

Section 1165 - Adult Establishments

1165.01. Purpose and Intent. Subdivision 1. Findings. It is the purpose of this ordinance to regulate Adult oriented Businesses to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to:

- a) Prevent additional criminal activity within the City;
- b) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;
- c) To locate Adult Oriented Businesses away from residential areas, schools, churches, and parks and playgrounds;
- d) Prevent concentration of Adult Oriented Businesses within certain areas of the City.

Subd. 2. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including Adult oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to Adult oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of Adult oriented entertainment to their intended market.

1165.03. Definitions. Subdivision 1. For purposes of this section the terms defined in this section have the meanings given them.

Subd. 2. Adult Oriented Business. An adult oriented business is an establishment or business that is engaged in any of the following activities or which utilizes any of the following business procedures or practices:

- a) Any establishment or business that has a least 30% or 3,000 square feet, whichever is less, of its floor area (not including storerooms, stock areas, bathrooms, basements, attics or any portion of the business not open to the public) or at least 30% of its merchandise on display to the public, devoted to items, merchandise or other material that is distinguished or characterized by an emphasis on material depicting, exposing, describing, discussing, or relating to "specified sexual activities" or "specified anatomical areas"; or
- b) Any other use or business defined in subdivision 3 through 10 of this subsection.

Subd. 3. Adult Book and/or Media Store. An establishment or business that has at least 30%, or 3,000 square feet, whichever is less, of its floor area (not including storerooms, stock areas, bathrooms, basements, attics, or any portion of the business not open to the public) , or at least 30% of its merchandise on display to the public devoted to books, magazines, films, videotape, or other media that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas".

Subd. 4. Adult Cabaret. An establishment or business which provides dancing or other live entertainment, if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, depiction or description of "specified sexual activities" or "specified anatomical areas".

Subd. 5. Adult Hotel or Motel. Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas".

Subd. 6. Adult Mini-Motion Picture Theater.

- a) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas".
- b) Any business which presents motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas", for viewing on the premises, including but not limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpts of motion pictures offered for sale or rent.

Subd. 7. Adult Modeling Studio. An establishment/ which excludes minors from all or part of the establishment, whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

Subd. 8. Adult Motion Picture Arcade. Any place which excludes minors from all or part of the establishment wherein coin or token operated or electronically, electrically, or mechanically controlled or operated still or motor picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas". (Added Ord. 2003-894, February 2003)

Subd. 9. Adult Motion Picture Theater. A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity of 50 or more persons used regularly and routinely for presenting live entertainment or motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Subd. 10. Adult Novelty Business. A business or establishment that has at least 30%, or 3,000 square feet, whichever is less, of its floor area (not including storerooms, stock areas, bathrooms, basements, attics, or any portion of the business not open to the public), or at least 30% of its merchandise on display to the public devoted to items, merchandise or devices that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas”.

Subd. 11. Specified Anatomical Areas are any of the following conditions:

- a) Less than completely and opaquely covered:
- b) human genitals, pubic region, or pubic hair;
- c) buttock; ~~and~~ or
- d) female breast below a point immediately above the top of the areola; and
- 5) Human male genitals in a discernibly turgid state, even if opaquely covered.

Subd. 12. Specified Sexual Activities are any of the following conditions:

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

Subd. 13. 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 such facility is public or private. Such facilities include, but are not limited to, playgrounds, swimming pools, libraries or daycare facilities.

1165.05. Application of this Ordinance. Except as in this ordinance specifically provided, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used, for any purpose nor in any manner which is not in conformity with this ordinance.

No Adult Oriented Business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the City of Hopkins, the laws of the State of Minnesota, or the United States of America. Nothing in this ordinance shall be construed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinance prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale, or distribution of specified materials to minors.

