

CHAPTER 119: ADULT BUSINESSES

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Cross-reference:

Adult uses and zoning, see 155.003, 155.097

License fees, see 110.34

§ 119.01 PURPOSE.

In order to protect the city's community image, property values, public health, safety, welfare, and business environment, the city has found it necessary to restrict which businesses may locate within the city, and to regulate certain businesses. Only those businesses with secondary effects on neighboring properties and the city are intended to be regulated. This chapter is not intended to restrict or regulate art, or speech based on content. (Ord. 364, passed 12-22-2003)

§ 119.02 DEFINITIONS.

For the purpose of this chapter, the following terms and words are defined in Chapter 155 of the city code: ***ADULT CABARET, ADULT USE - LIMITED, ADULT USE - STANDARD, SEXUALLY ORIENTED MATERIALS, SPECIFIED ANATOMICAL AREAS,*** and ***SPECIFIED SEXUAL ACTIVITIES.*** (Ord. 364, passed 12-22-2003)

119.03 PROHIBITION.

No person shall operate an adult use except in conformity with the provisions of this chapter. (Ord. 364, passed 12-22-2003)

§ 119.04 LICENSES.

(A) *License required.* No person, firm, or corporation shall operate an adult use in the city without having first secured a license as hereinafter provided. Licenses shall be one of two types:

- (1) Adult Use - Standard;
- (2) Adult Use - Limited.

(B) *Applications.* The application for an adult use license shall include:

- (1) The name, residence, phone number and birth date of the applicant, if an individual; and if a corporation, the names, residences, phone numbers and birthdates of those owners holding more than 5% of the outstanding stock of the corporation.
- (2) The name, address, phone number and birth date of the manager of such operation, if different from the owners.
- (3) A description of the premises wherein the adult use is to be located, accompanied by a sketch or diagram showing the configuration of the premises to be licensed, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale.
- (4) A statement detailing any gross misdemeanor or felony relating to a sex offense, as defined in M.S. §§ 609.293 through 609.352, 609.746 through

609.749, 609.79, 518b.01, as they may be amended from time to time, or related statute, 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 5% 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.

- (5) The activities and types of business to be conducted.
- (6) The hours of operation.
- (7) The provisions made to restrict access by minors.
- (8) A building plan of the premises detailing all internal operations and activities.

(C) *License fees.*

- (1) Each application for a license shall be accompanied by a receipt from the City Clerk/Finance Director for payment in full of the required fee for the license as established by City Council resolution from time to time. All fees shall be paid into the general fund of the city. Upon rejection of any application for a license, the Finance Director shall refund the amount paid.
- (2) All licenses shall expire on the last day of June 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 rata fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.
- (3) The annual fee for an adult use license shall be as established by city council resolution from time to time, and shall not exceed the cost of a liquor license for an Adult Use - Standard, and not to exceed 3% of the cost of the liquor license for an Adult Use - Limited.
- (4) No part of the fee paid for any license issued under this chapter shall be refunded except in the following instances upon application to the City Clerk 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:
 - (a) Destruction or damage of the licensed premises by fire or other catastrophe;

- (b) The licensee's illness;
- (c) The licensee's death;
- (d) A change in the legal status making it unlawful for the licensed business to continue.

(D) *Granting of license.*

- (1) The city shall investigate all facts set out in the application.
- (2) 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 place without the approval of the City Council.
- (3) The City Council shall approve the issuance of a license by the City Clerk/Finance Director to an applicant within 60 days after receipt of the complete application for such license, providing that the results of the investigation shall be reported to the City Council, that the person qualifies under division (E) and that the location qualifies under division (F). Refusal to grant the license may be appealed under § 119.08(B).

(E) *Persons ineligible for license.* No license shall be granted or held by any person:

- (1) Under 21 years of age.
- (2) 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 uses.
- (3) Who is not the proprietor of the establishment for which the license is issued.

