

## § 150.22 ADULT ESTABLISHMENTS.

### (A) *Purpose and intent.*

(1) (a) *Findings of the City Council.* Research conducted by the Minnesota Attorney General, the American Planning Association and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; and Seattle, Washington have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. Based on these findings, the City Council concludes:

1. Adult establishments have adverse secondary impacts of the types set forth above.
2. The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, licensing requirements and health requirements.
3. It is not the intent of the City Council to prohibit adult establishments from having a reasonable opportunity to locate in the city.
4. M.S. § 462.357, as it may be amended from time to time, allows the city to adopt regulations to promote the public health, safety, morals, and general welfare.
5. The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.

(b) The City Council of the city makes the following findings regarding the need to license sexually-oriented businesses. The findings are based upon the experiences of other cities where such businesses have located, as studied by city staff.

1. Sexually-oriented businesses can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs and law enforcement services.
2. Sexually-oriented businesses can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owner and operators of such facilities are regulated by licensing or other procedures.
3. Sexually-oriented businesses can increase the risk of exposure to communicable diseases including but not limited to Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.
4. Sexually-oriented businesses can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.
5. The risk of criminal activity and/or public health problems can be minimized

through a licensing and regulatory scheme as prescribed herein.

(2) *Findings.* It is the purpose of this section to regulate adult oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to:

- (a) Prevent additional criminal activity within the city;
- (b) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;
- (c) To locate adult oriented business away from residential areas, schools, churches, parks, playgrounds and day care services.
- (d) Prevent concentration of adult oriented businesses within certain areas of the city.

(3) *Communicative materials.* The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult oriented materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to adult oriented materials protected by the First Amendment or to deny access by distributors and exhibitors of adult oriented entertainment to their intended market.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ADULT BOOK*** and/or ***MEDIA STORE.*** An establishment which excludes minors and which has a substantial portion of its stock in trade or stock on display books, magazines, films, videotape, or other media which are characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

***ADULT CABARET.*** An establishment which provides dancing or other live entertainment, if the establishment excludes minors by virtue of age from all or part of the establishment and if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction or description of specified sexual activities or specified anatomical areas.

***ADULT ESTABLISHMENT.*** Any business which offers its patrons services, entertainment, or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussion, or relating to specified sexual activities or specified anatomical areas. Specifically included in the term, but without limitation, are adult book and media stores, adult cabarets, adult hotels or motels, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, adult novelty businesses and other establishments.

***ADULT HOTEL*** or ***MOTEL.*** 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.

***ADULT MINI-MOTION PICTURE THEATER.***

(a) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or

characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(b) Any business which presents motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or reliant on specified sexual activities or specified anatomical areas, for viewing on the premises, including but not limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpt of motion pictures offered for sale or rent.

***ADULT MODELING STUDIO.*** An establishment, which excludes minors from all or part of the establishment, whose major business is the provision, to customers, or figure models who are so provided with the intent of providing sexual stimulation to 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.

***ADULT MOTION PICTURE ARCADE.*** Any place which excludes minors from all or part of the establishment wherein coin or token operated or electronically, electrically, or mechanically controlled or operated still or motion 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.

***ADULT MOTION PICTURE THEATER.*** A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity of 50 or more persons used regularly and routinely for presenting live entertainment or motion pictures, including but not limited

to film and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons.

***ADULT NOVELTY BUSINESS.*** A business, from which minors are excluded from all or part of the establishment, which sells, offers to sell, or displays devices which simulate human genitals or devices which are designated for sexual stimulation.

***ADULT USE.*** Any of the activities and businesses described in this division (B) constitutes ***ADULT ORIENTED BUSINESSES*** which are subject to the regulation of this section.

***SPECIFIED ANATOMICAL AREAS*** are any of the following conditions:

- (a) Less than completely and opaquely covered:
  - 1. Human genitals, pubic region, or pubic hair;
  - 2. Buttock, anus; and
  - 3. Female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernible turgid state, completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES*** are any of the following conditions:

- (a) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.
- (b) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.
- (c) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed.
- (d) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(C) *Application of this section.*

(1) Except as in this section specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose not in any manner, which is not in conformity with this section.

(2) No adult oriented business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the city, the laws of the State of Minnesota, or the United States of America. Nothing in this section shall be construed as authorizing or permitting conduct which prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the

exhibition, sale, or distribution of obscene material generally, or the exhibition, sale, or distribution of specified materials to minors.

(D) *Location.*

(1) During the term of this section, adult oriented businesses shall be located only in zoning district B4, subject to the following limitations. Within any B4 zoning district, no adult oriented business shall be located less than:

- (a) Two hundred and fifty feet from any residential zoning district;
- (b) Two hundred and fifty feet from any public park;
- (c) Two hundred and fifty feet from any church or religious site;
- (d) Two hundred and fifty feet from any day care facility;
- (e) Five hundred feet from all school property;
- (f) Five hundred feet from another adult oriented business.

(2) For purposes of this section, the distance as measured in a straight line from the closest point of the property line of the building upon which the adult use is located.

