

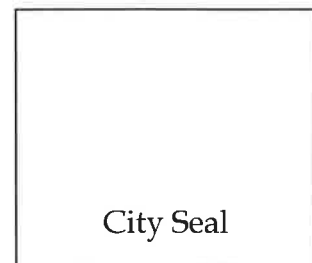
**CHAPTER 52**  
**CITY OF PRESQUE ISLE**

*Ordinance Regulating Commercial  
Displays of Nudity*



Adopted: March 4, 2002  
Repassed: January 6, 2014  
Amended: April 1, 2013  
Repassed: January 3, 2018  
Repassed: January 5, 2022

Attest: Kimberly A. Finnemore  
Kimberly A. Finnemore, City Clerk



## CHAPTER 52

### ORDINANCE REGULATING COMMERCIAL DISPLAYS OF NUILITY

#### *SECTION 1      PURPOSE AND LEGISLATIVE FINDINGS*

This purpose of this Ordinance is to prohibit certain acts of commercial exploitation of human sexuality in commercial or business establishments within the City of Presque Isle, 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. The City recognizes that some activities which occur in connection with sexually oriented businesses are protected as expressions under the First Amendment to the United States Constitution; and the City further recognizes that First Amendment Rights are among our most precious and highly protected rights and wishes to act consistently with full protection of those rights. The City is aware, however, that sexually oriented businesses may and do generate secondary effects, which are detrimental to the public health, safety and welfare. Among these secondary effects are (a) prostitution and other sex related offenses; (b) drug use and dealing; (c) health risks through the spread of AIDS and other sexually transmitted diseases and (d) infiltration by organized crime for the purpose of drug and sex related business activities, laundering of money and other illicit conduct. This Ordinance is not intended to interfere with legitimate expression but to avoid and mitigate the secondary effects enumerated above.

The City finds:

- a) That licensing of persons who operate and manage sexually oriented businesses and persons who provide adult services will further the goals of the Ordinance by enabling the City to ascertain if an applicant is underage or has engaged in criminal or other behavior of the sort the Ordinance is designed to limit.
- b) That limiting proximity and contact between adult service providers and patrons promotes the goal of reducing prostitution and other casual sexual conduct and the attendant risk of sexually transmitted diseases.
- c) The types of nude entertainment offered by establishments regulated by this Ordinance are a purely commercial activity.

- d) The types of nude entertainment regulated by this Ordinance consists of lewd exhibitions that are patently offensive to a large majority of the residents of the City of Presque Isle;
- e) Unlimited commercial exploitation of nudity can induce individuals to engage in prostitution, sexual assaults, breaches of the peace and other criminal activity;
- f) Displays of nudity in commercial establishments can create a tawdry atmosphere which adversely affects the quality of life of Presque Isle's residents;
- g) Persons under the age of 18, by reason of their age and inexperience, are especially susceptible to prostitution and other criminal activity if employed by or allowed entrance as patrons of commercial establishments offering nude entertainment;
- h) Commercial establishments offering nude entertainment should be situated in locations that minimize the negative effects, public health, safety and morals; and
- i) The harmful secondary effects of sexually oriented businesses are more pronounced when conducted continuously or during late night hours.

In view of the foregoing legislative findings, for the purpose of public health, safety and morals, the City of Presque Isle hereby adopts the following regulations of commercial displays of nudity within the City of Presque Isle.

This Ordinance shall not apply to massage therapist or massage practitioners, or massage therapy, authorized and licensed under the provisions of Chapter 127 of Title 32, M.R.S.A., as amended.

## ***SECTION 2        DEFINITIONS***

For purposes of this Ordinance, the following terms, phrases, words and their derivatives shall have the meanings given herein. Terms not defined herein shall have their customary dictionary meanings; unless the context clearly indicates that a different meaning is intended.

ABUSE - See "Sadomasochistic Act"

CLOSED AREA - An area of a building separated by a door, screen, curtain, partition or in any other manner that prevents persons in the same portion of the building from having visual access to the area concerned.

COMMERCIAL ESTABLISHMENT - Any retail establishment offering food, beverages, merchandise, products or services for sale to members of the general public, operated as a for-profit business and treated as such for federal or state tax purposes.

DEPICTING - Containing graphic, photographic, engraved or printed representations, with or without accompanying printed or recorded text. Live performances or the display of live persons shall also constitute depictions within the meaning of this Ordinance.

DISPLAY - To make available for on-premises viewing or perusal by patrons, customers or members of the general public.

GENITALS - Relating to or being a sexual organ.