(F) *Places ineligible for license.*

- (1) No license shall be granted for adult uses on any premises where a licensee 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.
- (2) Except for uses lawfully existing at the time of adoption of this article, no license shall be granted for any adult use which is not in compliance with the city's zoning regulations.

(G) *Nonconforming uses.* Any adult use existing on the effective date of the adoption of this article may be continued subject to the following provisions:

- (1) No such adult use shall be expanded or enlarged except in conformity with the provisions of this chapter.
- (2) A nonconforming adult use shall be required to apply for and receive an adult use license. (Ord. 364, passed 12-22-2003)

§ 119.05 CONDITIONS OF LICENSE.

Every license shall be granted subject to the conditions in the following divisions and all other provisions of this chapter, and of any applicable sections of this code or state law.

(A) All licensed premises shall have the license posted in a conspicuous place at all times. The separate area of an Adult Use - Limited shall be considered the licensed premises.

(B) In the case of an Adult Use - Standard, no minor shall be permitted on the licensed premises.

(C) Access must be provided to the establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license.

(D) Every licensee shall be responsible for the conduct of his place of business and shall maintain conditions of this order.

(E) Activities classified as obscene as defined by M.S. § 617.241, as it may be amended from time to time, are not lawful. (Ord. 364, passed 12-22-2003)

§ 119.06 CONDITIONS OF LICENSE, ADULT USE - PRINCIPAL.

An Adult Use - Standard business is subject to the following restrictions and regulations:

(A) No owner, manager, or employee shall allow any sexually oriented materials or entertainment to be visible or perceivable in any manner, including aurally, at any time from outside of the business.

(B) The business owner, manager, or employee shall assure that no person under the age of 18 enters the business.

(C) No owner, manager, or employee shall allow any person under the age of 18 to have access to sexually oriented materials, whether by sight, purchase, touch, or any other means.

(D) Except for empty boxes, or containers associated with the rental of electronic media including video games and movies, no owner, manager, or employee may sell or display for sale any sexually oriented materials except in original unopened packages.

(E) No owner, manager, or employee of a high impact business shall have been convicted of a sex crime, as identified in M.S. §§ 609.293 through 609.352, 609.746 through 609.749, 609.79, 518B.01, as they may be amended from time to time, or related statute dealing with sexual assault, sexual conduct, harassment, obscenity, or domestic abuse.

(F) Each business shall display a sign on its main entrance door which reads: This business sells sexually oriented material or entertainment. Persons under the age of 18 are prohibited from entering. The sign letters shall be a minimum of two inches high.

(G) No business may have a license under Chapter 117 of this code, and no alcoholic beverages may be consumed in the business. (Ord. 293, 12/13/2004)

(H) No business shall exceed 10,000 square feet in gross floor area.

(I) No patron, employee, or other person may physically contact any specified anatomical area of himself or herself, or of any other person, except that a live performer may touch himself or herself.

(J) No business shall have any booths, stalls, or partitions unless such booths, stalls, or partitions have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Such areas shall be lighted in such a manner that the persons inside the booth, stall, or partition are clearly visible from the adjacent public room. Seating or reclining surfaces inside such areas are prohibited. No more than one person may occupy any partitioned area, booth, stall, or other similar area at one time. The restrictions of this paragraph do not apply to restrooms, storage rooms, or private offices of the owner, manager, or employees of the business, if such storage rooms or offices are used solely for running the business and no person other than the owner, manager, and employees is allowed in the storage rooms or offices. (Ord. 364, passed 12-22-2003)

§ 119.07 CONDITIONS OF LICENSE, ADULT USE - LIMITED.

