

1124. ADULT ESTABLISHMENTS

§1124.010 Findings and Purpose. A study conducted by the Minnesota Attorney General has examined the impact that sexually orientated adult establishments have in cities in Minnesota and throughout the country. This study concluded that adult establishments have an adverse impact on surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. Based on these studies and findings, the City Council concludes:

- A. The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.
- B. Adult establishments have adverse secondary impacts of the types set forth above.
- C. The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, licensing requirements and health requirements.
- D. It is not the intent to prohibit adult establishments from having a reasonable opportunity to locate in the city.

§1124.020 Definitions. For the purposes of this chapter only, the words and phrases below are defined as follows:

1. Adult Establishment. A business engaged in any of the following activities or which utilizes any of the following business procedures or practices:

- A. A business that is conducted exclusively for the patronage of adults and as to which minors are specifically excluded from patronage, either by operation or law or by the owners of such business, except any business licensed under Chapter 1002 of the White Bear Lake City Code;
- B. Any business that has a substantial or significant portion of its floor space that is characterized by an emphasis on material depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.

An adult establishment includes, but is not limited to, any adult use as defined in this chapter.

2. Adult Use. An adult use is any of the activities and businesses described below:

- A. Adult Body Painting Studio. An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas."
- B. Adult Bookstore. A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified anatomical areas."

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- C. Adult Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas."
- D. Adult Companionship Establishment. A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- E. Adult Conversation/Rap Parlor. A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- F. Adult Health/Sport Club. A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- G. Adult Hotel or Motel. Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or specified anatomical areas."
- H. Adult Massage Parlor, Health Club. A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- I. Adult Mini-Motion Picture Theater. A building or portion of a building with a capacity for less than 50 persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- J. Adult Modeling Studio. An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by such customers.
- K. Adult Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motor picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

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- L. Adult Motion Picture Theater. A building or portion of a building with a capacity of 50 or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- M. Adult Novelty Business. A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.
- N. Adult Sauna. A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- O. Adult Steam Room/Bathhouse Facility. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

3. Specified Anatomical Areas.

- A. Less than completely and opaquely covered human genitals, pubic region, buttock, anus or female breast(s) 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.

4. Specified Sexual Activities.

- A. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
- B. Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
- C. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; or
- D. Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
- E. Situations involving a person or person, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person; or
- F. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or

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G. Human excretion, urination, menstruation, vaginal or anal irrigation.

5. Substantial or Significant. For purposes of this section, the phrase "substantial or significant" means that at least 20 percent of the portion of the floor area of the business (not including storerooms, stock areas, bathrooms, basement or any portion of the business not open to the public) is devoted to items, merchandise or other material that is distinguished or characterized by an emphasis on the depiction or description of "specific sexual activities" or "specified anatomical areas."

§1124.030 Location. Adult establishments shall be located only in districts zoned B-W, I-1 and I-2 and shall be located at least 500 radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult establishment is located, to the property line of:

- A. Residentially zoned property.
- B. A licensed day care center.
- C. A public or private educational facility classified as an elementary, junior high or senior high.
- D. A public park.
- E. A church.

§1124.040 License Required. No person, firm or corporation shall own or operate an adult establishment without having first secured a license as provided for in this chapter.

Subd. 1 Applications. The application for an adult establishment license shall be submitted on a form provided by the city and shall include:

- A. The name, residence, phone number and birth date of the applicant, if an individual; and if a corporation, the names, residences, phone number and birth dates of those owners holding more than five percent of the outstanding stock of the corporation;
- B. The name, address, phone number and birth date of the manager of such operation, if different from the owners;
- C. The address and legal description of the premises where the adult establishment is to be located;
- D. A statement detailing each gross misdemeanor or felony relating to a sex offense and/or the operation of adult uses and related activities of which the applicant, or in the case of a corporation, the owners of more than five percent of the outstanding stock of the corporation, have been convicted, and whether or not the applicant has ever applied for or held a license to operate a similar type of business in other communities;
- E. The activities and types of business to be conducted;
- F. The hours of operation;
- G. The provisions made to restrict access by minors;

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H. A building plan of the premises detailing all internal operations and activities.

Subd. 2 License Fees.