1165.09. Location. Adult Oriented Businesses may only be located in districts authorized in the City's Zoning Ordinance. No Adult Oriented Businesses shall located less than 300 (three hundred) feet from any residential zoning district boundary or from the property line of a site used for residential purposes, or less than 350 feet from any off-sale liquor business, or less than 1,000 (one thousand )feet from the property line of any church site, any school site, any day care facility, or any park. In addition, no Adult Oriented Business may be located within 1,000 (one thousand) feet of another Adult Oriented Business. 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 Oriented Business site to the nearest property line of the proposed Adult Oriented Business site. (Amended Ord. 2003-899)

1165.11. Hours of Operation. No Adult Oriented Business site shall be open to the public from the hours of 10:00 o'clock p.m. to 8:00 o'clock a.m.

1165.13. Operation. Subdivision 1. Off-site Viewing. An establishment operating as an Adult Oriented Business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of M.S. Chapter 617 or other applicable Federal or State Statutes or local ordinances.

Subd. 2. Entrances. All entrances provided for the general public shall be visible from a public street with the exception of emergency fire exits which are not usable by patrons.

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

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

Subd. 5. Signs. Signs for Adult Oriented Businesses shall comply with the City's sign ordinance, and in addition signs for Adult Oriented Businesses shall not contain representational depictions of an adult nature or graphic descriptions of the adult theme of the operation.

1165.14. Additional Conditions for Adult Cabarets. Subdivision 1. The following additional conditions apply to adult cabarets.

Subd. 2. No owner, operator or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to display specified anatomical areas.

Subd. 3. No dancer, live entertainer, performer, patron or any other person shall display specified anatomical areas in an adult cabaret.

Subd. 4. The owner, operator or manager of an adult cabaret shall provide the following information to the city concerning any persons who dance or perform live entertainment at the adult cabaret: The person's name, home address, home telephone number, date of birth and any aliases.

Subd. 5. No dancer, live entertainer or performer shall be under 18 years old.

Subd. 6. All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.

Subd. 7. No dancer, live entertainer or performer shall perform any dance or live entertainment closer than 10 (ten) feet to any patron.

Subd. 8. No dancer, live entertainer or performer shall fondle or caress any patron and no Patron shall fondle or caress any dancer or Performer.

Subd. 9. No patron shall pay or give any gratuity to any dancer, live entertainer or performer.

Subd. 10. No dancer, live entertainer or performer shall solicit any pay or gratuity from any patron.

1165.15. Licenses. Subdivision 1. License Required. All establishments, including any business operating at the time this ordinance becomes effective, operating or intending to operate an Adult Oriented Business, shall apply for and obtain a license with the City of Hopkins. A person is in violation of the City Code if he or she operates an Adult Oriented Business without a valid license, issued by the City.

Subd 2. Applications. An application for a license must be made on a form provided by the City.

a) The application 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 marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

b) 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 appropriate state, county, and local laws and codes by the health official, fire marshal, and building official.

- c) Application for license shall contain the address and legal description of the property to be used; the names, addresses, phone numbers, date of birth, of the owner, lessee, if any, the operator or manager, and all employees; the name, address, and phone number of two persons, who shall be residents of the State of Minnesota, and who may be called upon to attest to the applicant's, manager's, or operator's character; whether the applicant, manager, or operator has ever been convicted of a crime or offense other than a traffic offense and, if so, complete and accurate information as to the time, place, and nature of such crime or offense including the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as and regarding credit which has been extended for the purposes of constructing, equipping, maintaining, operating, or furnishing or acquiring the premises, personal effects, equipment, or anything incident to the establishment, maintenance and operation of the business.
- d) If the application is made on behalf of a corporation, joint business venture, partnership, or any legally constituted business association, it shall submit along with its application, accurate and complete business records showing the names, addresses, and dates of birth of all individuals having an interest in the business, including partners, officers, owners, and creditors furnishing credit for the establishment, acquisition, maintenance, and furnishings of said business and, in the case of a corporation, the names, addresses, and dates of birth of all officers, general managers, members of the board of directors as well as any creditors who have extended credit for the acquisition, maintenance, operation, or furnishing of the establishment including the purchase or acquisition of any items of personal property for use in said operation.
- e) All applicants shall furnish to the City, along with their applications, complete and accurate documentation establishing the interest of the applicant and any other person having an interest in the premises upon which the building is proposed to be located or the *furnishings thereof*, personal property thereof, or the operation or maintenance thereof. Documentation shall be in the form of a lease, deed, contract for deed, mortgage deed, mortgage credit arrangement, loan agreements, security agreements, and any other documents establishing the interest of the applicant or any other person in the operation, acquisition, or maintenance of the enterprise.

