

## ORDINANCE NO. 95

AN ORDINANCE PROVIDING FOR THE REGULATION OF ADULT ESTABLISHMENTS IN THE CITY OF NEW AUBURN; PROVIDING FOR THE ISSUANCE OF LICENSES AND COLLECTION OF FEES THEREFORE; PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

THE CITY COUNCIL OF THE CITY OF NEW AUBURN DOES ORDAIN AS FOLLOWS:

### ADULT ESTABLISHMENTS

#### SECTION 1. Purpose and Intent

Subdivision 1. Findings of the City Council. Studies conducted by the Minnesota Attorney General, the American Planning Association and cities such as St. Paul; Indianapolis; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have an adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council of the City of New Auburn makes the following findings regarding the need to regulate adult establishments. The findings are based upon the experiences of other cities where such businesses have located, as studied by City staff. 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 locational requirements, licensing requirements 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) Minnesota Statutes, Section 462.357, allows the city to adopt regulations to promote the public health, safety, morals and general welfare.
- (e) The public health, safety, morals and general welfare will

be promoted by the City adopting regulations governing adult establishments.

- (f) Adult establishments can contribute to an increase in criminal activity in the area in which such businesses are located, taxing city crime-prevention programs and law enforcement services.
- (g) Adult establishments can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that the proper management and operation of such businesses can, however, minimize this risk, provided the owners and operators of such facilities are regulated by licensing or other procedures.
- (h) Adult establishments can increase the risk of exposure to communicable diseases including but not limited to Acquired Immune Deficiency Syndrome (AIDS) for which currently there is no cure. Experiences of other cities indicate that such businesses can facilitate the spread of communicable diseases by virtue of the design and use of the premises, thereby endangering not only the patrons of such establishments but also the general public.
- (i) Adult establishments can cause or contribute to public health problems by the presence of live adult entertainment in conjunction with food and/or drink on the same premises.
- (j) The risk of criminal activity and/or public health problems can be minimized through a licensing and regulatory scheme as prescribed herein.

Subdivision 2. Purpose. It is the purpose of this Ordinance to regulate Adult Establishments 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 Establishments away from residential areas, schools, churches, libraries, parks, and playgrounds;
- d) Prevent concentration of Adult Establishments within certain areas of the City.

Subdivision 3. 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.

## **Section 2. Definitions.**

For purposes of this Ordinance the terms defined in this section have the meanings given them.

Subdivision 1. "Adult Establishment" means:

- a) any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas; or
- b) any business that engages in any Adult Use as defined in Subdivision 2 of this section.
- c) the term "substantial or significant portion" as used in this ordinance is defined as 25 percent or more of the inventory, stock in trade or publicly displayed merchandise, or 25 percent or more of the floor area (not including store rooms, stock areas, bathrooms, basements, or any portion of the business not open to the public), or 25 percent or more of the gross revenues of the business. All adult establishments and all other businesses stocking any material depicting, exposing, simulating, describing or relating to Specified Sexual Activities or Specified Anatomical Areas shall make available all inventory records and all sales receipts and records for inspection by city staff upon request at all reasonable times.

Subdivision 2. Adult Use. Any of the activities and businesses described below:

- a) "Adult Body Painting Studio" means an establishment or business that provides the service of applying paint, ink, or other substance, whether transparent or non-transparent, to the body of a patron when the person is nude.
- b) "Adult Bookstore" means an establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, movies, or motion picture film if a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise consists of, or if a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.
- c) "Adult Cabaret" means a business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on: (1) the depiction of nudity, Specified Sexual Activities or Specified Anatomical Areas; or (2) the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.
- d) "Adult Companionship Establishment" means a business or establishment 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" means a business or establishment that provides the services of engaging in or listening to conversation, talk, or discussion distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- f) "Adult Health/Sport Club" means a health/sport club that is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- g) "Adult Hotel or Motel" means a hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

- h) "Adult Massage Parlor/Health Club" means a massage parlor or health club that provides massage services distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- i) "Adult Mini-Motion Picture Theater" means a business or establishment with a capacity of less than 50 persons that as a prevailing practice presents on-premises viewing of movies, motion pictures, or other material distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- j) "Adult Modeling Studio" means a business or establishment that provides live 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" means 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 or characterized by an emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas.
- l) "Adult Motion Picture Theater" means a motion picture theater with a capacity of 50 or more persons 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" means an establishment or business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, or devices that are distinguished or characterized by an emphasis of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas, or items, merchandise or devices that simulate Specified Sexual Activities or Specified

Anatomical Areas, or are designed for sexual stimulation.