(E) *Hours of operation.* No adult oriented business shall be open to the public from the hours of 11:00 p.m. to 9:00 a.m.

(F) *Operation.*

(1) *Off-site viewing.* An establishment operating as an adult oriented business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of M.S. Chapter 617, as it may be amended from time to time, or other applicable federal or state statutes or local ordinances.

(2) *Entrances.* All entrances to the business, with the exception of emergency fire exits, which are not useable by patrons to enter the business shall be visible from a public right-of-way, excluding alleyways.

(3) *Layout.* The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons while they have access to any merchandise offered for sale or viewing including but not limited to books, magazines, photographs, video tapes, or any other material.

(4) *Illumination.* Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

(5) *Signs.* Signs for adult oriented businesses shall comply with the city's ordinance for signs addressed in this chapter, and in addition signs for adult oriented businesses shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

(G) *License required.* No person shall own or operate a sexually-oriented business within the City unless such person is currently licensed under this section.

(H) *License application.* This application for a license under this section shall be made on a form supplied by the issuing authority and shall require the following information:

(1) *All applicants.* For all applicants:

(a) Where the applicant is a natural person, corporation, partnership, or other form of organization.

(b) The legal description of the premises to be licensed, along with a floor plan of the premises. The floor plan of the premises shall detail all internal operations and activities, including a statement of the total floor space occupied by the business. The floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimension of the interior of the premises to an accuracy of plus or minus six inches.

(c) The name and street address of the business. If the business is to be conducted under a designated name, or style other than the name of the applicant, a certified copy of the certificate required by M.S. § 333.01, as it may be amended from time to time, shall be submitted.

(2) *Applicants who are natural persons.* If the applicant is a natural person:

(a) The name, place, and date of birth, street and city address, and phone number of the applicant.

(b) Where the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places where used.

(c) The street and city addresses at which the applicant has lived during the preceding two years.

(d) The type, name, and location of every business or occupation in which the applicant has been engaged during the preceding two years and name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding two years.

(e) Whether the applicant has ever been convicted of a felony, crime, or violation of any ordinance other than a petty misdemeanor traffic ordinance. If so, the applicant shall furnish information as to the time, place and offense for which convictions were had.

(3) *Applicants that are partnerships.* If the applicant is a partnership:

(a) The name(s) and address(es) of all general partners and all of the information concerning each general partner that is required of applicants in division (H)(2) above.

(b) The name(s) of the managing partner(s) and the interest of each partner in the business.

(c) A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to M.S. § 333.01, as it may be amended from time to time, a certified copy of such certificate shall be attached to the application.

(4) *Corporate or other applications.* If the applicant is a corporation or other organization:

(a) The name of the corporation or business form, and if incorporated, the state of incorporation.

(b) A true copy of the certificate of incorporation, articles of incorporation or association agreement and by-laws shall be attached to the application. If the applicant is a foreign corporation, a certificate of authority as required by M.S. § 303.06, as it may be amended from time to time, shall be attached.

(c) The name of the manager(s), or other agent(s) in charge of the business and all of the information concerning each manager, proprietor or agent is required of the applicants in division (H)(2) above.

(I) *License application execution.* If the application is that of a natural person, the application shall be signed and sworn to by that person; if of a corporation, by an officer thereof; if of a partnership, by one of the general partners; if of an incorporated association, by the manager or managing officer thereof.

(J) *License application verification.* Applications of licenses under this section shall be submitted to the City Council (hereinafter referred to as the issuing authority). Within twenty (45) calendar days of receipt of a complete application and payment of all license application fees, agents and/or employees of the issuing authority shall verify any and all of the information requested of the applicant in the application, including the ordering of criminal background checks, and conduct any necessary investigation to assure compliance with this section.

(K) *License application consideration.* No later than ten calendar days after the completion of the license application verification and investigation by the issuing authority or its agents or employees, as prescribed in division (J), the issuing authority shall accept or deny the license application in accordance with this section. If the application is denied, the issuing authority shall notify the applicant of the determination in writing. The notice shall be mailed by certified mail to the applicant at the address provided in the application form and it shall inform the applicant of the applicant's right within 20 calendar days of receipt of the notice by the applicant, to request an appeal of the determination for consideration by the City Council or to immediately challenge the determination in a court of law. If the appeal to the City Council is timely received, the hearing before the City Council shall take place within 20 calendar days of the receipt of the appeal. If an application is granted for a location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a certificate of occupancy has been issued for the licensed premises. During the application consideration process prescribed herein an applicant operating a business not previously subject to the license provisions of this section may remain operating pending the outcome of the application consideration by the issuing authority.

(L) *License fees.*

(1) *Application fee.*

(a) The license application fee shall be \$1,000;

(b) The application license fee shall be paid in full before the application for a license is considered. All fees shall be paid to the issuing authority for deposit into the general fund of the city. Upon rejection of any application for a license or upon withdrawal of application before the issuing authority the license fee shall be refunded to the applicant.

(c) When the license is for premises where the building is not ready for occupancy, the time fixed for computation of the license fee of the initial license period shall be ninety (90) days after approval of the license by the issuing authority or upon the date an occupancy permit is issued for the building.