Subd. 3. Issuance or Renewal of License. The City Manager shall issue or renew a license to an applicant within 30 (thirty) days after receipt of an application unless the Manager denies the application, having found one or more of the following to be true:

- a) An applicant is under 18 years of age.
- b) An applicant is overdue in his payment to the City, County, or State of taxes, fees, fines, or penalties assessed against him or her or imposed upon him or her in relation to a Adult Oriented Business, or if the State of Minnesota prohibits the issuance of such a license because of taxes, fees, fines, or penalties assessed against him or her.
- c) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

- d) An applicant has been convicted of a violation of a provision of this chapter, other than the offense of operating a Adult Oriented Business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- e) The premises to be used for the Adult Oriented Business have not been approved by the health official, fire marshal, and the building official as being in compliance with applicable laws and ordinances; such inspections shall be completed within thirty (30) days from the date the application was submitted, provided that the application contains all of the information required by this ordinance. If the application is deficient, the inspections shall be completed within thirty (30) days from the date the deficiency has been corrected.
- f) The license fee required by this chapter has not been paid.
- g) An applicant has been convicted of a crime involving any of the following offenses:
  - 1) Any sex crimes as defined by Minnesota statutes 609.29 through 609.352 inclusive or as defined by any ordinance or statute in conformity therewith;
  - 2) Any obscenity crime is defined by Minnesota statutes 617.23 through 617.299 inclusive, or as defined by any ordinance or statute in conformity therewith; for which:
    - 3) 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;
    - 4) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
    - 5) 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 conviction are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.
  - 6) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

Subd. 4. Requalification. An applicant who has been convicted of an offense listed in Section 1165.15, Subd. 3g may qualify for a Adult Oriented Business license only when the time period required by Section 1165.15, Subd. 3g has elapsed.

Subd. 5. Notice of Decision on Application. The City Manager shall send notice of a decision on the application within the 30 (thirty) day review period to the applicant by mail postage prepaid at the address on the application. The notice shall state whether the City Manager finds the application acceptable and a license is to be issued or renewed, or whether the application is denied and the reasons for the denial.

Subd. 6. Posting. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Adult Oriented Business. The license shall be posted in a conspicuous place at or near the entrance to the Adult Oriented Business so that it may be easily read at any time.

Subd. 7. Council Action. If an application is denied by the City Manager, the applicant may appeal to the City Council by filing a written notice of appeal within ten (10) days after the notice of decision. Any such appeal must be acted on by the Council within 30 (thirty) days after the notice of appeal is received by the City. If the Council fails to act within 30 days, the application is deemed approved. If the Council denies the appeal, the application is denied. Reapplication may be pursued according to the provisions of this chapter. If the Council determines to grant the appeal, the Council shall instruct the City Manager to issue the license.

Subd. 8. Correction of deficiency. If the application is denied by the City Manager, the applicant may correct any deficiency and the Manager shall act on the corrected application within 30 (thirty) days from the date the deficiency has been corrected. If the determination of deficiency has been appealed to the City Council the Council ~~shall~~ must act on the corrected application within 30 (thirty) days from the date that the City receives the appeal.

Subd. 9. Appeals. If the City Council denies the appeal, the applicant may commence an action in state of federal court within 15 (fifteen) days after notification by the City of the denial for the purpose of determining whether the City acted properly. The applicant may not commence doing business unless the action is concluded in his favor.

Subd. 10. Notification. Any notification required to be sent by the City is deemed completed when mailed by first class mail to the applicant or licensee at the address listed in the application.

