

Town of Cambridge

Public Indecency and Adult Entertainment Ordinance

Enacted March 2, 2013

pages 1 - 7

Attest:

Carol F. Laplant

Part One: Purpose

C.F. Laplant, Town Clerk

The regulations of this ordinance are not directed at the content of speech or protected First Amendment rights, but are directed at the negative secondary effects of public indecency and sexually oriented businesses within the Town of Cambridge. The effects sought to be addressed in this ordinance are referenced to the following cases: City of Bangor v Diva's, Inc., 2003 ME 51, 830 A.2d 898 and City of Erie v. Pap's A.M., 529 U.S. 77 (2000). These regulations are necessary to reduce the likelihood of criminal activity, moral degradation, sexually - transmitted diseases, and disturbance of the peace.

Part Two of this ordinance (Public Indecency) is to prohibit acts of exploitation of human sexuality in public places and business establishments within the Town of Cambridge.

Part Three of this ordinance (Adult Entertainment) is to regulate and to annually license sexually-oriented businesses and to prevent their location in proximity to residences, daycare centers, schools, churches, public parks, or recreational areas within the Town of Cambridge.

Part Two: Public Indecency

Section I. Definitions

- A. Sexual Intercourse means any penetration of the female sex organ by the male sex organ. Emission is not required.
- B. Sexual act means any act of sexual gratification between 2 persons involving direct physical contact between the sex organs of one and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other, or direct physical contact between the sex organs of one and the hand of another, or between the sex organs of one and an instrument or device manipulated by the other. A sexual act may be proved without allegation of proof of penetration.
- C. Sexual contact means any touching of the genitals, directly or through clothing, other than as would constitute a sexual act for the purpose of arousing or gratifying sexual desire.
- D. Nudity means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering or any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.
- E. Public Place means a place to which the public at large or a substantial group has access, including but not limited to commercial or business establishments, public ways, schools, government owned facilities, and the lobbies, hallways, and basement portions of apartment houses, hotels, motels, public buildings and transportation terminals, as well as non-profit recreational facilities and clubs, including, but not limited to, health clubs, gymnasiums, spas, hot tub centers, swimming pools, open to members of the public.

F. Public Indecency means knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact, or nudity in a public place,

G. Commercial or Business establishments include but are not limited to: companies, firms, corporations, stores, malls, markets, bars, saloons, restaurants or dining facilities, swimming pools, gymnasiums, health clubs, spas, hot tub centers, relaxation centers, etc.

Section II. Public Indecency Prohibited

A. Engaging in public indecency is prohibited.

B. Encouraging or permitting another person or persons to engage in an act or acts of public indecency by the person who or entity which owns, leases, or otherwise controls a premises on which the act or acts of public indecency occur(s) is prohibited.

Section III. Sexual Contact for Pecuniary Benefit Prohibited.

A. Engaging in, or agreeing to engage in, or offering to engage in sexual contact in return for pecuniary benefit to be received by the person engaging in the sexual contact or by a third person is prohibited.

B. Providing or agreeing to provide a person for purposes of engaging in sexual contact in return for a pecuniary benefit to be received by the persons engaging in the sexual contact or by a third person is prohibited.

C. Causing or aiding another person to engage in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by the third person is prohibited.

D. Leasing or otherwise permitting a place controlled by the defendant in any action to enforce this ordinance, alone or in association with others, to be used as a site for sexual contact for a pecuniary benefit to any person is prohibited.

Part Three: Adult Entertainment

Section I. Definitions

The following terms as used in this ordinance and for the purpose of the ordinance have the meanings to them below:

A. "Adult Movie Theater", means an enclosed building used regularly and routinely for presenting motion picture or video material having as a dominant theme material distinguished or characterized by an emphasis on erotic material for observation by patrons therein.

B. "Adult Entertainment Cabaret" means a public or private establishment which features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interests of the patron.

C. "Adult Spa" means an establishment or place primarily in the business of providing services of an erotic nature.

D. "Sexually Oriented Business", means Adult Movie Theaters, Adult Entertainment Cabarets, or Adult Spas, as defined herein, or any business where erotic materials and activities are displayed, depicted, described or simulated as a regular and substantial part of its operation.

E. "Residence", means any structure, which is principally used as a dwelling including, without limitation, a single family or multifamily house, and apartment, a condominium, or a mobile home.

F. "Specified Criminal Activity," means a criminal conviction for any of the following offenses: Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; or any similar sex related offenses to those described above the Maine Criminal Code or Statutes of other states, the United States or any other nation or province, and for which:

- (1) less than two (2) years have elapsed since the date of conviction or the date of release from confinement or probation imposed for the conviction, whichever is the later date, if the conviction is for an offense punishable by a maximum term of imprisonment of less than one year;
- (2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement or probation imposed for the conviction, whichever is the later date, if the conviction is for an offense punishable by a maximum term of imprisonment of one year or more;
- (3) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement or probation imposed for the last conviction, whichever is the later date, if the convictions are for two or more offenses or combination of offenses occurring within any twenty-four (24) hour period, and all such offenses are punishable by maximum term of imprisonment of less than one year.

Section II. License Required

A person or persons wishing to operate a sexually oriented business shall obtain an annual license (a) prior to opening the person's establishment, and (b) prior to expiration of the current annual license. A license issued under this ordinance does not eliminate the requirements of any other ordinance in Cambridge.

Section III. Application; Investigation and Issuance of License

1. Application. An Applicant for sexually oriented business license shall:

- A. Complete and file an application prescribed by the Planning Board;
- B. Deposit a license fee and a processing fee in advance with the Town Clerk or the Code Enforcement Officer. The Amount of the fee shall be established by the Board of Selectmen and shall not exceed the cost associated with the Town's processing of the application.

