

11.44 SEXUALLY ORIENTED BUSINESSES

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11.44.010 Findings And Purpose

~~The city recognizes that the existence of sexually oriented businesses within the city presents unique problems in a variety of areas, including crime prevention, protection of retail trade, maintenance of protection of the quality of life in the city, and public health concerns as a result of sexually transmitted diseases. In particular, the city also recognizes problems that other communities throughout the country have had with sexually oriented businesses in terms of their location and effect upon adjoining neighborhoods. Finally, the city makes note of the spread of the sexually transmitted disease known as acquired immune deficiency syndrome (AIDS), and the lack of any adequate cure or treatment for this disease.~~

~~In order to provide for the general safety and welfare of the citizens of the city, the preservation of property values, and to minimize public health risks, the city finds it necessary to regulate sexually oriented businesses in terms of their physical location, condition of the premises, and the like.~~

- A. Purpose. The purpose of this chapter is to prescribe licensing requirements for sexually oriented businesses to protect the public health, safety, and welfare and to prevent criminal activity and the spread of sexually transmitted diseases. This chapter is intended to supersede the provisions of M.S. § 617.242, as it may be amended from time to time, and render M.S. § 617.242 inapplicable as authorized by the statute.
- B. Findings. The City Council makes the following findings regarding the effect sexually oriented businesses have on the character of the city's neighborhoods. In making these findings, the City Council hereby incorporates by reference the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses dated June 6, 1989, together with the studies, judicial decisions, and materials cited therein. A copy of the report is on file with the Administrator, Clerk/Treasurer and available for public inspection. The City Council further finds that the conclusions and recommendations contained in the report provide a reasonable evidentiary basis for the regulations adopted in this chapter.
 - 1. Sexually oriented businesses can contribute to an increase in criminal activity in the area in which such businesses are located, increasing the demands on city crime-prevention programs and law enforcement services.
 - 2. Sexually oriented businesses can be used as fronts for prostitution and other criminal activity. The experience of other cities indicates that proper management and operation of such businesses can minimize this risk.

3. Sexually oriented businesses can increase the risk of exposure to communicable diseases, including Acquired Immune Deficiency Syndrome (AIDS), for which there is currently 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, endangering not only the patrons of such establishments but also the general public.
4. Sexually oriented businesses 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.
5. A licensing and regulatory scheme as prescribed in this chapter facilitates enforcement of the City's zoning, property maintenance, nuisance, and building code regulations, and assists the City in preventing deterioration of surrounding properties, protecting neighborhood character, and monitoring sexually oriented businesses for adverse secondary effects on the community.
6. The risk of criminal activity and/or public health problems can be minimized through a licensing and regulatory scheme as prescribed in this chapter.

11.44.020 Definitions - Sexually Oriented Businesses

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~**ADULT ENTERTAINMENT CENTER.** An enclosed building or a part of an enclosed building, a portion of which contains one or more coin-operated mechanisms which when activated permit a customer to view a live person unclothed or in such attire, costume, or clothing as to expose to view any portion of the female breast below the top of the areola, or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, or the charging of any admission fee for the viewing of this type of activity.~~

~~**ADULTS-ONLY BOOKSTORE.** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for rent, sale, or viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined in this section, or an establishment with a segment or section devoted to the sale, rental, or display of this type of material, for sale or rental to patrons therein. A "substantial or significant portion" of its stock in trade shall be deemed to exist if 10% or more of the gross revenue from the business is derived from this type of sales or rentals, or if 10% or more of the floor area of the building used for these purposes is occupied by this stock in trade.~~

~~**ADULTS-ONLY THEATER.** An enclosed building used regularly and routinely for presenting programs, material distinguished or characterized by an emphasis on matter depicting, describing, or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined in this section, for observation by patrons therein.~~

~~**MESSAGE PARLOR.** An establishment or place primarily in the business of providing massage services.~~

~~**NUDITY.** The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depicting of covered male genitals in a discernibly turgid state.~~

~~**RAP PARLOR.** An establishment or place primarily in the business of providing non-professional conversation or similar services for adults.~~

