

FRIDLEY CITY CODE
CHAPTER 127. SEXUALLY ORIENTED BUSINESSES
(Ref. 965)

127.01. PURPOSE AND INTENT

It is the purpose of this ordinance to regulate Sexually 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 neighborhood;
3. To locate Sexually Oriented Businesses away from residential areas, schools, churches, and parks and playgrounds;
4. Prevent concentration of Sexually Oriented Businesses within certain areas of the City.

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 sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market.

127.02. DEFINITIONS

1. Adult Use.

Any of the activities and businesses described below constitute "Sexually Oriented Businesses" which are subject to the regulations of this ordinance.

- A. Adult Book and/or Media Store.

An establishment which excludes minors or which has a substantial portion of its stock in trade or stock on display books, magazines, films, videotape, or other media which are characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas".

- B. Adult Cabaret.

An establishment which provides dancing or other live entertainment, if such establishment excludes minors by virtue of age or 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".

C. Adult Establishment.

Any business which excludes minors or 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.

D. 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.

E. Adult Mini-Motion Picture Theater.

(1) A theater in an enclosed building, from which minors are excluded, 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".

(2) Any business which presents motion pictures, from which minors are excluded, 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.

F. Adult Modeling Studio.

An establishment, which excludes minors, 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.

G. Adult Motion Picture Arcade.

Any place which excludes minors 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.

H. Adult Motion Picture Theater.

A theater in an enclosed building, from which minors are excluded, 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.

1. Adult Novelty Business.

A business, from which minors are excluded, which sells, offers to sell, or displays devices which simulate human genitals or devices which are designed for sexual stimulation.

J. Specified Anatomical Areas are any of the following conditions:

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

K. Specified Sexual Activities are any of the following conditions:

- (1) 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.

- (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.
- (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.

127.03. 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 Sexually 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 Fridley, 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.

127.04. NON-CONFORMING USES

All Sexually Oriented Businesses which were lawfully in existence as of the effective date of this ordinance and which were rendered nonconforming by the application of this ordinance shall be subject to abatement within three (3) years of the date of enactment of this ordinance.

127.05. LOCATION

During the term of this ordinance, no Sexually Oriented Businesses shall be located less than 500 feet from any residential zoning district boundary or site used for residential purposes, and less than 1,000 feet from any church site, from any school site, or from any park which is adjacent to property zoned residential. In addition, no Sexually Oriented Business may be located within 1,000 feet of another Sexually Oriented Business. For purposes of this ordinance, this distance shall be a horizontal measurement from the nearest existing residential district boundary or site used for residential purposes, church site, school site, park site, or another Sexually Oriented Business site to the nearest boundary of the proposed Sexually Oriented Business site.

127.06. HOURS OF OPERATION

No Sexually Oriented Business site shall be open to the public from the hours of 11:00 o'clock p.m. to 8:00 o'clock a.m.

127.07. OPERATION

1. An establishment operating as a Sexually 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.
2. All entrances to the business, with the exception of emergency fire exits which are not useable by patrons to enter the business, shall be visible from a public right-of-way.
3. 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.
4. Illumination of the premises exterior shall be adequate to observe the location and activities of all persons on the exterior premises.

127.08. SIGNS

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

127.09. LICENSES

All establishments, including any business operating at the time this ordinance becomes effective, operating, or intending to operate Sexually Oriented Business, shall apply for and obtain a license with the City of Fridley.

1. Licenses Required.
 - A. A person is in violation of the City Code if he operates a Sexually Oriented Business without a valid license, issued by the City.
 - B. An application for a license must be made on a form provided by the City. 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.
 - C. 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 law by the health department, fire department, and building official.

D. Application for license shall be made only on the forms provided by the City. Four (4) complete copies of the application shall be furnished to the office of the City Clerk containing the address and legal description of the property to be used; the names, addresses, phone numbers of the owner, lessee, if any, and the operator or manager; 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 or 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.

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 and addresses 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 and addresses 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.

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.

2. Issuance of License.

A. The Public Safety Director shall recommend approval of the issuance of a license by the City to an applicant within 45 days after receipt of an application unless he finds one or more of the following to be true:

- (1) An applicant is under 18 years of age.
- (2) An applicant or an applicant's spouse is overdue in his payment to the City, County, or State of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a Sexually Oriented Business.

(3) 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.

(4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this chapter, other than the offense of operating a Sexually Oriented Business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect

(5) An applicant is residing with a person who has been denied a license by the City to operate a Sexually Oriented Business within the preceding 12 months, or residing with a person whose license to operate a Sexually Oriented Business has been revoked within the preceding 12 months.

(6) The premises to be used for the Sexually Oriented Business have not been approved by the health department, fire department, 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.

(7) The license fee required by this chapter has not been paid.

(8) An applicant has been employed in a Sexually Oriented Business in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a Sexually Oriented Business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(9) An applicant or an applicant's spouse has been convicted of a crime involving any of the following offenses:

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;

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:

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 are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring, within any 24 month period.

B. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

C. An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection 127.09.02.(9) may qualify for a Sexually Oriented Business license only when the time period required by Subsection 127.09.02.(9) has elapsed.

D. 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 Sexually Oriented Business. The license shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

E. The City Council shall act to approve or disapprove the license application within 120 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.

F. Within 90 days after the decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or Clerk of the Municipality.

3. Fees.

An initial investigation fee of \$400.00 shall be charged at the time the application is filed; no part of this fee shall be refundable. If after review of the application the license is approved, the license holder shall pay \$400.00 for the initial license and \$400.00 per annum each time the license is renewed.

4. Inspection.

A. An applicant or license shall permit representatives of the police department, health department, fire department, and housing and building inspection division, to inspect the premises of a Sexually Oriented Business for the purpose of ensuing compliance with the law, at any time it is occupied or open for business.

B. A person who operates a Sexually Oriented Business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department at any time it is occupied or open for business.

C. 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.

5. Expiration of License.

A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 127.09.01. 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 expiration of the license will not be affected.

B. 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.

6. 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 license has:

A. Violated or is not in compliance with any provisions of this chapter.

B. Engaged in excessive use of alcoholic beverages while on the Sexually Oriented Business premises.

C. Refused to allow an inspection of the Sexually Oriented Business premises as authorized by this chapter.

D. Knowingly permitted gambling by any person on the Sexually Oriented Business premises.

E. Demonstrated inability to operate or manage a Sexually Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

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.

7. Revocation.

A. The City may revoke a license if a cause of suspension in section 127.09.6 occurs and the license has been suspended within the preceding 12 months.

B. The City shall revoke a license if it determines that:

(1) A licensee gave false or misleading information in the material submitted to the City during the application process;

- (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (3) A licensee or an employee has knowingly allowed prostitution on the premises;
 - (4) A licensee or an employee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;
 - (5) A licensee has been convicted of an offense listed in Section 127.09.02. A. (9) for which the time period required in Section 127.09.02.A. (9) has not elapsed;
 - (6) 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 127.09.02.A. (9) for which a conviction has been obtained, and. the person or persons were employees of the Sexually Oriented Business at the time the offenses were committed.
 - (7) 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.
 - (8) A licensee is delinquent in payment to the County or State for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the Sexually-Oriented Business.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license,
- D. Subsequent B. (7) 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.
- E. When the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued a Sexually 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 Subsection 127.09.07.B. (5) an applicant may not be granted another license until the appropriate number of years required under Section 127.09.02.A. (9) has elapsed.

F. A revocation by the City shall be proceeded 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.

8. Transfer of License.

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

127.10. 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