

## **CHAPTER 117: ADULT USE BUSINESS REGULATIONS**

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### **§ 117.01 PURPOSE.**

The City Council finds that the nature of adult uses is such that they are recognized as having adverse secondary characteristics, particularly when they are accessible to minors, and located near residential property or related residential uses such as schools, day care centers, libraries or parks.

Furthermore, the concentration of adult uses has an adverse and chilling effect upon the use and enjoyment of adjacent area. The nature of adult uses requires that they not be allowed within certain zoning districts, or within minimum distances from each other or residential uses. Special regulation of adult uses is necessary to ensure that the adverse secondary effects not contribute to or enhance criminal activity in the area of such uses or contribute the blighting or downgrading of the surrounding property and lessening of its value.

(Ord. 344, passed 4-15-04)

## **§ 117.02 DEFINITIONS.**

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

***ADULT ORIENTED BUSINESS/ADULT USE BUSINESS.*** Any business engaged in adult uses.

***ADULT USES.*** Adult uses include adult bookstores, adult motion picture theaters, adult picture rental, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse sauna facilities, adult clubs, adult cabarets, adult companionship establishments, adult rap/conversation parlors, adult health sport clubs, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, business or places open to some or all members of the public, or in which there is an emphasis on the presentation, display, depiction or description of “specified sexual activities” or “specified anatomical areas” which are capable of being seen by members of the public. This includes bars and/or businesses where upper and/or lower extremities are exposed, nude dancing, strip clubs, and dancing establishments with any type of partial or full nudity.

***ADULT USE - 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.”

***ADULT USE - BOOKSTORE, VIDEO STORE, OR ADULT STORE.*** A commercial establishment which as a principal business purpose offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe “specified sexual activities” or “specified anatomical areas”; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

***ADULT USE CABARET.*** A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

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- (1) Persons who appear semi-nude or in a state of nudity; or
- (2) Live performances which are characterized by the exposure of Aspecified anatomical areas@ or by “specified sexual activities”; or
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction of “specified sexual activities” or “specified anatomical areas.

***ADULT USE - COMPANIONSHIP ESTABLISHMENT.*** An establishment 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.”

***ADULT USE - CONVERSATION/RAP PARLOR.*** A conversation/rap business which offers to engage customers in 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.”

***ADULT USE - HEALTH/SPORT CLUB.*** A health/sport club which is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

***ADULT USE - HOTEL OR MOTEL.*** A hotel or motel or similar establishment, which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

***ADULT USE - MASSAGE PARLOR, HEALTH CLUB.*** A massage parlor or health club which provides the services of massage, if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

***ADULT USE - MINI-MOTION PICTURE THEATER.*** A building or portion of a building with a capacity for less than 50 people used for presenting material if such material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

***ADULT USE - 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 “specified anatomical areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

***ADULT USE - 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 customer 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 USE - MOTION PICTURE THEATER.*** A building or portion of a building with a capacity of 50 or more people used for presenting material via still or motion picture machine, projectors, or other image producing devices to show images to customers or guests if such material is distinguished or characterized by an emphasis on depicting or describing “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

***ADULT USE - 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.

***ADULT USE - SAUNA.*** A sauna 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.”

***ADULT USE - 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 the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.”

***DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON.*** The dominant or principal theme of the object referenced. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or display of specified anatomical areas, or specified sexual activities.”

***ESTABLISH OR ESTABLISHMENT.*** Includes any of the following:

- (1) The opening or commencement of any adult use business as a new business;
- (2) The conversion of an existing business, whether or not an adult use business, to any adult use business;

- (3) The addition of any adult use business to any other existing adult use business; or
- (4) The relocation of any adult use business.

**LICENSEE.** A person in whose name a license to operate an adult use business has been issued, as well as the individual listed as an applicant on the application for a license.

**NUDITY, NUDE OR STATE OF NUDITY.** Means:

- (1) The appearance of a human bare anus, male genitals, female genitals, or female breast; or
- (2) A state of dress which fails to opaquely cover a human anus, male genitals, female genitals, or areola of the female breast.

**OPERATE OR TO CAUSE TO BE OPERATED.** To cause to function or to put or keep in a state of doing business.

**OPERATOR.** Any person on the premises of an adult use business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated an adult use business regardless of whether that person is an owner, part owner, or licensee of the business.

**PERSON.** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**REGULARLY FEATURES OR REGULARLY SHOWN.** A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult use business.