~~**SADOMASOCHISTIC ABUSE.** Flagellation or torture by or upon a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.~~

~~**SAUNA.** An establishment or place primarily in the business of providing:~~

- ~~1. A steam bath; and~~
- ~~2. Massage services.~~

~~**SEXUAL CONDUCT.** Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast.~~

~~**SEXUAL EXCITEMENT.** The condition of human male or female genitals when in a state of sexual stimulation or arousal.~~

SEXUALLY ORIENTED BUSINESS. Includes (1) any business that, measured on a daily, weekly, monthly, or yearly basis, has more than twenty-five percent (25%) of its inventory, stock-in-trade, or publicly displayed merchandise consisting of sexually oriented materials; devotes more than twenty-five percent (25%) of its floor area, excluding storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public, to sexually oriented materials; or derives more than twenty-five percent (25%) of its gross revenues from sexually oriented materials or (2) any business that engages, for any length of time, in a sexually oriented use as defined in this section or in any other use that emphasizes specified sexual activities or specified anatomical areas.

SEXUALLY ORIENTED MATERIALS. Any visual, printed, or aural materials, or any objects or devices, that contain, depict, simulate, or describe specified sexual activities or specified anatomical areas; that are marketed for use in conjunction with, or are primarily used only with or during, specified sexual activities; or that are designed for sexual stimulation.

SEXUALLY ORIENTED USE. Any of the following activities and businesses, even if the activity exists for only a short time:

ADULT BODY PAINTING STUDIO. 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.

ADULT BOOKSTORE. An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audiotape, videotape, movies, or motion picture film if it meets the criteria established in the definition of "sexually oriented business," as defined in this section.

ADULT CABARET. A business or establishment that provides dancing or other live entertainment distinguished or characterized by an emphasis on: (a) the depiction of nudity, specified sexual activities or specified anatomical areas; or (b) the presentation, display, or depiction of matter that seeks to evoke, arouse, or excite sexual or erotic feelings or desire.

ADULT COMPANIONSHIP ESTABLISHMENT. 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.

ADULT CONVERSATION/RAP PARLOR. 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.

ADULT HEALTH/SPORT CLUB. A health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

ADULT HOTEL OR MOTEL. 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.

ADULT MODELING STUDIO. 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.

ADULT MOTION PICTURE ARCADE. 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.

ADULT MOTION PICTURE THEATER. 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.

ADULT NOVELTY BUSINESS. An establishment or business that has a variety of items for sale if it meets the criteria established in division (1) of the definition of "sexually oriented business" defined in this section.

ADULT SAUNA. 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.

ADULT STEAM ROOM/BATHHOUSE FACILITY. 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.

SPECIFIED ANATOMICAL AREAS. Shall include the following: (1) less than completely and opaquely covered human genitals, pubic area, buttocks, anus, or female breast below a point immediately above the top of the areola; and (2) human male genitals in a state of sexual arousal, whether or not completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Shall include the following: (1) 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; piquerism or zoerastia; (2) clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; (3) use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; (4) fondling or touching of nude human genitals, pubic regions, buttocks, or female breasts; (5) 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; (6) erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or (7) human excretion, urination, menstruation or vaginal or anal irrigation.

11.44.030 Exceptions.

~~No sexually oriented businesses shall be permitted to be located in any area which is zoned other than C-1 (commercial).~~

This chapter does not regulate the following:

- A. Material with significant literary content or social commentary;
- B. A business where sexually oriented materials are sold, bartered, distributed, leased, furnished, or otherwise provided for off-site use or entertainment, if the sexually oriented material on each item is blocked from view by an opaque cover as required under M.S. § 617.293, as it may be amended from time to time, and each item is in an area accessible only by an employee of the business;
- C. A person or organization exempted under M.S. § 617.295;
- D. Activity regulated under M.S. § 617.202;
- E. Displaying works of art showing specified anatomical areas, so long as no sexually oriented materials are for sale, and the business does not have a liquor license; and
- F. Movies rated G, PG, PG-13, NC-17 or R.