- n) "Adult Sauna" means 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" means 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 or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

Subdivision 3. "Nude" or "Specified Anatomical Areas" means:

- 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.

Subdivision 4. "Specified Sexual Activities" means:

- 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; coprophagy; coprophilia; cunnilingus; fellatio; necrophilia; pedophilia;
- 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 in 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.

### **Section 3. Application of this Ordinance.**

Except as this Ordinance specifically provides, 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 Establishment 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 New Auburn, 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 that 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.

### **Section 4. Location.**

Adult Establishments are permitted uses in the Agricultural, I-1, and I-2 zoning districts. Adult Establishments must be located at least 500 feet from: (a) any R1- One and Two Family Residence District boundary or R2 Multiple Family Residence District boundary; (b) any site actually used for residential purposes; and (c) any church site, school site, library site, day care facility, park or playground. No Adult Establishment may be located within 500 feet of another Adult Establishment. For purposes of this Ordinance, this 500 foot distance shall be a horizontal measurement from the nearest existing R1 or R2 district boundary or lot line or site used for residential purposes, church, school, library, day care, park or playground, or another Adult Establishment site, to the nearest point of the proposed Adult Establishment structure.

### **Section 5. Hours of Operation.**

No Adult Establishment shall be open to the public from the hours of 12:00 noon to 12:00 midnight weekdays and Saturdays, nor at any time on Sundays or national holidays.

**Section 6. Operation.**

Subdivision 1. Off-site Viewing. Any business operating as an Adult Establishment 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.

Subdivision 2. Entrances. All entrances to the business, with the exception of emergency fire exits that are not useable by patrons to enter the business, shall be visible from a public right-of-way.

Subdivision 3. Layout. The layout of any 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, or any live dancers or entertainers.

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

Subdivision 5. Signs. Signs for Adult Establishments shall comply with the City's Ordinance for signs addressed in Ordinance 78. Signs for Adult Establishments shall not contain representational depiction of an adult nature or graphic descriptions of the adult theme of the operation.

Subdivision 6. Parking. An Adult Establishment shall provide a minimum of one off-street parking space per employee, the total minimum number of such parking spaces to equal the highest number of employees scheduled to work on any shift, and one off-street parking space per customer for the total number of customers for which the facility is designed at full occupancy. Each parking space shall be a minimum of 9 feet wide by 18 feet long, plus sufficient driveway space to allow safe access to and from adjoining public rights of way.

Subdivision 7. Additional Conditions for Adult Cabarets. The following additional conditions apply to adult cabarets:

- a) No owner, operator or manager of an adult cabaret shall



- permit or allow any dancer or other live entertainer to perform nude.
- b) No dancer, live entertainer, performer, patron or any other person shall be nude in an adult cabaret.
  - c) 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.
  - d) No dancer, live entertainer or performer shall be under 18 years old.
  - e) 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.
  - f) No dancer or performer shall perform any dance or live entertainment closer than 5 feet to any patron.
  - g) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
  - h) No patron shall pay or give any gratuity to any dancer or performer.
  - i) No dancer or performer shall solicit or receive any pay or gratuity from any patron.

## **Section 7. Licenses.**

Subdivision 1. Licenses Required. All Adult Establishments, including any Adult Establishment operating at the time this Ordinance becomes effective, shall apply for and obtain a license from the City of New Auburn. A person or entity is in violation of this Ordinance if the person or entity operates an Adult Establishment without a valid license, issued by the City.

Subdivision 2. Applications. An application for a license must be made 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 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 owner's;
  - c) The address and legal description of the premises where the Adult Establishment is to be located;
  - d) A statement detailing any misdemeanor, 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 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 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;
  - h) A building plan of the premises detailing all internal operations and activities;
  - i) 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;
  - j) A statement that the applicant is qualified according to the provisions of this Ordinance and that the premises have been or will 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 inspector;
  - k) 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 and, if so, complete and accurate information of the disposition thereof; the names and addresses of all creditors of the applicant, owner, lessee, or manager insofar as 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;

- l) 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; and
  
- m) 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.

