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**CHAPTER 6****BUSINESS REGULATIONS AND LICENSES****645. ADULT ESTABLISHMENTS**

**Section 645.01 Findings and Purpose.** Studies conducted by the Minnesota Attorney General, the American Planning Association, and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Hopkins, Minnesota; Ramsey, 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 impacts on the surrounding neighborhoods. These impacts include increased crime rates, lower property values, increased transiency, neighborhood blight, and potential health risks. In addition, medical publications of the Center for Disease Control of the United States Department of Health and Human Services indicate that the sexually transmittable disease of AIDS is currently irreversible and uniformly fatal. Medical research has further established that the risk factors for obtaining or spreading AIDS are associated with high-risk sexual conduct. Based on these studies and findings, the city council concludes:

- (a) Adult establishments have adverse secondary impacts of the types set forth above.
- (b) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by geographic, licensing, and health requirements.
- (c) It is not the intent of the city council to prohibit adult establishments from having a reasonable opportunity to locate in the city.
- (d) Certain commercial premises, buildings, and structures, or parts thereof, by reason of their design and use, are conducive to high-risk sexual conduct and hence the spread of communicable disease, and that the risk of spreading infectious and contagious diseases can be minimized by regulating these commercial premises, buildings, and structures.
- (e) Minnesota Statutes, section 462.357, allows the city to adopt regulations to promote the public health, safety, morals and general welfare.
- (f) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.
- (g) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing commercial premises, buildings, and structures conducive to high-risk sexual conduct.

**Section 645.03 Definitions.** The following terms have the meanings given them below.

**Subd. 1. Adult Establishment:**

- (a) any business that is conducted exclusively for the patronage of adults and that excludes minors from patronage, either by operation of law or by the owners of the business, except any business licensed under sections 625 or 630 of the Medina City Code;
- (b) any business that (1) has at least one-third of its inventory, stock and trade, or publicly displayed merchandise, or (2) has at least one-third of the floor area of the business (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) devoted to items, merchandise, or other materials distinguished or characterized by an emphasis on material depicting, exposing, describing, discussing, or relating to specified sexual activities or specified anatomical areas, or (3) derives at least one-third of any month's gross sales from the sale or rental of items, merchandise, or material distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas; or
- (c) any business that engages in any adult use as defined in subdivision 2 of this section.

**Subd. 2. Adult Use.** An adult use is any of the following activities or businesses:

- (a) **Adult Body Painting Studio or Tattoo Parlor:** An establishment or business that provides the service of applying paint, tattoo ink, or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.
- (b) **Adult Bookstore:** An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if the business is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or that (1) has at least one-third of its inventory, stock and trade, or publicly displayed merchandise, or (2) has at least one-third of the floor area of the business (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) devoted to items, merchandise, or other materials distinguished or characterized by an emphasis on material depicting, exposing, describing, discussing, or relating to specified sexual activities or specified anatomical areas, or (3) derives at least one-third of any month's gross sales from the sale or rental of items, merchandise, or material distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (c) **Adult Cabaret:** A business or establishment that provides dancing or other live entertainment that is distinguished and characterized by an emphasis on the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.
- (d) **Adult Companionship Establishment:** A business or establishment that excludes minors by reason of age, and that provides the service of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

- (e) **Adult Conversation/Rap Parlor:** A business or establishment that excludes minors by reason of age, and that provides the services of engaging in or listening to conversation, talk, or discussion distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (f) **Adult Health/Sport Club:** A health/sport club that excludes minors by reason of age, and that is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (g) **Adult Hotel or Motel:** A hotel or motel that excludes minors by reason of age, and that presents material distinguished and characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.
- (h) **Adult Massage Parlor/Health Club:** A massage parlor or health club that excludes minors by reason of age, and that provides massage services distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (i) **Adult Mini-Motion Picture Theater:** A business or establishment with a capacity or less than 50 persons that presents material distinguished and characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.
- (j) **Adult Modeling Studio:** A business or establishment that provides figure models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted.
- (k) **Adult Motion Picture Arcade:** Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished and characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.
- (l) **Adult Motion Picture Theater:** A motion picture theater with a capacity of 50 or more persons that as a prevailing practice excludes minors by reason of age or that as a prevailing practice presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