11.44.040 License Required.

- 1. ~~Within the C-1 zoning district, sexually oriented businesses shall be permitted only by special use permit, to be issued on an annual basis, to be reviewed on an annual basis.~~
- 2. ~~The special use permit shall be issued, with the following exceptions, which shall apply to all special use permits issued for sexually oriented businesses.~~
 - 1. ~~Conditions common to all sexually oriented businesses.~~
 - 1. ~~Location.~~ All sexually oriented businesses shall exist in free-standing buildings, located at least 500 feet from any structure containing any public or private school, church, licensed day care center, public library, park, or municipal building. All sexually oriented businesses shall be located at least 500 feet from any residential district.
 - 2. ~~Parking.~~ All driveways and parking facilities shall be paved with concrete or bituminous material in accordance with specifications to be established from time to time by the City Engineer.
 - 3. ~~Illumination.~~ Parking lots and access roads shall be illuminated by exterior lighting facilities with a sufficient candle power or illuminating capacity to meet standards which shall be from time to time established and publicly available through the office of the City Engineer.
 - 4. ~~Inspection.~~ During business hours, all areas of the facility shall be open and available for inspection by law enforcement personnel, public health officials, and Fire Department or building code officials. The premises of each business shall be completely covered by television camera surveillance devices, with sufficient closed circuit monitors to permit the inspection of all locations within and without the premises on a constant basis. These monitors shall be available to law enforcement personnel at all times during business hour operations. Standards for the quality and

~~type of television camera monitoring equipment shall be established at the time of issuance of the special use permit, by the City Council upon recommendation of its staff and other experts as may be employed by the City Council.~~

- ~~5. *Minors.* No person under the age of 18 years shall be permitted on or about the premises, whether or not accompanied by an adult, at any time.~~
- ~~6. *Signage.* No exterior signage containing reference to any of the activities going on within the business shall be permitted except a simple, generic sign identifying the type of establishment, as defined in SLPC 11.44.020. Sign lettering shall not exceed six inches in height. Sign prohibition shall not include the AIDS warning sign noted below.~~
- ~~7. *AIDS warning.* Each sexually oriented business shall display, immediately adjacent to its main entrance, an AIDS warning sign. The AIDS warning sign shall be purchased from the city, which shall charge a fee equal to the cost of production of the sign. The content of the AIDS warning sign shall be as determined from time to time by the City Council and shall not be altered in any way by the merchant displaying the sign. The sign shall be displayed at all times and shall be illuminated at all times.~~
- ~~8. *Annual fee and information.* Each sexually oriented business shall pay an annual license fee to be established from time to time by resolution of the City Council.
 - ~~1. Prior to issuance of the license, the owner of each sexually oriented business shall provide the following information to the city:
 - ~~1. The type of business organization which owns the business, e.g., corporation, partnership, proprietorship;~~
 - ~~2. The names and addresses of all stockholders, partners, or other persons interested in the ownership of the business; and~~
 - ~~3. Other information as the City Council may from time to time direct. Forms shall be prepared by city staff listing the types of information which are deemed necessary for investigation of the background of the owner of any sexually oriented business.~~~~
 - ~~2. No person shall be eligible, and no business shall be eligible, to obtain a special use permit for a sexually oriented business if any principal, stockholder, or other interested party having an interest in the business has ever been convicted of any type of felony, or has ever been convicted of any type of gross misdemeanor or misdemeanor involving a sexual offense or illegal sale of liquor, tobacco, or other materials to minors.~~~~
- ~~9. *Alcohol and drugs.* No sexually oriented business shall permit on the premises any alcoholic beverage or other mood-altering substances. Owners of all sexually oriented businesses shall make concerned efforts to prohibit any illicit or illegal activities from taking place upon their premises, including the illegal sale, use, or distribution of alcohol or controlled substances, or acts of prostitution or criminal sexual conduct of any kind.~~
- ~~10. *Revocation.* All special use permits for sexually oriented businesses shall be subject to revocation under the procedures established for revocation of special use permits for any violation of any term or condition of the special use permit. Further, upon the revocation of a special use permit for a violation, the premises where the violation occurred shall not be eligible~~