Subdivision 3. Disqualifications.

- a) All Adult Establishments, including any business operating at the time this Ordinance becomes effective, operating or intending to operate an Adult Establishment shall be prohibited if the license fees and background investigation

fees required by this Ordinance have not been paid.

b) All Adult Establishments, including any business operating at the time this Ordinance becomes effective, shall be prohibited if an applicant, operator, or manager has been convicted of a crime involving any of the following offenses:

(1) Any sex crimes as defined by Minn. Stat. 609.29 through 609.352 inclusive, or as defined by any ordinance or statute in conformity therewith;

(2) Any obscenity crime as defined by Minn. Stat. 617.23 through 617.299 inclusive, or as defined by any ordinance or statute in conformity therewith; for which:

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.

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

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 is 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 disqualification of the applicant.

Subdivision 4. Requalification. An applicant who has been convicted of an offense listed in Section 7, Subdivision 3(b), may qualify for an Adult Establishment license only when the time period required by Section 7, Subdivision 3(b), has elapsed.

Subdivision 5. 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 Establishment. The license shall be posted in a conspicuous place at or near the entrance to the Adult Establishment so that it may be easily read at any time.

Subdivision 6. An Adult Establishment license will not be

granted to or held by a person:

- a) Who is under 21 years of age;
- b) Who is overdue or whose spouse is overdue in payments 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 has been or 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 who has or is residing with a person whose license to operate an Adult Establishment has been suspended or revoked within the preceding twelve (12) months; or
- e) Who has not paid the license and investigative fees required by this Ordinance.

Subdivision 7. An Adult Establishment license will not be granted for:

- a) Any Adult Establishment on premises where the applicant or any of its officers, agents or employees has been convicted of a violation of this Ordinance, or where a license has been revoked for cause, until one year has elapsed after the conviction or revocation;
- b) Any Adult Establishment that is not in full compliance with the City Code and all provisions of state and federal law; or
- c) Any premise that holds an intoxicating liquor, beer, or wine license.

## **Section 8. Fees.**

Subdivision 1. The license fee for Adult Establishments is as follow:

- a) The annual license fee is \$2,000.00.
- b) An application for a license must be submitted to the city administrator and accompanied by payment of the required license fee. Upon rejection of an application for a

license, the city will refund the license fee.

- c) Licenses will expire on December 31 in each year. Each license will be issued for a period of one 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 month.
- d) No part of the fee paid by any licensee 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:
  - 1. Destruction or damage of the licensed premises by fire or other catastrophe;
  - 2. The licensee's illness, if such illness renders the licensee unable to continue operating the licensed Adult Establishment;
  - 3. The licensee's death; or
  - 4. A change in the legal status making it unlawful for the licensed business to continue.
- e) An application must contain a provision in bold print indicating that withholding information or providing false or misleading information will be grounds for denial or revocation of a license. 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 city administrator in writing. A failure by an applicant or licensee to report such a change may result in a denial or revocation of a license.

Subdivision 2. The one-time non-refundable background investigative fee for an Adult Establishment license is \$500.00 and shall be charged for each person identified on the application as an owner, operator, or manager of the business and for each successor, owner, operator or manager.

Subdivision 3. The procedures for granting an Adult Establishment license are as follow:

- a) The City will conduct and complete an investigation within 30 days after the city administrator 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 whether the applicant meets the criteria of this Ordinance for a renewal license.
- c) If, after the investigation, it appears that the applicant and the place proposed for the business are eligible for a license, the license must be issued by the city council within 30 days after the investigation is completed. If the city council fails to act within 30 days after the investigation is completed, the application will be deemed approved.
- d) A license will be issued to the applicant only and is not transferable to another holder. Each license will be issued only for the premises described in the application. A license may not 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 percent of the issued and outstanding stock of the corporation will be deemed a transfer of the license. Adult Establishments existing at the time of the adoption of this section must obtain an annual license.