- (m) **Adult Novelty Business:** A business that as a principal activity sells material or devices that stimulate human genitals, are designed for sexual stimulation, or that depict or relate to specified anatomical areas or specified sexual activities.
- (n) **Adult Sauna:** A sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (o) **Adult Steam Room/Bathhouse Facility:** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, if the building or portion of a building restricts minors by reason of age and if the service provided by the steam room/bathhouse facility is distinguished and characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Subd. 3. Booths, stalls, or partitioned portions of a room or individual room:**

- (a) enclosures specifically offered to persons for a fee or as an incident to performing high-risk sexual conduct; or
- (b) enclosures which are part of a business operated on the premises that offers movies or other entertainment to be viewed within the enclosure, including enclosures in which movies or other entertainment are dispensed for a fee; but not including
- (c) private offices that are used by the owners, managers, or persons employed by the premises for attending to the tasks of their employment, and that are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.

**Subd. 4. Doors, curtains or portal partitions:** Full, complete, non-transparent closure devices through which activity taking place within the enclosure cannot be seen.

**Subd 5. Hazardous site:** Any commercial premises, building or structure, or any part thereof, that is a site of high-risk sexual conduct as defined herein.

**Subd. 6. High-risk sexual conduct:**

- (a) fellatio;
- (b) anal intercourse; and
- (c) vaginal intercourse with a person who engages in sexual acts in exchange for money.

**Subd. 7. Nude or Specified Anatomical Areas include:**

- (a) Less than completely and opaquely covered human genitals, pubic regions, buttocks, anuses, or female breasts below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Subd. 8.** Open to an adjacent public room so that the area inside is visible to persons in the adjacent public room: Either the absence of any entire door, curtain or portal partition, or a door or other device which is made of transparent material such as glass, plexiglass, or other similar material that meets building code and safety standards, and that allows the activity inside the enclosure to be entirely seen by a person outside the enclosure.

**Subd. 9. Public health official:** An agent or employee of the city, county or state charged with the enforcement of the state or local health laws.

**Subd. 10. Specified Sexual Activities.**

- (a) Actual or simulated: sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation of unclothed genitals; flagellation or torture in the context of a sexual relationship; the use of excretory functions in the context of a sexual relationship; anilingus; buggery; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pederasty; pedophilia; piquerism; sapphism; or zooerastia;
- (b) Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;
- (c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;
- (d) Fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts;
- (e) Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged the flagellation, torture, fettering, binding, or other physical restraint of any person;
- (f) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
- (g) Human excretion, urination, menstruation, or vaginal or anal irrigation.

**Subd. 11. Youth Facility:** Any facility or outdoor area where a substantial portion of its use or programs are devoted to or offered for activities or recreation for minors, regardless of whether the facility is public or private. Such facilities include, but are not limited to, playgrounds, swimming pools, libraries or day care facilities.

**Section 645.05. Location.** No Adult Establishment may be located less than 1000 feet from any

residential zoning district boundary or from the property line of a site used for residential purposes, or less than 1000 feet from the property line of any church site, any school site, any day care facility, any youth facility or any park. In addition, no Adult Establishment may be located within 1000 feet of another Adult Establishment. For purposes of this ordinance, this distance shall be a horizontal measurement from the nearest existing residential district boundary or the property line of any site used for residential purposes, church site, school site, day care site, youth facility, park site, or another Adult Establishment site to the nearest property line of the proposed Adult Establishment site.

**Section 645.07 Hours of Operation.** No Adult Establishment may be open to the public between the hours of 10:00 p.m. and 8:00 a.m.