~~for another special use permit for a sexually oriented business for a period of ten years following that revocation.~~

~~11. *Other codes.* All sexually oriented businesses shall strictly observe the conditions of all state, fire, health, and building codes. All buildings housing sexually oriented businesses shall be completely sprinkled with an approved fire detection and sprinkler system.~~

~~12. *Consumables.* No sexually oriented business shall engage in the sale or distribution of any item for human consumption, and no sexually oriented business shall be eligible for any vending machine license of any kind.~~

~~13. *Violations of law.* The special use permit of any sexually oriented business shall be subject to revocation in the event any employee, owner, interested principal, or agent of the business is convicted of any of the following crimes on more than one occasion within any calendar year, or on three occasions within any ten-year period:~~

~~1. Prostitution;~~

~~2. Sale of any material, device, or item to any minor which is prohibited by state law;~~

~~3. Trafficking in controlled substances including the use, possession, or distribution thereof; or~~

~~4. Any sex crime as defined in M.S. §§ 609.293–609.352, inclusive, as they may be amended from time to time.~~

~~2. *Conditions common to bookstores:*~~

~~1. *Windows.* All bookstores shall be completely surrounded on the exterior walls by transparent windows which shall not be covered in any manner. Windows shall be at least four feet in height, and the interior of the premises shall be illuminated at all times during regular business hours. Windows shall not be tinted and shall be specifically designed and aligned so as to permit the observance from the outside of patrons and employees on the inside.~~

~~2. *Booths.* No private booths of any kind will be allowed within the bookstore, excepting a private business office for use only by store employees. All other areas of bookstores at all times shall be open and accessible.~~

~~3. *Parking.* Each bookstore shall provide one parking stall for every ten square feet of retail floor space located in the bookstore.~~

~~3. *Conditions common to theaters:*~~

~~1. *Parking.* One parking stall shall be provided for every ten square feet, as measured at the foundation level, of the building housing the theater, or one space per seat allocated for patron seating, whichever figure is greater.~~

~~2. *Obscenity.* For any theater offering live entertainment, the following activities are hereby defined as obscene and shall be prohibited:~~

~~1. 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, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piqueurism, sapphism, or zoocerastia;~~

~~2. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence;~~

- ~~3. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation;~~
 - ~~4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast;~~
 - ~~5. Situations involving a person or persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraining of those persons;~~
 - ~~6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or~~
 - ~~7. Human excretion, urination, menstruation, or vaginal or anal irrigation.~~
- ~~4. Conditions common to parlors.~~
- ~~1. Enclosures. No private booths or enclosed areas shall be permitted in any parlor or any sauna having a steam bath facility; any such steam bath shall be completely surrounded by transparent windows, to permit observation of all areas within those steam baths from the outside. A massage parlor or sauna may provide for separate enclosed areas where members of the same sex may be shielded from view from members of the opposite sex, but for no other purposes.~~
 - ~~2. Obscenity. No person shall engage in any of the acts described in Paragraph B,3,b, publicly or in private, for remuneration or no remuneration, in any parlor.~~
- ~~5. Additional conditions. The City Council, upon recommendation of its Planning Commission, may make or propose other conditions and restrictions on sexually oriented businesses as the City Council deems from time to time to be appropriate, where those restrictions or regulations are designed to protect the general health, safety, and welfare of the public.~~

No person may own or operate a sexually oriented business within the city unless the person is currently licensed under this chapter.

11.44.050 Persons Ineligible

~~In addition to the annual permit fee required by SLPC 11.44.040 Paragraph B,1,h, at the time of initial application for a special use permit, an initial investigation fee shall be charged, in an amount to be established from time to time by resolution of the City Council.~~

No license may be issued to a person who:

- A. Is not a citizen of the United States or a resident alien;
- B. Is a minor at the time the application is filed;
- C. Has been convicted of a crime directly related to the licensed occupation and has not shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of the owner, operator or manager of a sexually oriented business under M.S. § 364.03, Subd. 3, as it may be amended from time to time, or a person not of good moral character and repute;
- D. Holds a liquor license under SLPC 11.08.
- E. In the judgment of the licensing authority, is not the real party in interest or beneficial owner of the business operated under the license;
- F. Has had a license for a sexually oriented business or similar business revoked anywhere within five years of the license application; or

