

CHAPTER 11. ADULT USES**Section 1100 - Regulations for the Zoning of Adult Uses****1100.01 Purpose.**

It is the purpose of this Chapter to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene material.

(Ord. passed 10-15-02)

1100.02 Findings.

Based on evidence concerning the adverse secondary effects of adult uses in other communities and also on findings found in the Report of Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

A. Sexually oriented businesses in the City lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

B. Certain employees of sexually oriented businesses defined in this Chapter as adult theaters and cabarets engage in a higher incidence of certain types of sexually oriented behavior at these businesses than employees of other establishments.

C. Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos or live sex shows, as defined under this Chapter as adult book stores, adult novelty shops, adult video stores, adult motion picture theaters or adult arcades.

D. Offering and providing such space encourages such activities which create unhealthy conditions.

E. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

F. At least 50 communicable diseases may be spread by activities occurring in sexually oriented

businesses, including, but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, and salmonella infections.

G. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of those facilities to self-regulate those activities and maintain those facilities.

H. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

I. Sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.

J. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

K. The general welfare, health and safety of the citizens of the City will be promoted by the enactment of this Chapter.

(Ord. passed 10-15-02)

1100.03 Definitions.

A. Adult Arcade. Means any place to which the public is permitted or invited wherein coin operated, slug operated or for any form of consideration, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or digital disc players 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 the depicting or describing of "specified sexual activities" or "specified anatomical areas."

B. Adult Bookstore, Adult Novelty Store or Adult Video Store. Means a commercial establishment which, as one of its principal purposes, 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 that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or;
2. Instruments, devices or paraphernalia that are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or

"specified anatomical areas" and still be categorized as Adult Bookstore, Adult Novelty Store, or Adult Video Store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an Adult Bookstore, Adult Novelty Store, or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction of description of "specified sexual activities" or "specified anatomical areas."

C. Adult Cabaret. Means a nightclub, bar, restaurant or similar commercial establishment that regularly features:

1. Persons who appear in a state of nudity or semi-nude; or
2. Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. Films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

D. Adult Motel. Means a hotel, motel or similar commercial 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 of or description of "specified sexual activities" or "specified anatomical areas" and has a sign visible from the public right-of-way that advertises the availability of this type of photographic reproductions; or
2. Offers a sleeping room for rent for a period of time that is less than ten 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 ten hours.

E. Adult Motion Picture Theater. Means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

F. Adult Theater. Means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude or live performances that are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

G. Employee. Means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is designated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

H. Escort. Means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person; or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

I. Escort Agency. Means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

J. Establishment. Means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

3. The additions of any sexually oriented business to any other existing sexually oriented business; or
4. The relocation of any sexually oriented business.

K. Nude Model Studio. Means any place where a person who appears seminude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Minnesota or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
2. Where in order to participate in a class, a student must enroll at least three days in advance of the class; and
3. Where no more than one nude or semi-nude model is on the premises at any one time.

L. Nudity or a State of Nudity. Means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

M. Person. Means an individual, proprietorship, partnership, corporation, association or other legal entity.

N. Sexual Encounter Center. Means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

O. Sexually Oriented Business. Means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

P. Specified Anatomical Areas. Mean:

1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
2. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

Q. Specified Criminal Activity. Means any of the following offenses:

1. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
2. For which:
 - a) 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;

b) 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

c) 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 any 24-month period.

3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

R. Specified Sexual Activities. Means any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or

2. Sex acts, normal or perverted, actual or simulated, including intercourse, or copulation, masturbation or sodomy; or

3. Excretory functions as part of or in connection with any of the activities set forth in 1. and 2. above.

S. Substantial Enlargement of a Sexually Oriented Business. Means the increase in floor areas occupied by the business by more than 25%, as the floor areas exist on October 15, 2002.

T. Transfer of ownership or control of a sexually oriented business. Means and includes any of the following:

1. The sale, lease or sublease of the business; or
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 control.

(Ord. passed 10-15-02)

1100.04 Classification. Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;

- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

(Ord. passed 10-15-02)

1100.05 Location of Sexually Oriented Businesses.

A. Sexually oriented businesses are a permitted use in the "A" Agricultural District, as delineated on the New Richland Zoning Map, provided they meet the following setback standards.

B. A sexually oriented business must be setback a minimum of 1,000 feet from the following uses:

1. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
2. A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, junior colleges and universities. School includes the school grounds,

but does not include the facilities used primarily for another purpose and only incidentally as a school.

C. A sexually oriented business must be setback a minimum of 500 feet from the following uses:

1. A boundary of a residential district as defined in the City of New Richland, Minnesota zoning ordinance and map; a public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the city that is under the control, operation or management of the city park and recreation authorities.

2. The property line of a lot devoted to a residential use as defined in the City of New Richland, Minnesota zoning map.

3. An entertainment business which is oriented primarily toward children or family entertainment.

4. A licensed premises pursuant to the alcoholic beverage control regulations of the State of Minnesota.

D. A person commits a misdemeanor if that person causes or permits the operation,

establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

E. A person commits a misdemeanor if that person causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.

F. For the purpose of division B. or C. of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in division B. or C. Presence of a city, county or other political subdivision boundary, shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

G. For purposes of division D. of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

H. Any sexually oriented business lawfully operating on October 15, 2002 that is in violation of division A. through G. of this Section shall be deemed a nonconforming use. The

nonconforming use will be permitted to continue unless terminated for any reason or voluntarily discontinued for a period of 180 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and are otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established businesses) is/are nonconforming.

(Ord. passed 10-15-02)

1100.06 Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.

A. A person who operates or causes to be operated a sexually oriented 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 specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. It is the duty of the business owner of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

2. 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 to for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations, 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 to for any purpose from at least one of the manager's stations. The view required in this division must be by direct line of sight from the manager's station.

3. It shall be the duty of the business owner to ensure that the view area specified above remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

4. No viewing room may be occupied by more than one person at any time.

5. 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 footcandle as measured at the floor level.

6. No openings of any kind are allowed to exist between viewing rooms or booths.

7. The owner or manager shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

8. The business owner shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

9. The business owner shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or be 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. A person having a duty under this section commits a misdemeanor if he or she knowingly fails to fulfill that duty.

(Ord. passed 10-15-02)

1100.07 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 the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. passed 10-15-02)

1100.08 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 under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

C. A person commits an offense if the person 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.

D. A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. passed 10-15-02)

1100.09 Additional Regulations Concerning Public Nudity.

A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

B. It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten feet from any patron or customer and on a stage at least two feet from the floor.

C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(Ord. passed 10-15-02)

1100.10 Prohibition Against Children in a Sexually Oriented Business.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

(Ord. passed 10-15-02)

1100.11 Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of

1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 10:00 a.m. on Sundays.

(Ord. passed 10-15-02)

1100.12 Exemptions.

It is a defense to prosecution that a person appearing in a state of nudity did so in a modeling class operated:

A. By a proprietary school, licensed by the State of Minnesota; a college, junior college or university supported entirely or partly by taxation;

B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

C. In a structure:

1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

2. Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

3. Where no more than one nude model is on the premises at any one time.

(Ord. passed 10-15-02)