

Section 45-080 Adult Use Regulations

The purpose and intent of this regulation is the purpose of this section is 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:

1. Prevent additional criminal activity within the city;
2. Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhoods;
3. To locate Adult Oriented Businesses away from residential areas, schools, churches, and parks and playgrounds;
4. To prevent concentration of Adult Oriented Businesses within certain areas of the city.

The provisions of this Section 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 the effect of this section 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.

Adult Use Definitions. For the purpose of these regulations, the terms defined in this section have the following meanings:

Adult Use: Any activities and businesses described below constitute “Adult Oriented Businesses” which are subject to the regulation of this ordinance.

Adult Book and/or Media Store: An establishment which excludes minors and which has a substantial portion of its stock in trade or stock on display books, magazine, films describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

Adult Cabaret: An establishment which provides dancing or other live entertainment, if such establishment excludes minors by virtue of age from all or part of the establishment and 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.

Adult Establishment: Any business which offers its patrons services, entertainment, or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to Specified Sexual Activities or Specified Anatomical Areas. Specifically included in the term, but without limitation, are adult book and media stores, adult cabarets, adult hotels, or motels, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, adult novelty businesses, and other adult establishments.

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.

Adult Mini-Motion Picture Theater:

1. A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 100 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.
2. 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 or excerpt of motion pictures offered for sale or rent.

Adult Modeling Studio: An establishment, which excludes minors from all or part of the establishment, who's major business are figure models who are so provided with the intent of providing sexual stimulation to 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.

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 motion picture machines, projectors, video machines 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 or describing Specified Sexual Activities or Specified Anatomical Areas.

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 100 or more persons used regularly and routinely for presenting live entertainment or motion pictures, including but not limited to film 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 observation by patrons therein.

Adult Novelty Business: A business, from which minors are excluded from all or part of the establishment, which sells, offers to sell, or displays devices which simulates human genitals or devices which are designed for sexual stimulation.

Specified Anatomical Areas are any of the following conditions: Less than completely and opaquely covered.

1. human genitals, pubis region, or pubic hair;
2. buttock; and
3. female breast below a point immediately above the top of the areola; and
4. human male genitals in a discernible turgid state, even if opaquely covered.

Specified Sexual Activities are any of the following conditions:

1. An act of sexual intercourse, normal or perverted, actual or simulated, including genital, anal genital, or oral genital intercourse, whether between human beings or between a human being and an animal.
2. 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.

3. Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed.
4. 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.

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, or 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 Nevis, the Laws of the State of Minnesota or the United States of America. Nothing in this Ordinance shall be constructed as authorizing or permitting conduct which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale or distribution of specified materials to minors.

Hours of Operation. No Adult Oriented Business site shall be open to the public from the hours of 11:00 PM to 9:00 AM.

Operation.

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 Minnesota Statutes Chapter 617 or other applicable Federal or State Statutes or local ordinances.
2. Entrances. All entrances to the business, with the exception of emergency fire exits which are not useable by the patrons to enter the business, shall be visible from a public right-of-way.
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 media, or any other material.
4. Illumination. Illumination of the premises' exterior shall be adequate to observe the location and activities of all persons on the exterior premises.
5. Signs. Signs for Adult Oriented Businesses shall comply with those sign regulations addressed in Division 80 of the Nevis Zoning Ordinance, and in addition signs for Adult Oriented Businesses shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

License.

1. Licenses Required. All establishments, including any business operating at the time this Ordinance becomes effective, operating or intending to operate Adult Oriented Business, shall, in conjunction with the Conditional Use Permit approval requirements of this Ordinance, apply for and obtain a license from the City of Nevis. A person is in violation of this Ordinance if he or she operates an Adult Oriented Business without a valid license issued by the City.
2. Application. An application for a license may 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 application must be qualified according to the provisions of this section and the premises must be inspected and found to be in compliance with the appropriate state, county and local law 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, dates 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, if so, complete and accurate information regarding the disposition thereof, the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as the 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 credits 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. 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.
- f. The license fee required by this ordinance must accompany the application.
- g. An applicant is ineligible for a license if applicant has been convicted of a crime involving any of the following offenses:
 1. Any obscenity crime as defined by Minnesota Statutes 617.23 through 617.299 inclusive, or as defined by any ordinance or statute in conformity therewith;
 2. Any obscenity crime as defined by Minnesota Statute 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 gross misdemeanor or 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 first conviction, whichever is the later date, if the conviction is 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 disqualification of the applicant or applicant's spouse.
- h. **Requalification.** Any applicant, who has been convicted of an offense above, may qualify for an Adult Oriented Business License only when the time period required by has elapsed.
- i. **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 of the Adult Oriented Business so that it may be easily read at any time.
- j. **Council Action.** The City Council shall act to approve or disapprove the license application within 60 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 Council shall act on the application within 120 days from the date that the deficiency has been corrected.
- k. **Appeals.** Within 90 days after an adverse decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or City Administrator.

Fees. The Nevis City Council shall set fees in accordance with the adopted fee schedule. The initial fee is \$500.00 per year. License fees are non-refundable.

Inspection.

1. **Access.** An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspection division, to inspect the premises of an Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
2. **Refusal to Permit Inspections.** A person who operates 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 inspecting 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 below.
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.

Expiration and Renewal.

1. Expiration. Each license shall expire at the of the calendar year and may be renewed only by applying at least 60 days before the expiration date, the expiration of the license will not be affected.
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.

Suspension.

1. Causes of Suspension. The city may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:
 - a. Violated or is not in compliance with any provision of this chapter.
 - b. Engaged in the use of alcoholic beverages 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 an Adult Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
2. Notice. A suspension by the City shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least 10 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.

Revocation.

1. Suspended Licenses. The city may revoke a license if a cause of suspension occurs and the license has been suspended within the preceding 12 months.
2. Causes of Revocation. The City shall 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 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 for which the time period required has not elapsed.

- f. 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, for which a conviction has been obtained and the person or persons were employees of the Adult Oriented Business at the time of the offenses were committed.
- g. A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, and oral copulation or masturbation to occur in or on the licensed premises.
- h. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- i. Exceptions. The license 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.
- j. 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 an Adult Oriented Business license for one year from the date the 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, the applicant may not be granted another license until the appropriate number of years has elapsed.
- k. Notice. A revocation by the City shall be preceded by written notice to the licensee and a public hearing. The notice shall give at least 10 days 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.

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

Severability. Every section, provision, or part of this Ordinance or any permit issued pursuant 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.