11.44.060 Places Ineligible

No license may be issued for:

- A. A place or a business ineligible for a license under city ordinance or state law;
- B. Operation in a zoning district where the business is not allowed pursuant to SLPC 16;
- C. A place or business that is currently licensed as a tattoo establishment, pawnshop, massage business or establishment that sells alcoholic beverages; or
- D. Operation on a premises on which taxes, assessments or other financial claims of the city or other government agency are delinquent and unpaid, unless the non-payment is not under the control of the applicant.

11.44.070 License Application

- A. The application for a sexually oriented business license under this chapter must be made on a form supplied by the city and must provide the following information:
 - 1. The business in connection with which the proposed license will operate;
 - 2. The location of the business premises;
 - 3. The legal description of the premises to be licensed, including a map of the area for which the license is sought, showing dimensions, locations of buildings, street access and parking facilities;
 - 4. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not paid, the years and amounts that are unpaid;
 - 5. Whether the applicant is the owner and operator of the business and if not, who is;
 - 6. Whether the applicant has ever used or been known by a name other than his or her true name, and if so, what was the name or names, and information concerning dates and places where used;
 - 7. Whether the applicant is married or single. If married, the true name, place and date of birth and street address of applicant's spouse;
 - 8. Street address at which the applicant and spouse have lived during the preceding ten years;
 - 9. Kind, name and location of every business or occupation the applicant and spouse have been engaged in during the preceding ten years;
 - 10. Names and addresses of the applicant's and spouse's employers and partners, if any, for the preceding ten years;
 - 11. Whether the applicant or spouse has ever been convicted of a violation of a state law or local ordinance, other than a non-alcohol related traffic offense. If so, the applicant must furnish information as to the time, place and offense for which convictions were had;
 - 12. Whether the applicant or spouse has ever been engaged as an employee or in operating a sexually oriented business, massage business, or other business of a similar nature. If so, the applicant must furnish information as to the time, place and length of time;
 - 13. Whether the applicant has ever been in military service. If so, the applicant must, upon request, exhibit all discharges;
 - 14. If the applicant is a partnership, the name and address of all partners and all information concerning each partner as is required of a single applicant as above. A managing partner or partners must be designated. The interest of each partner or partners in the business must be submitted with the application and, if the partnership is required to file a certificate as to trade name under the provisions of

M.S. Ch. 333, as it may be amended from time to time, a copy of the certificate must be attached to the application;

15. If the applicant is a corporation or other organization, the applicant must submit the following:
 1. (a) Name, and if incorporated, the state of incorporation;
 2. (b) Names and addresses of all officers;
 3. (c) The name of the manager or proprietor or other agent in charge of, or to be in charge of the premises to be licensed, giving all information about said person as is required in the case of a single applicant; and
 4. A list of all persons who, single or together with their spouse, own or control an interest in said corporation or association in excess of 5% or who are officers of said corporation or association, together with their addresses and all information as is required for a single applicant.
 16. The amount of the investment that the applicant has in the business, land, building, premises, fixtures, furniture or stock-in-trade, and proof of the source of the money;
 17. A list of responsible persons, including the names of owners, managers and assistant managers, who may be notified or contacted by state or city employees in case of emergency. These persons must be residents of the state;
 18. Whether the applicant holds a current license for a sexually oriented business or similar business from another governmental unit;
 19. Whether the applicant has ever been denied a license for a sexually oriented business or similar business from another governmental unit; and
 20. Other information that the city deems appropriate.
- B. No person may make a false statement or material omission in a license application or investigation. A false statement or material omission is grounds for denial, suspension or revocation of a license.
- C. Each licensee has the continuing duty to properly notify the Administrator, Clerk/Treasurer of a change in the information or facts required to be furnished on the application for a license. This duty continues throughout the period of the license. Failure to comply with this section will constitute cause for revocation or suspension of the license.
- D. The application for the renewal of an existing license must be made at least 90 days prior to the date of the expiration of the license and must be made on the form which the city provides.