**SEMI-NUDE OR IN A SEMI-NUDE CONDITION.** A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

**SPECIFIED ANATOMICAL AREAS.**

- (1) Less than completely and opaquely covered human genitals pubic region, buttock, anus or female breasts below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES.*** Includes any of the following:

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, 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, intercourse, necrophilia, oral copulation, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty; or

(2) Actual or simulated of any of the following: use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

(3) Fondling or touching of nude human genitals, pubic region, buttocks, or female breast; or

(4) Situations involving a person or persons, 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 persons; or

(5) Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or

(6) Human excretion, urination, menstruation, vaginal or anal irrigation;

(7) Excretory functions as part of or in connection with any of the activities set forth in (1) through (6) above.

***SUBSTANTIAL ENLARGEMENT.*** Substantial enlargement of an adult use business means the increase in floor area occupied by the business by more than 25%, as the floor area existed on the effective date of Ord. 344.

***TRANSFER OF OWNERSHIP OR CONTROL.*** Transfer of ownership or control of an adult use business means and includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 344, passed 4-15-04)

**§ 117.03 LICENSE REQUIRED.**

(A) *Prohibition.* No adult oriented business shall be operated or maintained in the city without first obtaining a license to operate issued by the city.

(B) A license may be issued for only one adult oriented business located at a fixed and certain place and/or lot. Any person, partnership or corporation which desires to operate more than one adult use business shall have a separate license for each such business.

(C) No state licensed public or private school located within the city shall be deemed subject to any city licensing requirements or other restrictions made in terms of this chapter when instructing pupils in sex education as part of its standard curriculum.

(Ord. 344, passed 4-15-04)

**§ 117.04 APPLICATION FOR LICENSE.**

(A) Any person, partnership or corporation or other legal entity desiring to secure a license under this chapter shall make application to the City Manager.

(B) The application for a license shall be upon a form provided by the city.

(C) An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this chapter. The application shall be notarized. The application shall include the information called for in subsections (1) through (6), and where applicable, subsection (7), as follows:

(1) The full true name and any other names used in the preceding five years.

(2) The current business address.

(3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this chapter, or the applicant's Social Security Number, to be used for the same purpose.

(4) The name, business location, legal description, business mailing address and phone number of the proposed adult use business.

(5) Written proof of age, in the form of either a copy of a birth certificate and a current photo; a current driver's license with picture; or other picture identification document issued by a government agency.

(6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to an adult use business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor.



(7) The name and address of the statutory agent or other agent authorized to receive service of process.

The information provided pursuant to subsections (1) through (7) shall be supplemented in writing by certified mail, return receipt requested, to the City Manager within 10 working days of a change of circumstances which would render the information originally submitted false or incomplete.

(D) *Diagram of premises.* The application for an adult use business license must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with market dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with § 117.18 of this chapter shall submit a diagram meeting the requirements of that section.

(E) *Inspections.* The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the fire department and building official.

(F) *Execution of application.* If a person who wishes to operate an adult use business is an individual, the individual must sign the application for a license as applicant. If a person who wishes to operate an adult use business is other than an individual, each individual who has a 10% or greater interest in the business, and each officer, director, general partner, or other person who will participate directly in decisions relating to management of the business must sign the application for a license as applicant. Each applicant must be qualified under § 117.05 and each applicant shall be considered a licensee if a license is granted.

(G) *No exemption.* A person who possesses a valid business license is not exempt from the requirement of obtaining any required adult use business license. A person who operates an adult use business and possesses a business license shall comply with the requirements and provisions of this chapter, where applicable.

(Ord. 344, passed 4-15-04)

## **§ 117.05 ISSUANCE OF LICENSE.**

(A) *Temporary license.* Upon the filing of a completed application for an adult use business license, the city shall issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the city to deny or grant the license.

(B) *Approval of license.* Within 45 days after the receipt of a completed application, the city shall either issue a license, or issue a written notice of intent to deny a license to the applicant. The city shall approve the issuance of a license unless one or more of the following is found to be true:

- (1) An applicant is under 18 years of age.

(2) An applicant is delinquent in the payment to the city of taxes, fees, fines, or penalties assessed against him or her or imposed upon him or her in relation to an adult use business.

(3) An applicant has failed to provide information required under § 117.04, or which is necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(4) An applicant has been convicted of a violation of a provision of this chapter within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(5) The premises to be used for the adult use business have not been approved by the fire department and the building official as being in compliance with applicable laws and ordinances.

(6) The license fee required by this chapter has not been paid.

(7) An applicant or the proposed establishment is in violation of, or is not in compliance with this chapter.