- A. Each application for a license shall be accompanied by a receipt from the city for payment in full of the required fee for the license. All fees shall be paid into the general fund of the municipality. Upon rejection of any applications for a license, the treasurer shall refund the amount paid.
- B. All licenses shall expire on the last day of March in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rated fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.
- C. The annual license fee for adult establishments shall be \$1,500.00
- D. No part of the fee paid for any license shall be refunded except in the following instances upon application to the city administrator within 30 days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:
1. Destruction or damage of the licensed premises by fire or other catastrophe;
 2. The licensee's illness;
 3. The licensee's death;
 4. A change in the legal status making it unlawful for the licensed business to continue.

Subd. 3 Granting of License.

- A. The city manager or police chief, or such persons as they shall designate, shall complete their investigation within 30 days after the city manager receives a complete application and all license and investigative fees.
- B. If the application is for a renewal, the applicant shall be allowed to continue business until the Council has determined to renew or refuse to renew a license.
- C. If, after such investigation, it appears that the applicant and the place proposed for the business are eligible for a license under the criteria set forth in this subsection, then the license shall be issued by the City Council within 30 days after the investigation is completed. Otherwise the license shall be denied.

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- D. Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another premise without the approval of the City Council. If the licensee is a partnership or a corporation, a change in identity of any of the principals of the partnership or corporation shall be deemed a transfer of the license. All adult establishments existing at the time of the adoption of this subsection shall be required to obtain an annual license.
- E. An applicant for any license under this section shall deposit with the city at the time an original application is submitted, \$500 to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this section. If the investigation and verification process is conducted outside the state of Minnesota, the city may require the actual investigation costs not exceeding \$1,500.

Subd. 4 Persons Ineligible for License. No license shall be granted to or held by any person:

- A. Under 21 years of age;
- B. Who has been convicted of a felony or of violating any law of this state or local ordinance relating to sex offenses and/or adult establishments.
- C. Who is not the proprietor of the establishment for which the license is issued.

Subd. 5 Places Ineligible for License.

- A. No license shall be granted for adult establishments on any premises where the owner or the applicant has been convicted of a violation of this chapter, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation.
- B. Except for uses lawfully existing at the time of this ordinance adoption, no license shall be granted for any adult establishment which is not in compliance with the city's zoning regulations.

Subd. 6 Conditions of License.

- A. Every license shall be granted subject to the following conditions and all other provisions of this chapter, and of any applicable sections of the code of the city or state law.
- B. All licensed premises shall have the license posted in a conspicuous place at all times.
- C. No minor shall be permitted on the licensed premises.
- D. Any designated inspection officer of the city shall have the unqualified right to enter, inspect and search the premises of a licensee during business hours.

- E. Every licensee shall be responsible for the conduct of his/her place of business and shall maintain conditions of order. Added
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Subd. 7 Additional Conditions for Adult Cabarets. In addition to all other conditions set forth in this ordinance, the following conditions apply to adult cabarets:

- A. No owner, operator or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude.
- B. No dancer, live entertainer, patron or any other person shall be nude in an adult cabaret.
- C. The owner, operator or manager of an adult cabaret shall provide the following information to the city concerning any persons who dance or perform live entertainment at the adult cabaret: The person's name, home address, home telephone number, date of birth and any aliases.
- D. No dancer, live entertainer or performer shall be under 18 years old.
- E. All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.
- F. No dancer or performer shall perform any dance or live entertainment closer than 10 feet to any patron.
- G. No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- H. No patron shall pay or give any gratuity to any dancer or performer.
- I. No dancer or performer shall solicit any pay or gratuity from any patron.

Subd. 8 Penalty.

- A. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by state law.
- B. Any violation of this chapter shall be a basis for the suspension or revocation of any license granted hereunder. In the event that the City Council proposes to revoke or suspend the license, the licensee shall be notified in writing of the basis for such proposed revocation or suspension. The Council shall hold a hearing for the purpose of determining whether to revoke or suspend the license, which hearing shall be within 30 days of the notice.

- C. The City Council shall determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner, and shall notify the licensee of its decision within that period.

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§1124.050 Severability. The provisions of this ordinance shall be severable. If any provision is found to be void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially connected with the void provisions so that the court cannot presume the Council would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone are incomplete and incapable of being executed in accordance with the legislative intent.