11.44.080 Fees

- A. An applicant for a license must pay to the city the investigation fee specified in the Ordinance Establishing Fees and Charges, adopted pursuant to SLPC 3.16.030, as that ordinance may be amended from time to time. This fee will be for the purpose of conducting a preliminary background and financial investigation of the applicant. If the city believes that the public interest so warrants, it may require a similar investigation at the time of renewal of a license. If an investigation is ordered at the time of license renewal, the applicant must pay the fee specified above, except that the fee will be the smaller of the stated dollar amount or the actual cost of the investigation. There will be no refund of the investigation fee after the investigation has begun.
- B. The annual fees for a license are set forth in the Ordinance Establishing Fees and Charges, adopted pursuant to SLPC 3.16.030 of this code, as that ordinance may be amended from time to time.
- C. Each license expires on December 31 of the year in which it is issued. Fees for licenses issued during the license year will be prorated according to the number of months

remaining in the year. For this purpose an unexpired fraction of a month will be counted as a whole month having elapsed.

- D. No refund of a fee will be made except as authorized by ordinance.

11.44.090 Granting Of Licenses

- A. No license may be issued until the Police Department has conducted an investigation of the representations set forth in the application, the applicant's moral character, and the applicant's financial status. All applicants must cooperate with this investigation.
- B. No license, except for a renewed license, may be issued for a sexually oriented business until the Council has held a public hearing. Notice of the hearing must be made in the same manner as that specified in SLPC 16 of this code, for a zoning ordinance amendment affecting district boundaries. The Council must grant the license unless the applicant or the location does not meet the requirements of the city code, the application was incomplete, or the application contained false information or a material omission. If the application is denied, the city must notify the applicant with the reason(s) stated for denial. Notification must be sent certified, United States mail, return receipt requested, to the address provided on the license application. If the Council fails to act on the application within 45 days after receipt of a complete application, the application will be deemed approved. An applicant wishing to appeal the action of the City Council may seek a writ of certiorari before the Minnesota Court of Appeals.
- C. *Interim License Issuance Pending Investigation and Hearing.*
1. The City Council may issue a license before an investigation, notice and public hearing for an applicant who:
 - a. Had a license within the previous five years for the establishment that is specified in the application and that is continuing to operate under a license;
 - b. Wishes to resume operation of the business without sufficient time, through no fault of his or her own, to meet the normal procedural requirements;
 - c. Had no criminal license convictions, or license suspensions or revocations during the prior licensed period; and
 - d. Otherwise qualifies and meets the requirements for a license.
 2. In this situation, the City Council may immediately issue an interim license to the applicant for a period of no longer than 90 days. The applicant must then proceed through the specified requirements for an investigation, notice, and public hearing. At the public hearing the Council will decide whether the license should continue in effect or be revoked. The applicant has no greater right to continuation of the license than he or she would have had to issuance of a new license following the normal procedure without the interim license.
- D. A license will be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without application in the same manner as an application for a new license. Transfer of 25% or more of the stock of a corporation or of a controlling interest of it, whichever is less, will be deemed a transfer of the license. If the licensee is a corporation that is wholly owned by another corporation, the same provisions about the transfer of a stock or a controlling interest will apply to that parent corporation, any second parent corporation that wholly owns the parent corporation, and all other similarly situated parent corporations up through the chain of ownership. Transfer of this amount of stock without prior Council approval is a ground for revocation or suspension of the license. In addition, each day the licensee operates under the license after a transfer has taken place without obtaining Council approval will be a separate violation of this chapter.

- E. In the case of the death of a licensee, the personal representative of a licensee may continue operation of the business for not more than 90 days after the licensee's death.

11.44.100 Conditions Of License

- A. A license is subject to the conditions in this section, all other provisions of this chapter, and of other applicable regulations, ordinances or state laws.
- B. A licensee is responsible for the conduct of his or her place of business and the conditions of order in it. The act of an employee of the licensed premises is deemed the act of the licensee as well, and the licensee is liable for all penalties provided by this chapter equally with the employee, except criminal penalties.
- C. The license must be posted in a conspicuous place in the premises for which it is used.