(8) An applicant has been convicted of a crime:

(a) Involving any of the following offenses:

1. Prostitution as described in M.S. § 609.321, as may be amended from time to time;

2. Solicitation, inducement of promotion of prostitution as described in M.S. § 609.322, as may be amended from time to time;

3. Receiving profit derived from prostitution as described in M.S. § 609.323, as may be amended from time to time;

4. Other prohibited acts relating to prostitution as described in M.S. § 609.324 as may be amended from time to time;

5. Obscenity as described in M.S. § 617.241, as may be amended from time to time;

6. Sale, dissemination, distribution, display or exhibition of harmful materials to minors as described in M.S. §§ 617.293 and 617.294, as may be amended from time to time;

7. Sexual performance by a child as described in M.S. § 617.246, as may be amended from time to time;

8. Dissemination or possession of child pornography as described in M.S. § 617.247, as may be amended from time to time;

9. Indecent exposure as described in M.S. § 617.23, as may be amended from time to time;

10. Criminal sexual conduct as described in M.S. §§ 609.342, 609.343, 609.344, and 609.345, as may be amended from time to time;

11. Incest, as described in M.S. § 609.365, as may be amended from time to time; or

12. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses:

(b) For which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24 month period.

(9) The proposed adult use business would or does not comply with the city's Zoning Ordinance.

(C) *Conviction.* The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant. For purposes of this chapter, Aconviction@:

(1) Means a conviction or a guilty plea; and

(2) Includes a conviction of any business entity for which the applicant had, at the time of the offense leading to the conviction for a crime designated under this section, a management responsibility or a controlling interest.

(D) *Time Periods.* An applicant who has been convicted of an offense listed in § 117.05(B)(8)(a) may qualify for an adult use business license only when the time period required by § 117.05(B)(8)(b) has elapsed.

(E) *License information and posting.* The license, if granted, shall state the name of the person or persons to whom it is granted, the expiration date and the address of the adult use business. The license shall be posted in a conspicuous place at or near the entrance to the adult use business so that it may be easily read at any time.

(Ord. 344, passed 4-15-04)

#### **§ 117.06 LICENSE FEES.**

The investigation fee and annual license fee for an adult use business license shall be set by the City Council. Said investigation fee shall be escrowed with the city prior to the initiation of the investigation, and the city shall draw on the escrow account for costs incurred in performing the background investigation. The city shall maintain a detailed record of such costs and furnish the applicant with a copy of the record. Any remaining funds in the escrow account shall, at the conclusion of the investigation, be returned to the applicant. In the event that the application is denied, the license fee shall be refunded.

(Ord. 344, passed 4-15-04)

#### **§ 117.07 INSPECTIONS.**

(A) *Inspection required.* An applicant, operator, or licensee shall permit law enforcement officers and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this chapter, normally and arguably conducted by such agencies to inspect the premises of an adult use business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) *Refusal.* A person who operates an adult use business or their agent or employee commits an offense if the person refuses to permit a lawful inspection of the premises by a representative of the city at any time it is occupied or open for business.

(C) *Exception.* 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.

(Ord. 344, passed 4-15-04)

#### **§ 117.08 EXPIRATION AND RENEWAL OF LICENSE.**

(A) Every license issued pursuant to this chapter shall expire at 12:00 midnight on December 31 of each year unless sooner revoked by the City Council, and must be renewed before operation is allowed in the following year.

(B) Applications for renewal must be submitted with the annual license fee to the City Manager no later than 60 days before the license expires. When an application for renewal is made less than 60

days prior to the expiration date, the license will expire and a new application for a license will need to be applied for. If the City Manager determines good and sufficient cause is shown by the applicant for failure to file a timely renewal application, the City Manager may, if other provisions of the chapter are complied with, accept the application.

(C) Renewal licenses may be issued by the City Council unless the Council finds cause for not renewing the license.

(D) No license for which application for renewal has been timely made shall be deemed to expire until the City Council has rendered its decision not to renew a license.

(E) If 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.

(Ord. 344, passed 4-15-04)

#### **§ 117.09 SUSPENSION OF LICENSE.**

The city may suspend a license for a period not to exceed 30 days following written notice and an opportunity to be heard if the city determines that a licensee or an employee of a licensee has:

(A) Violated or is not in compliance with this chapter;

(B) Refused to allow an inspection of the adult use business premises as authorized by this chapter;  
or

(C) Knowingly permitted unlawful gambling by any person on the adult use business premises.  
(Ord. 344, passed 4-15-04)

#### **§ 117.10 REVOCATION OF LICENSE.**

(A) *Intent to revoke.* The city shall issue a written statement of intent to revoke an adult use business license if a cause of suspension in § 117.09 occurs and the license has been suspended within the preceding 12 months.