LODGING ESTABLISHMENT - Any commercial establishment operated to offer lodging that is either rented or leased to guests not using the unit as a permanent residence, and by an operator whose intention is that such guests' occupancy will be temporary and transient in nature.

LICENSED MOVIE THEATER - A commercial establishment regularly operated for the on-premises screening of general release films, movies or videotapes, having a legal seating capacity within its general viewing area of at least 50 persons and currently processing all licenses and permits required under the City's Ordinances or state law.

MINOR - Any person under the age of 18 years.

NUDE and/or NUDITY - The showing of the human male or female genitals, pubic area or buttocks or the female breast at or below the areola or the depiction of covered male genitals in a discernibly turgid state.

NUDE ENTERTAINMENT - The showing, exhibiting or displaying of the male or female genitals, or the female breast at or below the areola, buttocks, pubic area, perineum or anus of any person with less than a fully opaque covering, or the depiction of covered male genitals in a discernibly turgid state.

OPERATE - To own, lease, manage or supervise operations of a commercial establishment.

**PERSON** - Any individual, partnership, firm, association, corporation, trustee, lessee, agent, assignee or other legal entity.

**PREMISES** - The entire building or structure concerned, including all floors, attics, basement areas, and outbuildings, whether or not partitioned into separate rooms or areas.

**PUBLIC INDECENCY** - The knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact or nudity in a public place.

**PUBLIC PLACE** - 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.

**SADOMASOCHISTIC ACT** - Flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

**SEXUAL ACT** - Any act of sexual gratification between two 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 an instrument or device manipulated by the other. A sexual act may be proved without allegation or proof of penetration.

**SEXUAL CONDUCT** - Acts of sodomy, masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or breast.

**SEXUAL CONTACT** - Any touching of the genitals or anus directly or through clothing or other covering for the purpose of arousing or gratifying sexual desire.

**SEXUAL EXCITEMENT** - The condition of the human male or female genitals when in a state of sexual stimulation or arousal.

### **SECTION 3**

#### **A. Certificate of Occupancy and License Required:**

No person operating a commercial establishment in the City of Presque Isle shall present or allow presentation of any form of nude entertainment on the premises of the establishment concerned without first obtaining a certificate of occupancy from the Code Enforcement Officer and a license from the City Council for that purpose. The procedure and criteria for issuance of a certificate of occupancy shall be as provided in Chapter 16, Land Use and Development Code. The procedure and criteria for issuing a license shall be in accordance with Section B of this Section.

Application forms may be obtained from the City Clerk's Office, and all applications for license hereto must be filed with the City Clerk's Office.

- a) The application shall state that the proposed use includes nude entertainment. The application shall describe the nude entertainment to be offered, including the intended frequency and times, and shall indicate the area of the premises where the nude entertainment shall take place.
- b) The application shall disclose the name and current residence address of all principals of the business concerned and shall disclose the name and current residence address of all persons holding a financial interest of 5%, or more, in the business concerned.
- c) Upon receipt of any such application, by the City Clerk, copies thereof shall be forwarded to the Code Enforcement Officer and the Chief of Police for their action thereon.
- d) Location and Standards:
  - 1) No certificate of occupancy shall be issued by the Code Enforcement Officer prior to the issuance of a license as set forth in subsection B of Section Three.
  - 2) No certificate of occupancy shall be granted for a commercial establishment offering nude entertainment, unless the premises concerned are located in a commercial zoning district and the premises concerned meet with all district provisions and development standards contained in Chapter 16, Land Use and Development Code plus the following additional requirements:

