

CHAPTER 33
REGULATION OF NUDITY; REGULATIONS PERTAINING TO
ESTABLISHMENTS LICENSED TO SERVE ALCOHOLIC BEVERAGES

Section 33.1 Public Nudity Prohibited. No person shall knowingly or intentionally display in any public place, or for payment or promise of payment by any person including, but not limited to, payment or promise of payment of an admission fee, any individual's genitals or anus with less than a fully opaque covering, or a female individual's breasts with less than a fully opaque covering of the nipple and areola. This does not prohibit a woman's breast feeding a baby, whether or not the nipple or areola is exposed during or incidental to the feeding, material as defined in Section 2 of Public Act 343 of 1984, MCL 752.362, or sexually explicit visual material as defined in Section 3 of Public Act 33 of 1978, MCL 722.673. This section of the ordinance code is adopted pursuant to the authority of MCL 41.181.

Section 33.2 Findings. The Township Board makes the following findings:

- A. It is a purpose of this Chapter to prohibit nudity within any establishment licensed or subject to licensing by the Michigan Liquor Control Commission, in order to promote the health, safety and general welfare of the citizens of the Township, and to exercise the powers of the States and local governments to regulate the sale of liquor, conferred by the 21st Amendment to the United States Constitution, and in accordance with the laws of the State of Michigan pertaining to local control of establishments which serve beer, wine, or spirituous liquors.
- B. Numerous reports and materials report secondary effects occurring in and around businesses and establishments at which persons appear nude, and other types of sexually oriented businesses. Included among those studies are studies to the effect that alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects, such as crime, disorderly conduct, impaired driving, lewd behavior, and solicitation. It has been recognized and accepted by the Michigan and Federal Courts that the provision of alcohol coupled with nudity creates undesirable behavior, and that there is a rational basis for the prohibition of the combination of such activities in one establishment. *Charter Township of Van Buren v Garter Belt, Inc., d/b/a Legg's Lounge*, 258 Mich App 594 (2003); *Jott v Charter Township of Clinton*, 224 Mich App 513 (1997); and *Richland Bookmart v Knox County, Tennessee*, 555 F3d 512 (2009).
- C. It is the further purpose of this Chapter to establish reasonable and uniform regulations to prevent the deleterious secondary effects of physical contact in alcoholic beverage establishments between patrons and certain employees of the establishment, in order to promote the health, safety, and general welfare of the citizens of the Township, in accordance with the laws of the State of Michigan pertaining to local control of establishments which serve beer, wine, or spirituous liquors. 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 or performances, including sexually oriented materials or performances. Similarly, it is neither the purpose 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 purpose nor effect of this Ordinance to condone or legitimize the distribution or presentation of obscene material or performances.

- D. Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in reports available to the Township Board, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to *California v. LaRue*, 409 U.S. 109 (1972); *New York State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); *Entertainment Productions, Inc. v. Shelby County, Tennessee*, 2011 WL 3903002, No. 2:08-cv-02047 (W.D. Tenn. Sept. 6, 2011); *5634 East Hillsborough Ave., Inc. v. Hillsborough County*, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (affirming 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007)); *Wacko's Too, Inc. v. City of Jacksonville*, No. 3:04-cv-1307, R.22 (M.D. Fla. Mar. 16, 2005); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *Hang-On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 865 N.E.2d 133 (Ill. 2006); *Big Dipper Entm't, LLC v. City of Warren*, 658 F. Supp. 2d 831 (E.D. Mich. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291(6th Cir. 2008); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en bane); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Little Mack Entm't II Inc. v. Twp. of Marengo*, 2008 WL 2783252 (W.D. Mich. July 17, 2008); *Charter Twp. of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); *Jott, Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *BZAPs, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Grand Faloan Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *Board of County Commissioners v. Dexterhouse*, 348 So. 2d 916 (Ct. App. Fla. 1977); *International Food & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *Willis v. Town of Marshall*, 426 F.3d 251 (4th Cir. 2005); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); and other cases; and on reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Jacksonville, Florida; Dallas, Texas - 1997, 2004; Phoenix, Arizona-1995-98; and "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011), and also on findings of physical abuse from the papers entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; Jackson County, Missouri - 2008; Affidavit of J.R. Long; and "Sexually Oriented Businesses: An Insider's View,"

by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and Various Media Articles; the Township Board finds:

1. Certain businesses require special supervision from public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Township.
2. Such establishments include alcoholic beverage establishments that feature bikini-clad employees.
3. Conduct by bikini-clad persons, and/or sexual conduct coupled with alcohol in public places begets undesirable behavior, and that sexual, lewd, lascivious, and salacious conduct among patrons and employees within alcoholic beverage establishments results in violations of law and dangers to the health, safety and welfare of the public; it is the intent of this Ordinance to prohibit such conduct in said establishments.
4. There is convincing documented evidence that physical contact between bikini-clad performers and patrons of alcoholic beverage establishments leads to unlawful sexual activities, including public masturbation, lewdness, illicit sexual activity, and other behaviors which the Township seeks to prevent.
5. Conduct by bikini-clad persons, and/or sexual conduct coupled with alcohol in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of laws and in dangers to the health, safety and welfare of the public.
6. Physical contact between bikini-clad employees of alcoholic beverage establishments, including “bed” dances, “couch” dances, and “lap” dances as they are commonly called, are associated with and can lead to illicit sexual activities, including public masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault.
7. The Township finds that the foregoing conduct, even when said employees are technically not nude or semi-nude, is substantially similar to and presents similar concerns as conduct by nude and semi-nude performers in sexually oriented businesses.
8. Each of the negative effects targeted by this Ordinance constitutes a harm which the Township has a substantial government interest in preventing and/or abating. This substantial government interest in preventing such negative effects, which is the Township’s rationale for this Ordinance, exists independent of any comparative analysis between the regulated establishments and other, non-regulated establishments. The Township finds that the cases and secondary effects documentation relied on in this

Ordinance are reasonably believed to be relevant to the Township's interest in preventing illicit sexual behavior.