(B) *Basis for revocation.* The city shall issue a written statement of intent to revoke an adult use business license if the city determines that:

(1) A licensee gave false or misleading information to the city during the application process;

(2) A licensee or operator has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee or operator has knowingly allowed prostitution on the premises;

(4) A licensee or operator knowingly operated the adult use business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in § 117.05(B)(8)(a) for which the time period required in § 117.05(B)(8)(b) has not elapsed;

(6) 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 § 117.05(B)(8)(a), for which a conviction has been obtained, and the person or persons were employees of the adult use business at the time the offenses were committed;

(7) A licensee or operator has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the meaning as it is defined in M.S. § 609.341, subd. 11(b), as may be amended from time to time. This subsection shall not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either in exchange for money or in a public place or with public view; or

(8) A licensee is delinquent in payment to the city for ad valorem taxes, local lodging tax, or other taxes or fees related to the adult use business.

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

(D) *Exception.* Section 117.10(B)(7) 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.

(E) *Provisional license.* When, after the notice and hearing procedure described in § 117.11, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult use business license for one year from the date revocation became effective, provided that, if the conditions of § 117.11(E) are met, a Provisional License shall be granted pursuant to that section. 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 § 117.10(B)(7), an applicant may not be granted another license until the appropriate number of years required under § 117.05(B)(8)(b) have elapsed.

(Ord. 344, passed 4-15-04)

## **§ 117.11 HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL.**

(A) *Notification.* If the City Manager determines that facts exist for denial, suspension, or revocation of a license under this chapter, the City Manager shall notify the applicant or licensee

("respondent") in writing of the intent to deny, suspend, or revoke the license, including the grounds therefor, by personal delivery or by certified mail. The notification shall be directed to the most current business address on file with the city. Within five working days of receipt of such notice, the respondent may provide to the City Manager, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three days of the receipt of respondent's written response, the City Manager shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

(B) *Appeal and hearing.*

(1) Within 10 working days of the receipt of respondent's written response, the city shall conduct a hearing on respondent's appeal of the City Manager's decision. The City Council may appoint a committee of the Council or an independent hearing officer to hear the matter, report findings of fact and a recommendation for disposition to the Council. Hearings on the appeal shall be open to the public and the licensee or applicant shall have the right to appear and be represented by legal counsel and to offer evidence in its behalf. At the conclusion of the hearing, the City Council shall make a final decision. If a response is not received by the city in the time stated or, if after the hearing, the city finds that grounds as specified in this chapter exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five days after the city sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

(2) If the City Council finds that no grounds exist for denial, suspension, or revocation of a license, then within five days after the hearing, the City Manager shall withdraw the intent to deny, suspend, or revoke the license, and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously issue the license.

(C) *Judicial review.* Any decision of the City Council shall be a final appealable order and the applicant or licensee ("aggrieved party") may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(D) *Stay of decision.* The filing of an appeal stays the action and decision of the City Council requiring, denying, suspending or revoking a license until 60 days after a final decision by the City Council, to provide the aggrieved party sufficient time to appeal the City Council's decision to a court of competent jurisdiction. If the aggrieved party appeals the City Council's decision within the 60 days provided, the stay shall be extended until a final judicial decision is rendered in the matter.

(E) *Provisional license.* Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension, revocation, or licensure requirement, the city shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the adult use business or to continue employment as an adult use employee, as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement.

(F) *Additional requirements.* The City Council may condition denial, suspension, revocation, or non-renewal of a license upon appropriate terms and conditions.  
(Ord. 344, passed 4-15-04)

#### **§ 117.12 TRANSFER OF LICENSE.**

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult use business under the authority of a license at any place other than the address designated in the application.  
(Ord. 344, passed 4-15-04)

#### **§ 117.13 RESPONSIBILITIES OF LICENSEE.**

(A) Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the licensee if such act of 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 conduct, and the licensee shall be punished for such act or omission in the same manner as if the licensee committed the act or caused the omission.

(B) Any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the licensee for purposes of determining whether the licensee's license shall be revoked, suspended or renewed.

(C) No employee of an adult oriented business shall allow any minor to loiter around or to frequent an adult oriented business or to allow any minor to view adult entertainment.

(D) The licensee shall maintain the premises in a clean and sanitary manner at all times.

(E) The licensee shall maintain at least 10 foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than 1 foot candle of illumination in said aisles as measured from the floor.

(F) All business transactions shall occur within the licensed building.

