

TOWN OF HOLDEN PUBLIC INDECENCY ORDINANCE

Purpose. The two purposes of this ordinance are (1) to prohibit certain acts of commercial exploitation of human sexuality in commercial or business establishments within the Town of Holden in order to reduce the likelihood of criminal activity, moral degradation, sexually transmitted diseases and disturbances of the peace and good order of the community which may occur when such commercial exploitation is permitted in such places, and (2) to protect the health, safety, welfare and morals of the community by using the government's recognized and traditional police power to protect societal order, morality and physical and emotional health in public places without infringing on protected First Amendment rights.

Definitions. For the purposes of this section, the following definitions apply:

1. Sexual intercourse means any penetration of the female sex organ by the male sex organ. Emission is not required.
2. 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 or proof of penetration.
3. 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.
4. Nudity, other than nudity in a dressing room, locker room, shower, rest-room, or other changing or lavatory facility set off and marked as such, 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 of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
5. 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, relation clubs, swimming pools, open to the membership by members of the public.
6. Public indecency means the knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact, or nudity in a public place.
7. Commercial or business establishments include but are not limited to: companies, firms, corporations, stores, shops, malls, markets, bars, saloons, restaurants or dining facilities, swimming pools, gymnasiums, health clubs, spas, hot tub centers, relaxation centers, etc.

Public Indecency Prohibited.

1. Engaging in public indecency is prohibited.
2. 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.

Sexual Contact for Pecuniary Benefit Prohibited.

1. Engaging in, or agreeing to engage in, or offering to engage in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a third person is prohibited.
2. 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 person engaging in the sexual contact or by a third person is prohibited.
3. 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 a third person is prohibited.
4. Leasing or otherwise permitting a place controlled by the defendant in any action to enforce this ordinance, alone or in association with other, to be used as a site for sexual contact for pecuniary benefit to any person is prohibited.

Penalties. The violation of any provision of this ordinance shall be punished by a fine not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this ordinance by appropriate action, including but not limited to revocation of any town license for a premises or commercial or business establishment in which the public indecency occurs. If the town is the prevailing party in an action to enforce any provision of this ordinance, it must be awarded its reasonable attorney fees, expert witness fees and costs, unless extraordinary circumstances make the award of these fees in just.

Sever ability. If any section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of 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.

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.

Effective Date. This ordinance will become effective on the date of approval by the Town Meeting.