- E. The Township hereby adopts and incorporates herein its stated findings and legislative record related to adverse secondary effects, including the judicial opinions and reports related to such secondary effects.
- F. It is not the intent nor the effect of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the Michigan Constitution, but to enact legislation to further the substantial governmental interests of the Township by controlling of secondary effects associated with physical contact in alcoholic beverage establishments.

Section 33.3 Definitions. For purposes of this Ordinance, the words and phrases defined hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

- A. **Alcoholic beverages** means beverages that are suitable for human consumption and contain .05% or more of alcohol by volume.
- B. **Alcoholic beverage establishment** means any commercial establishment where alcoholic beverages, as defined herein, are sold, consumed, or possessed on the premises. It also includes any commercial establishment within fifty (50) feet of such place owned or leased by the same individual or entity, or by an individual or entity with the actual power to operate or control its operation, management or policies, or in which a person holds a financial interest directly or indirectly of ten percent (10%) or more in both establishments, or there is any commonality of membership as member of an LLC, or office of president, vice president, secretary, treasurer, managing member, or managing director.
- C. **Bikini-clad** means a state of dress in which opaque clothing covers (i) the human male or female genitals, pubic area and buttocks, and (ii) the female breasts below the top of the areolae, but no additional area contiguous to those portions of the body described in (i) and (ii) other than area covered by supporting straps or devices.
- D. **Employee** means any person who performs a service on the premises of an alcoholic beverage establishment on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. The term also includes individuals participating in contests, exhibitions, and rehearsals organized by the establishment.
- E. **Nudity** shall be defined to be the exposure to view of persons, of any of the following body parts, either directly or indirectly, including but not limited to exposure, see-through clothing articles or body stockings:
 - 1. The whole or part of the pubic region;

2. The whole or part of the anus;
3. The whole or part of the buttocks;
4. The whole or part of the genitals;
5. The female breast below a horizontal line across the top of the areola, and extending across the width of the breast at that point, including the lower portion of the human female breast, but not including any portion of the cleavage of the human female breast exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

F. **Specified sexual activity** means any of the following:

1. Intercourse, oral copulation, masturbation or sodomy; or
2. Excretory functions as a part of or in connection with any of the activities described in 1 above.

Section 33.4 Regulation of Conduct on Licensed Premises.

- A. No person, while appearing in a state of nudity as defined by this section, shall frequent, loiter, work or perform in any establishment licensed or subject to licensing by the Michigan Liquor Control Commission. No proprietor or operator shall permit nudity in any such establishment.
- B. No bikini-clad employee of an alcoholic beverage establishment shall knowingly or intentionally touch or make physical contact with a patron or the clothing of a patron on the premises of the establishment. This subsection B shall not apply to physical contact between the hand of a bikini-clad employee and the hand of a patron.
- C. No employee of an alcoholic beverage establishment shall knowingly or intentionally, in the alcoholic beverage establishment, or engage in any specified sexual activity. This subsection C shall not apply to persons operating or performing in theaters, concerts halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.
- D. No person maintaining, owning, managing, or operating an alcoholic beverage establishment shall knowingly or recklessly allow conduct prohibited by subsections A, B and C, above.

Section 33.5 Approval of Liquor Licenses, Transfers and Permits. The Township Board shall not approve the issuance or transfer of any Michigan Liquor Control Commission license required for the sale or consumption of beer, wine or alcoholic liquors for an establishment in

which persons will engage in specified sexual activities, or in which bikini-clad employees shall violate this Ordinance.

Section 33.6 Penalty; Equitable Remedies.

- A. A person, business, or entity who violates any of the provisions of this Ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished as provided by this Ordinance Code.
- B. Any establishment, building or premises which is repeatedly operated or maintained in violation of this Ordinance shall constitute a public nuisance, and shall be subject to civil abatement proceedings initiated by the Township in a court of competent jurisdiction. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation.
- C. Notwithstanding subsection (a) hereof, the Township may employ any remedy available at law or in equity to prevent or remedy a criminal violation of any provision of this Ordinance.
- D. Violation of this Ordinance shall be grounds for the Township to seek revocation, or object to renewal of any license for sale of beer, wine or alcoholic liquors.
- E. This Ordinance does not impose strict liability. A showing of a knowing or reckless mental state is necessary to establish a criminal violation of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee shall be imputed to the establishment for purposes of finding a violation of this Ordinance only if an officer, director, 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 criminal liability hereunder that the person to whom liability is imputed was powerless to prevent the act.