(G) No employee shall have been convicted of any felony involving moral turpitude, prostitution, obscenity or other crime of a sexual nature or involving the use of distribution of a controlled substance as defined by Minnesota laws, or the use or distribution of a dangerous weapon. The fact that a conviction may be under appeal shall not affect the disqualification of the employee.

(H) The operator shall ensure compliance of the establishment and its employees, contractors, and patrons with the provisions of the chapter.  
(Ord. 344, passed 4-15-04)



**§ 117.14 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.**

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if he or she acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 344, passed 4-15-04)

**§ 117.15 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.**

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person commits an offense if he or she appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(Ord. 344, passed 4-15-04)

**§ 117.16 ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.**

(A) A person commits an offense if he or she knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(B) It is a defense to possible prosecution under division (A) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(Ord. 344, passed 4-15-04)

**§ 117.17 ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an adult use business license, he or she rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he or she rents or subrents the same sleeping room again.

(C) For purposes of division (B) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. 344, passed 4-15-04)

**§ 117.18 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, OR LIVE ENTERTAINMENT IN VIEWING ROOMS.**

(A) *Requirements.* A person who operates or causes to operate an adult use business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts Aspecified sexual activities@ or Aspecified anatomical areas@, shall comply with the following requirements:

(1) Upon application for an adult use business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city or its designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in division (A)(5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to division (A)(1) of this section.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot candle as measured at the floor level.

(8) It shall be the duty of the licensee, owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(9) No viewing room may be occupied by more than one person at any time.

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist and shall cover or repair all openings or holes within 24 hours.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within 48 inches of the floor.

(B) *Misdemeanor.* A person having a duty under divisions (A)(1) through (A)(14) above commits a misdemeanor if the person knowingly fails to fulfill that duty.  
(Ord. 344, passed 4-15-04)

## **§ 117.19 GENERAL RESTRICTIONS FOR CONDUCT WITHIN AN ADULT USE BUSINESS.**

(A) *Distance requirement for live entertainment.* All performers, dancers, and persons appearing in a semi-nude condition or 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 such entertainment can be seen by patrons of the licensed facility shall remain at all times a minimum distance of six 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.

(B) *Interaction with patrons.* No dancer, performer, or person while semi-nude or 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 knowingly or intentionally touch any spectator or patron or the clothing of any spectator or patron.

(C) *Gratuity prohibition.* No customers, spectator, or patron of a licensed facility shall directly pay or give any gratuity to any dancer or performer in a semi-nude condition and no dancer or performer in a semi-nude condition shall solicit or receive any pay or gratuity directly from any patron or spectator.

(D) *Hours of operation.* No adult use business, except for an adult motel, may remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 12:00 p.m. on Sundays.

(Ord. 344, passed 4-15-04)

#### **§ 117.20 ADDITIONAL REGULATIONS PROHIBITING PUBLIC NUDITY.**

It shall be a misdemeanor for a person to knowingly and intentionally, in an adult use business, appear in a state of nudity or engage in "specified sexual activities".

(Ord. 344, passed 4-15-04)

#### **§ 117.21 VIOLATIONS AND PENALTIES.**

(A) Any individual, partnership or corporation who is found to have violated the provisions of this chapter shall be guilty of a misdemeanor and shall also be subject to revocation of any license as provided under this chapter.

(B) Each violation of this chapter shall be considered a separate offense and any violation continuing more than one day shall be considered a separate offense.

(C) The city may, regardless of the status of any criminal prosecution of and alleged violation of this chapter, enforce any provision of this chapter by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.

(Ord. 344, passed 4-15-04)

#### **§ 117.22 SEVERABILITY.**

If any section or portion of any section of this chapter is found to be invalid or unconstitutional by a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other sections or portions of sections of this chapter. The City Council hereby declares that it would have

adopted Ord. 344 and each subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

(Ord. 344, passed 4-15-04)

#### **§ 117.23 PROHIBITION AGAINST CHILDREN IN A PRINCIPAL ADULT USE BUSINESS.**

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of an adult use business.

(Ord. 344, passed 4-15-04)

#### **§ 117.24 ENFORCEMENT.**

Members of the Milaca Police Department, Milaca Fire Department, the Fire Marshal, or her/his designee, the Building Official, or his/her designee, Zoning Administrator, or his/her designee, or the City Manager, or his/her designee, shall have the authority to enter any adult oriented business at all reasonable times to inspect the premises for the purposes of enforcing this chapter and all other applicable state laws, fire codes and building codes.

(Ord. 344, passed 4-15-04)