## **Section 9. Inspection.**

Subdivision 1. Access. An applicant or licensee shall permit health officials, representatives of the police department, fire department, and building inspector, to inspect the premises of an Adult Establishment for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. The licensee is at all times responsible for the conduct, activity and operation of the business.

Subdivision 2. Refusal to Permit Inspections. A person who operates an Adult Establishment or his/her 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 inspector at any time it is occupied or open for business. Refusal to permit inspections may result in nonrenewal, suspension or revocation of the license as provided in Section 11.

Subdivision 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. Temporary habitation is defined as a period of time of at least 12 hours.

Subdivision 4. Records. The licensee must keep itemized written records of all transactions involving the sale or rental of all items or merchandise for at least one year after the transaction. At a minimum, those records must describe the date of the transaction, a description of the transaction, the purchase price or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the City upon request.

#### **Section 10. 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 as provided in Section 7. Application for renewal must be made at least 60 days before the expiration date.

Subdivision 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.

#### **Section 11. Suspension.**

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

- a) Violated or is not in compliance with any provision of this Ordinance.
- b) Engaged in the sale or use of alcoholic beverages while on the Adult Establishment premises other than at an Adult Hotel or Motel.
- c) Refused to allow an inspection of the Adult Establishment as authorized by this Ordinance.
- d) Knowingly permitted gambling by any person on the Adult Establishment premises.
- e) Demonstrated inability to operate or manage an Adult



Establishment in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

Subdivision 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, or by mailing the notice by U.S. Mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

## **Section 12. Revocation**

Subdivision 1. Suspended Licenses. The City may revoke a license if a cause of suspension in Section 11 occurs and the license has been suspended at least once before within the preceding 12 months.

Subdivision 2. Causes of Revocation. The City 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 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 Establishment during a period of time when the licensee's license was suspended;
- e) A licensee has been convicted of an offense listed in Section 7, Subdivision 3(b), for which the time period required in Section 7, Subdivision 3(b), 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 listed in Section 7, Subdivision 3(b), for which a conviction has been obtained, and the person or persons were employees of the Adult Establishment 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.

Subdivision 3. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Subdivision 4. Exceptions. Section 12, Subdivision 2(g), 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.

Subdivision 5. 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 Establishment 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 is revoked under Section 12, Subdivision 2 (e), an applicant may not be granted another license until the appropriate number of years required under Section 7, Subdivision 3 b), has elapsed.

Subdivision 6. 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 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 or by mailing the notice by U.S. Mail to the last known address of the owner or agent authorized to receive legal notices for the business, as listed on its license application.

### **Section 13. Procedures.**

Issuances, suspensions, revocations, and nonrenewals of Adult Establishment licenses are governed by the following provisions:

- a) In the event that the city council proposes not to renew, to revoke, or to suspend the license, the licensee must be notified in writing of the basis for such proposed revocation or suspension. The council will hold a hearing for the purpose of determining whether to revoke or suspend the license. The hearing must be within 30 days of the date of the notice. The city council must determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of

the notice, whichever is sooner. The council must notify the licensee of its decision within that period.

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

**Section 14. Transfer of License.**

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

**Section 15. Severability.**

Every section, provision, or part of 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 be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision, or part thereof. The City Council specifically declares that the licensing requirements in this Ordinance are severable from any and all of the other requirements of this Ordinance. The City Council further declares that it would have adopted the other requirements in this Ordinance regardless of the validity or invalidity of the licensing requirements.

**Section 16. Enforcement/Penalty.**

Any person violating any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties for a misdemeanor as prescribed by state law. Each day the violation continues shall be considered a separate misdemeanor offense punishable by a separate misdemeanor penalty. If an act which is a violation of this ordinance is also a violation of any other state or federal law, this clause shall not preclude the appropriate authorities from also charging the perpetrator with such separate crime or crimes, subject to the appropriate penalty for each such separate crime. Violations of this ordinance may also be enforced by an appropriate civil action in either state or federal court.

**Section 17. Effective.**

This Ordinance shall be effective immediately upon its publication.

APROVED:

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Roger H. Becker  
Mayor

ATTEST:

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Eugene E. Grack  
City Clerk