**Section 645.09. Additional Conditions for Adult Cabarets.** The following additional conditions apply to adult cabarets:

- (a) No owner, operator, or manager of an adult cabaret may allow any dancer or other live entertainer to display specified anatomical areas;
- (b) No dancer, live entertainer, performer, patron, or any other person may display specified anatomical areas in an adult cabaret;
- (c) The owner, operator, or manager of an adult cabaret must provide the following information to the city concerning any person who dances or performs live entertainment at the adult cabaret: The person's name, home address, home telephone number, date of birth, and any aliases;
- (d) No dancer, live entertainer, or performer may be under 18 years old;
- (e) All dancing or live entertainment must occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor;
- (f) No dancer or performer may perform any dance or live entertainment closer than 10 feet to any patron;
- (g) No dancer or performer may fondle or caress any patron and no patron may fondle or caress any dancer or performer;
- (h) No patron may pay or give any gratuity to any dancer or performer; and
- (i) No dancer or performer may solicit or accept any pay or gratuity from any patron.

**Section 645.11 License Required.**

**Subd. 1.** No person may own or operate an Adult Establishment without having first secured a license as provided for in this subsection.

**Subd. 2. Application:** The application for an Adult Establishment license must be submitted

on a form provided by the city and must include:

- (a) If the applicant is an individual, the name, residence, phone number, and birth date of the applicant. If the applicant is a partnership, the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation, the names, residences, phone numbers, and birth dates of all persons holding more than five (5) percent of the issued and outstanding stock of the corporation;
- (b) The name, address, phone number, and birth date of the operator and manager of the Adult Establishment, if different from the owners;
- (c) The address and legal description of the premises where the Adult Establishment is to be located;
- (d) A statement detailing any gross misdemeanor or felony convictions relating to sex offenses, obscenity, or the operation of an Adult Establishment or adult business by the applicant, operator, or manager, and whether or not the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in another community. In the case of a corporation, a statement detailing any felony convictions by the owners of more than five (5) percent of the issued and outstanding stock of the corporation, and whether or not those owners have ever applied for or held a license to operate a similar type of business in another community;
- (e) The activities and types of business to be conducted;
- (f) The hours of operation;
- (g) The provisions made to restrict access by minors; and
- (h) A building plan of the premises detailing all internal operations and activities.

**Subd. 3. License Fee:**

- (a) The annual license fee shall be established by the city council by resolution.
- (b) Each application for a license must be submitted to the city clerk-treasurer and accompanied by payment in full of the required license fee. Upon rejection of any application for a license, the city will refund the license fee.
- (c) All licenses will expire on the last day of June in each year. Each license will be issued for a period of one (1) year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rated fee. In computing a pro rated fee, any unexpired fraction of a month will be counted as one (1) month.
- (d) No part of the fee paid by any license will be refunded, except that a pro rata portion of the fee will be refunded in the following instances upon application to the city

council within 30 days from the happening of one of the following events, provided that the event occurs more than 30 days before the expiration of the license:

- (i) Destruction or damage of the licensed premises by fire or other catastrophe;
  - (ii) The licensee's illness, if such illness renders the licensee unable to continue operating the licensed Adult Establishment;
  - (iii) The licensee's death; or
  - (iv) A change in the legal status making it unlawful for the licensed business to continue.
- (e) Each application must contain a provision on the application in bold print indicating that any withholding of information or the providing of false or misleading information will be grounds for denial or revocation of a license. Any changes in the information provided on the application or provided during the investigation must be brought to the attention of the city council by the applicant or licensee. If such a change takes place during the investigation, it must be reported to the police chief or the city clerk-treasurer in writing and they will report it to the city council. A failure by an applicant or licensee to report such a change may result in a denial or revocation of a license.

**Subd. 4.** The investigative fee for an Adult Establishment license will be established by the city council by resolution.