1165.17. Fees. Fees shall be set by City Council Resolution.

1165.19. Inspection. Subdivision 1. Access. An applicant or license shall permit health officials, representatives of the police department, fire department, and building inspection division, to inspect the premises of a Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

Subd. 2. Refusal to Permit Inspections. A person who operates a an Adult Oriented Business or his agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the police department, fire department, and building inspection division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in Section 1165.23.

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

1165.21. Expiration and Renewal. Subdivision 1. Expiration. Each license shall expire at the end of the calendar year and may be renewed only by making application and following the process as provided in Section 1165.15., Subd. 1. Application for renewal should be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the license may expire, depending on the timing of the application and possible appeals as described above in Section 1165.15, Subd. 1.

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

1165.23. Suspension. Subdivision 1. Causes of Suspension. The City Council may suspend a license for a period not to exceed 30 (thirty) days if it determines that a licensee or an employee of a license has:

- a) Violated or is not in compliance with any provisions of this chapter.
- b) Engaged in the use or sale of alcoholic beverages or controlled substances while on the Adult Oriented Business premises other than at an Adult Hotel or Motel.
- c) Refused to allow an inspection of the Adult Oriented Business premises as authorized by this chapter.
- d) Knowingly permitted gambling by any person on the Adult Oriented Business premises.
- e) Demonstrated inability to operate or manage a Adult Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

Subd. 2. Notice. A suspension by the City Council shall be proceeded by written notice to the licensee and a hearing. The notice shall give at least 10 (ten) days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof.

Subd. 3. Appeal. If the City Council suspends a license, the licensee may commence an action in state or federal court within 15 (fifteen) days after notification by the City of the suspension for purposes of determining whether the City Council acted properly. If such an action is timely commenced within the 15 days, the licensee may continue doing business until the conclusion of the action.

1165.25 Revocation. Subdivision 1. Causes of Revocation. The City Council may revoke a license if it determines that:

- a) A licensee gave false or misleading information in the material submitted to the City during the application process;
- b) A licensee or an employee has knowingly allowed possession, use, or sale of alcoholic beverages or controlled substances on the premises;
- c) A licensee or an employee has knowingly allowed prostitution on the premises;
- d) A licensee or an employee knowingly operated the Adult Oriented Business during a period of time when the licensee's license was suspended;
- e) A licensee has been convicted of an offense listed in Section 1165.15, Subd. 3g for which the time period required in Section 1165.15, Subd. 3g has not elapsed;
- f) On two or more occasions within a 12 (twelve) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 1165.15, Subd. 3g for which a conviction has been obtained, and the person or persons were employees of the Adult Oriented Business at the time the offenses were committed.
- g) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.
- h) If a cause of suspension in Section 1165.23 occurs within 36 (thirty-six) months after suspension of a license.

Subd. 2. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Subd. 3. Exceptions. 1165.25, Subd. 1g 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.

Subd. 4. Granting a License after Revocation. When the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued a Adult Oriented Business license for one year from the date revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Section 1165.25, Subd. 1e an applicant may not be granted another license until the appropriate number of years required under Section 1165.15, Subd. 3g has elapsed.

Subd. 5. Notice. A revocation by the City Council shall be by written notice to the licensee and a hearing. The notice shall give at least 10 (ten) days notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

Subd. 6. Appeal. If the City Council revokes a license, the licensee may commence an action in state of federal court within 15 (fifteen) days after notification by the City of the revocation for purposes of determining whether the City Council acted properly. If such an action is timely commenced within the 15 days, the licensee may continue doing business until the conclusion of the action.

1165.27. Transfer of License. A licensee shall not transfer this license to another, nor shall a licensee operate a Adult Oriented Business under the authority of a license at any place other than the address designated in the application.

1165.29. Severability. Every section, provision, or part of this ordinance or any permit issued to this ordinance is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this ordinance or any permit issued pursuant to this ordinance shall be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision, or part thereof.

(Section 1165 was added through Ord. No. 92-709)

(Section 1165 was amended by Ord. No. 95-762)

(Section 1165 was amended by Ord 2002-878)