- i. No certificate of occupancy shall be granted for a commercial establishment offering nude entertainment if the premises concerned are located within 250 feet of any other such establishment for which a certificate of occupancy, previously issued, remains in force; any establishment licensed to sell alcohol for on-premises or off-premises consumption under M.R.S.A. 28-A § 601 et seq.; a church, chapel, parish house or other place of worship; or a public library, juvenile shelter or orphanage in existence as of the application date, as measured from the main entrance of the premises to the main entrance of a building by the ordinary course of travel.
  - ii. The premises concerned must not be located within 200 feet of any residential zoning established under the provisions of Chapter 16, Land Use and Development Code, of the City of Presque Isle, as measured in a straight line from the premises to the boundary of the residential zone.
  - iii. The premises concerned must not be located within 250 feet of the nearest property line of any public or private school, school dormitory, or school ground, day school facility, public playground or Presque Isle public park, as measured in a straight line from the premises to the property line.
- e) No certificate of occupancy shall be issued for a commercial establishment offering nude entertainment unless the premises concerned include changing rooms and toilet facilities for performers that are separated from any area of the premises to which the public will have access.
  - f) No certificate of occupancy shall be issued for a commercial establishment offering nude entertainment if any portion of the premises concerned consists of residential apartments or units, whether or not occupied. For the purposes of this section, any lodging establishment shall not be considered residential units.
  - g) The premises concerned, in addition, shall meet all applicable requirements of Chapter 25, Building Code, Chapter 38B, Life Safety Code, and Chapter 16, Land Use and Development Code.
  - h) The subsequent establishment of an establishment licensed to sell alcohol, a public or private school or school dormitory, a church, chapel, parish house or other place of worship, a public library, a juvenile shelter or orphanage, a playground or public park or the rezoning of any nonresidential district within 200 feet of a residential zone (with the exception of the zone in which the adult business is situated) shall not affect the validity a certificate of occupancy of a legally existing commercial establishment offering nude entertainment. In the event of the subsequent establishment of any of the

foregoing uses, the commercial establishment offering nude entertainment shall be treated as any other use permitted in the zoning district.

### **SECTION 3**

#### **B. License:**

No person shall permit nude entertainment on the premises of any business whether such business is subject to a license under the Presque Isle City Ordinances, without a nude entertainment license from the City, whether provided by professional entertainer(s), employees or any other person; and without regard as to whether any compensation is paid by the management of the establishment in which the activity is performed or conducted.

Once the Code Enforcement Officer has completed his review of the application, and is satisfied that it complies with the Land Use and Development Code, and the Police Chief has found the persons involved have cleared the background check, the application will be presented by the City Clerk to the City Council for its review and determination.

- a) The application must be accompanied by a report from the Code Enforcement Officer that his applicant has complied with the requirement of Section 3 A, above, and that the Code Enforcement Officer is prepared to issue a Certificate of Occupancy, if the City Council approves the issuance of a license, after a public hearing is held.
- b) The application will be denied if the applicant, any principal of the business concerned, or any holder of a five percent (5%) or greater financial interest in the business concerned has a record of conviction of prostitution, promoting prostitution or of a Class A, B, or C felony under Maine law, or equivalent offences in other jurisdictions during a ten (10) year period ending prior to the application date.
- c) Hearings: A public hearing shall be held by the City Council prior to the issuance of any license under this Ordinance.
- d) Duration: A license, once granted, shall expire one (1) year after the date of issuance thereof, unless terminated, suspended, or revoked prior thereto by the City Council for violation of any part of this Ordinance, after hearing by the City Council, with reasonable written notice to the applicant, given at least 10 days prior to the hearing date. Such license is not transferable.

Any renewal of license is contingent upon applicant being in full compliance with the Ordinance and the City's Land Use and Development Code, and Section 3: A (g) above.



- e) **Minors Prohibited:** No person under the age of eighteen (18) years shall be permitted visual or physical access to activities licensed pursuant to this Ordinance.
- f) Issuance of any License hereunder is contingent upon the issuance of a Certificate of Occupancy as set forth in (A) above.
- g) **Fees:** The license fee issued under this Ordinance shall be \$500.00, for a one (1) year license.

## **SECTION 4      CONDUCT**

1. No person under the age of 18 years shall be allowed to be employed in any capacity upon the premises of a commercial establishment that offers nude entertainment during said event(s). This restriction shall apply for three hours prior to the beginning of the event and for three hours after the conclusion of the event(s). The operator of each such establishment shall be responsible for verifying the age of each employee through photographic identification, including hourly employees, salaried employees and all persons working on the premises for tips, commissions or as independent contractors, contract dancers or contract performers.
  - a) Each employer shall maintain records showing the name and date of birth for each employee, including a copy of the photographic identification used to verify age. Prior to any employee's beginning employment, the operator shall bring the records to the Presque Isle Police Department to verify the age of the prospective employee. These records must be maintained by the employer until six months after the employee ceases to work for the employer. These records are also subject to review by the Presque Isle Police on the business premises during normal operating hours.
  - b) In the event that the Presque Isle Police reasonably suspect that any employee listed in the records is under the age of 18 years, the Presque Isle Police may copy the record for investigatory purposes. Any record or information so obtained, and any subsequent information developed therefrom, is declared to be "intelligence and investigate information" under 16 M.R.S.A. § 611, Subsection 8, the Criminal History Record Information Statute, which, if publicly disclosed, would endanger the life or safety of the individuals named therein. Record information may be disclosed to the person named therein, notwithstanding this declaration.
2. No person under the age of 18 years shall be admitted to any commercial establishment offering nude entertainment, as a customer or patron. The operator of each such establishment shall be responsible for verifying the age of each person entering the premises, through photographic identification.