**Subd. 5. Granting of License:**

- (a) The city clerk-treasurer and police chief, or their designees, will complete their investigation within 30 days after the city clerk-treasurer receives a complete application and all license and investigative fees.
- (b) If the application is for a renewal, the applicant will be allowed to continue business until the city council has determined to renew or refuse to renew a license.
- (c) If, after the investigation, it appears that the applicant and the place proposed for the business are eligible for a license, then the license will be issued by the city council within 30 days after the investigation is completed. Otherwise the license will be denied.
- (d) Each license will be issued to the applicant only and will not be transferable to another holder. Each license will be issued only for the premises described in the application. No license may be transferred to another premise without the approval of the city council. If the licensee is a partnership or a corporation, a change in the identity of any partner or holder of more than five (5) percent of the issued and outstanding stock of the corporation will be deemed a transfer of the license. All Adult Establishments existing at the time of the adoption of this Subsection must

obtain an annual license.

**Subd. 6. Persons Ineligible for License:** No license will be granted to or held by any person:

- (a) Under twenty-one (21) years of age;
- (b) Who is overdue or whose spouse is overdue in his or her payment to the city, county, or state of taxes, fees, fines or penalties assessed against them or imposed upon them;
- (c) Who has been convicted or whose spouse has been convicted of a gross misdemeanor or felony or of violating any law of this state or local ordinance relating to sex offenses, obscenity offenses, or Adult Establishments;
- (d) Who is not the proprietor of the establishment for which the license is issued;
- (e) Who is residing with a person who has been denied a license by the city or any other Minnesota municipal corporation to operate an Adult Establishment, or residing with a person whose license to operate an Adult Establishment has been suspended or revoked within the preceding twelve (12) months; or
- (f) Who has not paid the license and investigative fees required by this subsection.

**Subd. 7. Places Ineligible for License:**

- (a) No license will be granted for Adult Establishments on any premises where the applicant or any of its officers, agents or employees has been convicted of a violation of this subsection, or where any license hereunder has been revoked for cause, until one (1) year has elapsed after the conviction or revocation.
- (b) No license will be granted for any Adult Establishment which is not in full compliance with the city code and all provisions of state and federal law.

**Subd. 8. Conditions of License:**

- (a) Every license will be subject to the following conditions and all other provisions of this subsection, and of any applicable sections of the city code and all provisions of state and federal law.
- (b) All licensed premises must have the license posted in a conspicuous place at all times.
- (c) No minor may be permitted on the licensed premises.
- (d) Any designated inspection officer of the city has the right to enter, inspect, and search the premises of a licensee during business hours.

- (e) Every licensee is responsible for the conduct of his or her place of business and must maintain conditions of order.
- (f) No adult goods or material services may be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.

**Section 645.13. Premises Conducive to High-Risk Sexual Conduct.**

**Subd. 1.** No commercial building, structure, premises, or part thereof or facilities therein may be constructed, used, designed, or operated in the city for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.

**Subd. 2.** No person may own, operate, manage, rent, lease, or exercise control of any commercial building, structure, premises, or portion, or part thereof in the city, which contains:

- (a) Partitions between subdivisions of a room, portion, or part of a building, structure, or premises having an aperture that facilitate high-risk sexual activity.
- (b) Booths, stalls, or partitioned portions of a room or individual room that have doors, curtains, or portal partitions they 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. Booths, stalls, and partitioned portions of a room that are open to an adjacent public room must be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but the lighting need not prevent the viewing of the motion pictures or other offered entertainment.

**Subd. 3.** The regulations set forth in this subsection do not apply to premises, buildings, or structures that are lawfully operating and licensed as hotels, motels, apartment complexes, condominiums, townhomes, or boarding houses.

**Subd. 4.** In exercising powers conferred by this subsection relating to communicable diseases, the Public Health Official will be guided by the instructions, opinions, and guidelines of the Center for Disease Control of the United States Department of Health and Human Services relating to the spread of infectious diseases.