11.44.110 Restrictions And Regulations

A sexually oriented business is subject to the following restrictions and regulations:

- A. No owner, manager or employee may allow sexually oriented materials or entertainment to be visible or perceivable in any manner, including aurally, at any time from outside of the business.
- B. No owner, manager or employee may allow a person under the age of 18 to enter the business.
- C. No owner, manager or employee may allow a person under the age of 18 to have access to sexually oriented materials, whether by sight, purchase, touch or other means.
- D. No owner or manager may employ a person under the age of 18 on the licensed premises.
- E. No owner, manager, or employee may have been convicted of a sex crime, as identified in M.S. §§ 609.293 to 609.352, 609.746 to 609.749, 609.79 or 518B.01, as they may be amended from time to time, or related statute dealing with sexual assault, sexual conduct, harassment, obscenity, or domestic abuse within the past five years.
- F. No business may exceed 10,000 square feet in gross floor area.
- G. No owner, manager or employee may allow a patron, employee, or other person on the premises to physically contact, in public view, a specified anatomical area of himself or herself or of another person, except that a live performer may touch himself or herself.
- H. A live performer must remain at all times a minimum distance of ten feet from members of the audience, and must perform on a platform intended for that purpose, that must be raised at least two feet from the level of the floor on which the audience is located. No performer may solicit or accept money, a tip, or other item from a member of the audience.
- I. No business may have booths, stalls, partitioned portions of a room, or individual rooms, except as follows:
 - 1. Restrooms are allowed as long as they are no larger than reasonably necessary to serve the purposes of a restroom, no other activities are provided or allowed in the rooms, and there are no chairs, benches, or reclining surfaces in the rooms; and
 - 2. Storage rooms and private offices are allowed, if the storage rooms and offices are used solely for running the business and no person other than the owner, manager and employees is allowed in them.
- J. A licensee must not be open for business to the public:
 - 1. Between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday; and
 - 2. Between 1:00 a.m. and 12:00 noon on Sundays.

11.44.120 Suspensions And Revocations

- A. Delinquent taxes. The City Council may suspend or revoke a license issued under this chapter for operation on a premises on which real estate taxes, assessments or other financial claims of the city or of the state are due, delinquent, or unpaid, unless the non-payment is not under the control of the licensee. If an action has been commenced under M.S. Ch. 278, as it may be amended from time to time, questioning the amount or validity of taxes, the Council may on application by the licensee waive strict compliance with this provision; no waiver may be granted, however, for taxes, or a portion of them, that remain unpaid for a period exceeding one year after becoming due, unless the one-year period is extended through no fault of the licensee.
- B. Violations.
 - 1. The Council may either suspend for up to 60 days or revoke a license for a violation upon a finding that the licensee or an agent or employee of the licensee has failed to comply with an applicable statute, regulation or ordinance relating to the subject matter of this chapter or violated the statutes in Paragraph (B)(2). No suspension or revocation will take effect until the licensee has been afforded an opportunity for a hearing pursuant to M.S. §§ 14.57 to 14.69, as they may be amended from time to time, with the exception of the suspension provided for in Paragraph (B)(2).
 - 2. Conviction of a sex crime, as identified in M.S. §§ 609.293 to 609.352, 609.746 to 609.749, 609.79 or 518B.01, as they may be amended from time to time, or related statute dealing with sexual assault, sexual conduct, harassment, obscenity or domestic abuse by the licensee will result in the immediate suspension pending a hearing on revocation of a license issued under this chapter.
- C. Prompt judicial review. Prompt and final judicial review shall be provided to any applicant or licensee when a license is denied, suspended or revoked.

11.44.130 Penalty

Except as otherwise provided by state law, a person violating a provision of this chapter is subject to the penalties established in SLPC 1.04.200. A fine or sentence imposed does not affect the right of the city to suspend or revoke the license of the licensee as the Council deems appropriate.