- C. Submit the completed application to the Planning Board through the Code Enforcement Officer, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;
 - D. File a sworn affidavit, which states the names of all owners, officers, managers or partners of the applicant, and their places of residence at the time of the application and for the immediately preceding three (3) years;
 - E. Applicant will be required to disclose any criminal convictions.
 - F. Submit evidence of right, title or interest in the premises in which the sexually oriented business will be sited, along with the written consent of the owner of the premises for such use if applicant is not the owner;
 - G. State the date of initiation of the sexually oriented business and the nature of the business with a description of the nature of all products and services offered to customers.
 - H. Submit evidence of compliance with Section VII of this Ordinance and evidence that there is no basis for denial of a license to applicant under the standards listed in Section IV of this Ordinance.
2. Investigation of applicant, officers. Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:
 - A. The Code Enforcement Officer, upon receipt of a completed application, shall immediately send a copy of the completed application to the Board of Selectmen and the Planning Board. The Code Enforcement Officer shall also immediately consult with the chairman of the Planning Board and arrange for public notice of a public hearing on the application in a newspaper of general circulation and by mail to owners of lots within 1,500 feet of the proposed location of the structure, at least ten days prior to the public hearing before the Planning Board. The cost of publication, certified mail postage, and other expenses related to the hearing shall be paid from the processing fee. After receipt of required reports from the Town officials, the Code Enforcement Officer shall forward the application and other documents to the Planning Board for public hearing and final decision. The hearing shall be held within thirty (30) days after receipt of a completed application by the Code Enforcement Officer and a decision shall be made within fifteen (15) business days thereafter.

B. The Code Enforcement Officer, within fifteen (15) days of receipt of the application, shall inspect the location or proposed location and construction drawings to determine whether the applicant's proposed plan satisfies the setback and construction requirements of this ordinance and then report findings in writing to the Planning Board.

C. The Code Enforcement Officer, within fifteen (15) days of receipt of the application, shall verify that the proposed premises of the establishment will comply with Section VII and with all other applicable State and Town laws and land use codes of the Town and then report findings in writing to the Planning Board. The Code Enforcement Officer will also verify whether or not other permitting under local Ordinances and State laws is required in addition to verification for compliance.

3. Issuance of license. The Planning Board, after notice and public hearing, shall determine whether the application and documents submitted comply with all of the requirements of this Ordinance. The license shall be issued upon determination by the Planning Board, based upon the record, including evidence and testimony at the public hearing, that the applicant meets the requirements of this Ordinance. The license may not be transferred or assigned.

Section IV. Standards of Denial

An application for a sexually oriented business license shall be denied in the following circumstances:

A. The applicant is a corporation or other legal entity that is not authorized to do business in the State of Maine;

B. The applicant is an individual who is less than eighteen (18) years of age;

C. The applicant has submitted an incomplete application, knowingly made an incorrect statement of a material nature or failed to supply additional information required that is reasonably necessary to determine whether the license can be issued;

D. The applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has been denied a sexually oriented business license for knowingly making an incorrect statement of a material nature within the immediately preceding five(5) years;

E. The applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has had a license granted pursuant to this Ordinance or a similar ordinance provision in any other municipality revoked for cause during the immediately preceding five (5) years;

F. The applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has committed any Specified Criminal Activity as defined herein;

- G. The site on which the sexually oriented business is proposed is a prohibited site under Section VII, or
- H. The application in any other way fails to meet the requirements of this Ordinance.

Section V. Age Restriction

A sexually oriented business licensee may not permit any person under the age of eighteen years into any portion of the building occupied by the sexually oriented business.

Section VI Prominent Display of License; Price Charges and Names of Owners or Officers

A sexually oriented business licensee must display the sexually oriented business license at all times in an open and conspicuous place in the sexually oriented business for which the license has been issued.

Section VII Prohibited Sites; Site Requirements

1. A sexually oriented business may not be sited within 1,500 feet of the closest part of the structure of a business that caters to the general public or 1,500 feet of the closest part of the structure of any of the following:

- A. A church, synagogue or other house of religious worship;
- B. A public or private elementary or secondary school;
- C. A day care facility;
- D. A public park or public recreational facility;
- E. Any resident on adjacent property, excepting the owner or proprietor;

The distance cited in this section shall be measured between the closest edge of the structure of the sexually oriented business and the closest edge of the structure of the use listed (A) through (E) above.

- 2. The Planning Board can require a reasonable visual barrier to prevent any of the activity conducted within any portion of the building occupied by the sexually oriented business from being viewed from the outside of said building.
- 3. It shall be unlawful for any person to cause or permit the operation, establishment, or substantial enlargement of a sexually oriented business within one thousand five hundred (1,500) feet of another sexually oriented business.
- 4. It shall be unlawful for any person to cause or permit the operation or establishment of more than one sexually oriented business in the same building, structure, or portion thereof.

Section VIII. Prohibited Activities

- A. All other acts prohibited by applicable ordinance or laws
- B. No Alcoholic Beverages allowed on the premises.
- C. The operation of the sexually oriented business on Sundays will be subject to 17 M.R.S.A. § 3204 Business, Traveling or Recreation on Sunday.
- D. All acts of public indecency, as defined in 17 M.R.S. A, § 854, are prohibited in sexually oriented business.

Part Four: Penalties

The violation of any provision of this ordinance may result in fines "upon Conviction", and that the court may order appropriate injunctive relief.

Part Five: Severability

If any section, phrase, sentence, or portion, is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Part Six: Nursing Women

Notwithstanding any ordinance to the contrary, no Town ordinance shall prohibit, or be interpreted or construed to prohibit or regulate, women from nursing or breast-feeding in public or private.

Part Seven: Effective Date

This ordinance shall become effective immediately after approval by the voters of the Town of Cambridge.