(2) *Investigation fee.* An application for any license under this division shall deposit with the Issuing Authority, at the time an original application is submitted, \$1,000 to cover the cost involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this division. The investigation fee shall be nonrefundable.

(M) *Persons and locations ineligible for a license.* The issuing authority shall issue a license under this division to an applicant unless one or more of the following conditions exists:

(1) The applicant is not 18 years of age or older on the date the application is submitted to the issuing authority;

(2) The applicant failed to supply all of the information on the license application;

(3) The applicant gave false, fraudulent, or untruthful information on the license application;

(4) The applicant has had a sexually-oriented license revoked from the city or any other jurisdiction within a one-year period immediately preceding the date the application was submitted;

(5) The applicant has had a conviction of a felony or gross misdemeanor or misdemeanor relating to sex offenses, obscenity offenses or adult uses in the past five years;

(6) The sexually-oriented business does not meet the zoning requirements prescribed in this section;

(7) The premises to be licensed as a sexually-oriented business is currently licensed by the city as a tanning facility, tattoo establishment, pawnshop, therapeutic massage enterprise, or an establishment licensed to sell alcoholic beverages;

(8) The applicant has not paid the license and investigation fees required in division (L).

(N) *License restrictions.*

(1) *Posting of license.* A license issued under this section must be posted in a conspicuous place in the premises for which it is used.

(2) *Effect of license.* A license issued under this section is only effective for the compact and contiguous space specified in the approved license application.

(3) *Maintenance of order.* A licensee under this section shall be responsible for the conduct of the business being operated and shall not allow any illegal activity to take place on or near the licensed premises including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this section shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct.



(4) *Distance requirement for live adult entertainment.* All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility where such entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of ten feet from all patrons, customers, or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two feet from the level of the floor on which patrons or spectators are located.

(5) *Interaction with patrons.* No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed facility where the entertainment can be seen by patrons of the licensed facility shall fondle or caress any spectator or patron.

(6) *Gratuity prohibition.* No customers, spectator, or patron of a licensed facility shall directly pay or give any gratuity to any dancer or performer and no dancer or performer shall solicit any pay or gratuity from any patron or spectator.

(7) *Adult car wash requirements.* Sexually-oriented businesses that are adult car washes shall meet all of the requirements of this section.

(O) *Restrictions regarding license transfer.*

(1) The license granted under this section is for the person and the and the premises named on the approved license application. No transfer of a license shall be permitted from place to place or from person to person without complying with the requirements of an original application.

(2) When a sexually-oriented business licensed under this section is sold or transferred, the existing licensee shall immediately notify the issuing authority of the sale or transfer. If the new owner or operator is to continue operating the sexually-oriented business, the new owner or operator must immediately apply for a license under this section.

(P) *Inspection.*

(1) *Access.* An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspection division, to inspect the premises of an adult oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(2) *Refusal to permit inspections.* A person who operates an adult oriented business or his or her agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the police department, fire department, and building inspection division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in division (K).

(3) *Exceptions.* The provisions of this section do not apply to areas of an adult motel, which are currently being rented by a customer for use as a permanent or temporary habitation.

(Q) *Expiration and renewal.*

(1) *Expiration.* Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in division (G). Application for renewal must be made at least

60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

(2) *Denial of renewal.* When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(R) *Suspension.*

(1) *Causes of suspension.* The city may suspend a license for a period not to exceed 30 days if it determines that licensee or an employee of a licensee has:

(a) Violated or is not in compliance with any provision of this section.

(b) Engaged in the use of alcoholic beverages while on the adult oriented business premises other than at an adult hotel or motel.

(c) Refused to allow an inspection of the adult oriented business premises as authorized by this section.

(d) Knowingly permitted gambling by any person on the adult oriented business premises.

(e) Demonstrated inability to operate or manage an adult oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(2) *Notice.* A suspension by the city shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least ten-days' notice of the time and place of the hearing and shall state the nature of the charge(s) against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

(S) *Revocation.*

(1) *Suspended licenses.* The City may revoke a license if a cause of suspension in division (K) occurs and the license has been suspended within the preceding 12 months.

(2) *Causes of revocation.* The city shall revoke a license if it determines that:

(a) A licensee gave false or misleading information in the material submitted to the City during the application process;

(b) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) A licensee or an employee has knowingly allowed prostitution on the premises;

(d) A licensee or an employee knowingly operated the adult oriented business during a period of time when the licensee's license was suspended;

(e) A licensee has been convicted of an offense listed in division (M), for which the time period required;

(f) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in division (M), for which a conviction has been obtained, and the person or persons were employees of the adult oriented business at the time the offenses were committed.

(g) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

(3) *Appeals.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(4) *Exceptions.* Division (S)(2)(g) above, does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(5) *Granting a license after revocation.* When the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult oriented business license for one year from the date revocation became effective. If subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under division (M), an applicant may not be granted another license until the appropriate number of years required under this division has elapsed.

(T) *Transfer of license.* A licensee shall not transfer this license to another, nor shall a licensee operate an adult oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. passed 5-7-2002)