**Subd. 5.** In order to ascertain the source of infection and reduce its spread, the Public Health Official, and persons under the Public Health Official's direction and control, have full power and authority to inspect, cause to be inspected, and issue orders regarding any commercial building, structure or premises, or any part thereof, which may be a site of high-risk sexual conduct. If the Public Health Official determines that a hazardous site exists, the Public Health Official will declare it to be a public health hazard and public health nuisance and:

- (a) Notify the manager, owner, or tenant of the premises;

- (b) Issue two written warnings at least ten (10) days apart to the manager, owner, or tenant of the premises stating the specific reasons for the Public Health Official's opinion that the premises, building, or structure is a hazardous site; and
- (c) Once the notices and warnings have been issued, the Public Health Official or the Public Health Official's appointee will proceed as follows:
  - (i) After the manager, owner, or tenant of the premises has been notified in writing as to the basis of the Public Health Official's determination, the manager, owner, or tenant has ten (10) days from the date of the last warning to request a hearing before the Public Health Official or the Public Health Official's appointee. If the manager, owner, or tenant of the premises does not request a hearing within ten (10) days of the date of the last warning notice, the Public Health Official will then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site, and will cause orders to be issued directing the manager, owner, or tenant of the premises constituting the hazardous site to take specified corrective measures to prevent high-risk sexual conduct from taking place within the premises.
  - (ii) If the manager, owner, or tenant of the premises requests a hearing, the hearing will be held before the Public Health Official or the Public Health Official's appointee at a date not more than thirty (30) days after demand for a hearing. After considering all evidence, the Public Health Official or the Public Health Official's appointee will decide whether the premises are a hazardous site, and will issue a decision based upon all hearing evidence presented. If the Public Health Official or the Public Health Official's appointee makes a determination that the premises constitute a hazardous site, the Public Health Official will then issue orders to the manager, owner, or tenant of the premises to take corrective measures to prevent high-risk sexual conduct from taking place within the premises and cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site.
  - (iii) If, within thirty (30) days from issuance of the orders to the manager, owner, or tenant of the hazardous site, the Public Health Official determines that corrective measures have not been undertaken, the Public Health Official may order the abatement of the hazardous site as a public nuisance. The abatement order will be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction.

**Section 645.15. Penalty:**

**Subd. 1.** The penalty for violating this section is as follows:

- (a) Any person violating any provision of this section is guilty of a misdemeanor and upon conviction may be punished not more than the maximum penalty for a misdemeanor as prescribed by state law.
- (b) Any violation of this section is a basis for the suspension or revocation of any license granted hereunder. In the event that the city council proposes to revoke or suspend the license, the licensee will be notified in writing of the basis for the proposed revocation or suspension. Within thirty (30) days of the date of the notice, the city council will hold a hearing for the purpose of determining whether to revoke or suspend the license.
- (c) The city council will determine whether to suspend or revoke a license within thirty (30) days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner, and will notify the licensee of its decision within that period.

**Subd. 2. Right of Appeal:**

- (a) In the event that the city council determines to suspend, or revoke a license, the suspension or revocation will not be effective until fifteen (15) days after notification of the decision to the licensee. If, within that fifteen (15) days, the licensee files and serves an action in state or federal court challenging the city council's action, then the suspension or revocation will be stayed until the conclusion of the action.
- (b) If the city council decides not to renew a license, the licensee may continue its business for fifteen (15) days after receiving notice of non-renewal. If the licensee files and serves an action in state or federal court within that fifteen (15) days for the purpose of determining whether the city acted properly, the licensee may continue in business until the conclusion of the action.
- (c) If the city council decides not to grant a license to an applicant, then the applicant may commence an action in state or federal court within fifteen (15) days for the purpose of determining whether the city acted properly. The applicant may not commence doing business unless the action is concluded in its favor.

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**Amendment History of this Section**

*Adopted November 30, 1995 (Ord. 287).*