An Adult Use - Limited is subject to the following restrictions and regulations:

(A) All sexually oriented materials must be provided only for use or entertainment off the business premises;

(B) All sexually oriented materials must be provided from a separate area to which persons under the age of 18 are prohibited access;

(C) The separate area may not exceed a maximum of 20% of the retail floor area of the establishment, or 300 square feet, whichever is less;

(D) No person outside the separate area shall be able to perceive or observe any sexually oriented materials at any time, including when someone is entering or exiting the separate area, shopping, or purchasing sexually oriented materials;

(E) A sign must be displayed on the entrance to the separate area, which shall read: No one under 18 permitted. The sign letters shall be a minimum of one inch high;

(F) The entry into the separate area shall be visible to an employee of the business at all times;

(G) The business owner, manager, or employee shall assure that no person under the age of 18 enters the separate area where sexually oriented materials are provided;

(H) No owner, manager, or employee shall allow any person under the age of 18 to have access to any sexually oriented materials, whether by sight, purchase, touch, or any other means;

(I) No owner, manager, or employee may sell or display for sale any sexually oriented materials except in original unopened packages;

(J) No business may have a license under Chapter 117 of this code other than an off sale license for non-intoxicating malt liquor. (Ord. 364, passed 12-22-2003)

§ 119.08 REVOCATION, SUSPENSION OR NON-RENEWAL OF LICENSE.

(A) The license may be revoked, suspended, or not renewed by the city council upon recommendation of the City Clerk by showing that the licensee, its owners, managers, employees, agents or any other interested parties have engaged in any of the following conduct:

- (1) Fraud, deception or misrepresentation in connection with the securing of the license.
- (2) Engaging in conduct involving moral turpitude or permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers, or employees in engaging in conduct involving moral turpitude.
- (3) Failure to fully comply with any requirements of the ordinances of the city regarding sanitary and safety conditions, zoning requirements, building code requirements or ordinances, the violation of which involves moral turpitude, or failure to comply fully with any requirements of this article.
- (4) Conviction of an offense involving moral turpitude.
- (5) Sale of any material, device, or item to any minor which is prohibited by state law.

(B) The license holder may appeal such suspension, revocation or non-renewal to the City Council. The Council shall consider the appeal at a regularly scheduled public hearing on or after ten days from service of the notice of appeal to the City Clerk. At the conclusion of the

hearing, the Council may order:

- (1) That the revocation, suspension or non-renewal be affirmed.
- (2) That the revocation, suspension or non-renewal be lifted and that the license be returned to the license holder.
- (3) The city council may base either suspension or issuance of the certificate upon any additional terms, conditions, and stipulations which they may, in their sole discretion, impose. (Ord. 364, passed 12-22-2003)

§ 119.09 ADDITIONAL CONDITIONS.

(A) The City Council, upon recommendation of the Planning Commission, may make or propose such other conditions and restrictions on adult uses as the City Council deems from time to time to be appropriate, where such restrictions or regulations are designed to protect the general health, safety and welfare of the public.

(B) In all other ways the city code will remain in full force and effort.

(C) This ordinance will be in full force and effect from and after its passage and publication according to law. (Ord. 364, passed 12-22-2003)

§ 119.10 EXCEPTIONS.

This chapter does not regulate the following:

(A) Any material with significant literary content or social commentary.

(B) A business where sexually oriented materials are sold, bartered, distributed, leased, furnished, or otherwise provided for off-site use or entertainment, if:

- (1) The material harmful to minors on each item is blocked from view by an opaque cover as required under M.S. § 617.293, as it may be amended from time to time, and
- (2) Each item is behind the counter and accessible only by an employee of the business.

(C) Displays of sexually oriented materials or performances may occur up to three times per year without rendering a business a high impact business, only if the displays are limited to an area which has been leased to a person or business for their exclusive occupancy for a private party, and the only people in attendance have received advance invitation from that person or company. No such events shall take place between 1:00 a.m. and 7:00 a.m. When such events end on a given day, it shall be counted as one of the allowed times per year.

(D) Any person or organization exempted under M.S. § 617.295, as it may be amended from time to time.

(E) Any activity regulated under M.S. § 617.251, as it may be amended from time to time.

(F) Any business may display works of art showing specified anatomical areas, so long as no sexually oriented materials are for sale.

(G) Movies rated G, GP, PG13, or R. (Ord. 364, passed 12-22-2003)

§ 119.99 PENALTY.

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. (Ord. 364, passed 12-22-2003)