intentionally violate the provisions of this ordinance or to allow, either knowingly or intentionally, an employee or a patron to violate the provisions of this ordinance. It shall be a defense to prosecution that the person prosecuted was powerless to prevent the violation.

(b) No person shall knowingly or intentionally, in a sexually oriented business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.

(c) No employee shall knowingly or intentionally, in a sexually oriented business, appear within view of any patron in a semi-nude condition unless the employee, while semi-nude shall be and remain at least six (6) feet from all patrons and on a fixed stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

(d) A sexually oriented business which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disk, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements: The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purposes from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by that operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(e) Sexually oriented businesses that do not have stages or interior configurations which meet at least the minimum requirements of this section shall be given one hundred eighty (180) days from the effective date of this ordinance to comply with the stage and building requirements of this section. During said one hundred eighty (180) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.

(f) No employee who regularly appears within view of patrons in a semi-nude condition in a sexually oriented business shall knowingly or intentionally touch a patron or the clothing of a patron in a sexually oriented business.

(g) No operator shall allow or permit a sexually oriented business to be or remain open between the hours of 12:00 midnight and 6:00 a.m. on any day.

(h) No person shall knowingly or intentionally sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(i) No person shall knowingly allow a person under the age of eighteen (18) years on the premises of a sexually oriented business.

(j) *Scienter*. This section does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this section. Notwithstanding anything to the contrary, for the purposes of this section, an act by an employee shall be imputed to the sexually oriented business for purposes of finding a violation of this section only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(k) *Sanctions; Equitable Remedies*. Any person, business, or entity violating or refusing to comply with any provisions of this section shall be responsible for a municipal civil infraction. The sanction for a violation of this section which is a municipal civil infraction shall be a civil infraction.

Additionally, a violation of this ordinance shall be considered a nuisance per se and subject to injunctive relief. Each day that a violation is permitted to exist or occur shall be considered a separate violation.

Section 5. Severability.

This ordinance and each section and provision of said ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said ordinance, or the application thereof, to any person or circumstances is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance.

Section 6. Effective Date.

This ordinance shall become effective May 10, 2010 (twenty) days after passage.

Date: April 20, 2010


Margaret Doud, Mayor


Karen Lennard, Clerk

Adopted: April 20, 2010

Effective: May 10, 2010