An establishment that otherwise meets all of the criteria of this ordinance, except section 4.2 may apply for a special exception from said section. In order for the City Council to grant the special exception, the establishment must demonstrate that the part of the premises in which the proposed event will be held can be isolated effectively to comply with intent of the section. The application for the special exemption shall have an affirmative statement by the applicant of their understanding of the requirement and acceptance of their responsibility of complying with the section

3. There shall be no physical contact between patrons and performers on the premises. For the purposes of this subsection, physical contact does not include incidental touching between a dancer and patron of a business or social nature, i.e., a handshake or the brief contact that occurs while a patron is giving a tip to a dancer. In no case shall incidental contact be deemed to include contact barred by the state statutes regarding unlawful sexual contact.
4. Dancers or performers who remove any garments during the nude entertainment shall not toss or throw those garments to any customer or patron.
5. Dancers or performers providing the nude entertainment shall not engage in any sadomasochistic abuse or sexual conduct, as defined in Section 2 of this Ordinance.
6. Nude entertainment presented in a commercial establishment shall not include any showing of the male or female genitals, or the female breast at or below the areola, buttocks, pubic area, perineum or anus of any person with less than a fully opaque covering.
7. No nude entertainment shall be presented after the hour of 1:00 AM. All premises offering nude entertainment shall be closed and cleared of customers and patrons between the hours of 1:15 AM and 12:00 Noon Mondays through Saturdays and 3:00 PM Sundays.
8. Any exterior signage, advertisement or other information that may be displayed on or about the exterior of a commercial establishment, or within the public areas of the commercial establishment which would allow the public to gain knowledge that a nude entertainment event was occurring or would be occurring at or on the premises must indicate that it is Adult Entertainment, which wording is prominently displayed thereon, and that such notice and/or advertisement must be done without any pictorial and/or graphic displays of any kind, and without depicting nudity.

## **SECTION 5        GENERAL PROVISIONS TO APPLY**

Except to the extent that this Ordinance contains a contrary provision, all provisions of the Ordinance of the City of Presque Isle shall be in addition to the provisions of this Ordinance.

## **SECTION 6        EXCEPTIONS**

1. This Ordinance shall not apply to a theater or similar establishment that is primarily devoted to theatrical performances or the presentation of movies, except as set forth in Section 9 below.
2. This Ordinance shall not apply to any unauthorized or prohibited by any statutes of the State of Maine, as amended from time to time.

## **SECTION 7        VIOLATION AND PENALTIES**

1. Any violation of this Ordinance by the owner, lessee, licensee, permittee or operator of a premises shall be punished by a fine of \$1,000.00 for each offence upon conviction by the District Court. In addition, the City Council, may upon conviction, suspend or revoke the license issued for any establishment offering nude entertainment in violation of this Ordinance.

If the licensee shall violate any condition contained in the Certificate of Occupancy, the Code Enforcement Officer may request a hearing before the City Council, with notice thereof to the licensee, setting forth the alleged violation(s); and after hearing, the City Council may suspend or revoke the Certificate of Occupancy of the licensee.

2. Any violation of this Ordinance by a person other than the owner, lessee, licensee, permittee or operator of a premises shall be punished by a fine of not less than \$1,000.00 for the first offense, and not less than \$1,500.00 for the second and subsequent offenses.

All such fines shall belong to the City of Presque Isle.

## **SECTION 8        SEVERABILITY**

If any section, phrases, 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.

## **SECTION 9        THEATRICAL PRODUCTIONS**

This Ordinance shall not apply to theaters, dinner theaters, licensed movie theaters, or similar establishments, which are primarily devoted to theatrical performances, or the presentation of movies, provided that any displays of live nudity within such theater, dinner theater, licensed movie theater or similar establishments, shall be limited to occasional nudity by bona fide stage actors during the course of theatrical performances, provided also the provisions of Section 4 (a) through (e) and (g) shall apply to nude theatrical performances under this Section.

## **SECTION 10        SUNSET PROVISION**

Sunset Provision: This Ordinance shall be in force for a term of four (4) years from its effective date noted below. This Ordinance shall become null and void upon the expiration of four (4) years from the effective date, unless recommended and requested by the City Council to remain effective, prior to the expiration date.