

## Section 450-Sexually Oriented Businesses

**Section 450.1. Purpose and Intent.** The purpose and intent of the sexually oriented business regulations set forth in this Ordinance is to serve a substantial government interest by attempting to preserve the quality and vitality of neighborhoods, curtail the depression of property values, restrain increased criminal activity and slow the spread of sexually transmitted diseases.

Sexually oriented businesses, as defined by this Ordinance, because of their very nature, are recognized as having serious objectionable operational characteristics that have a deleterious effect upon the use and enjoyment of adjacent areas. These secondary effects are especially evident where such uses are concentrated.

The secondary effects associated with sexually oriented businesses include an increased level of criminal activity, increased risk of exposure to sexually transmitted diseases, depression of property values and a significant change in the character of surrounding neighborhoods.

However, it is recognized that such regulations cannot on a de facto basis prohibit these businesses. Otherwise, a protected form of expression would vanish. The sexually oriented business regulations set forth herein represent a balancing of competing interests, reduction of objectionable secondary effects through the regulation of sexually oriented businesses versus the protected rights of the owners, operators, performers and patrons of those businesses.

### **Section 450.2. Definitions.**

**Subd. 1. Adult Motel.** Means a hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way which advertises the availability of this adult-type of photographic reproductions; or
- B. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

**Subd. 2. Employee.** Means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

**Subd. 3. Escort.** Means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person(s), or who agrees or offers to privately model lingerie or to privately perform a striptease for another person(s).

**Subd. 4. Escort Agency.** Means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**Subd. 5. Establishment.** Means and includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

**Subd. 6. Licensee.** Means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

**Subd. 7. Nude Model Studio.** Means any place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Minnesota or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

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

**Subd. 8. Nudity or a State of Nudity.** Means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

**Subd. 9. Person.** Means an individual, proprietorship, partnership, corporation, association, or other legal entity.

**Subd. 10. Semi-Nude or in a Semi-Nude Condition.** Means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

**Subd. 11. Sexually Oriented Business.** Means an adult motel, escort agency, or nude model studio.

**Subd. 12. Specified Anatomical Areas.** Means:

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

**Subd. 13. Specified Criminal Activity.** Means any of the following offenses:

- A. Prostitution or promotion of prostitution, dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
- B. For which:
  - (i) Less than two (2) 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;
  - (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

- (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

**Subd. 14. Specified Sexual Activities.** Means any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy, or
- C. Excretory functions as part of or in connection with any of the activities set forth in (A) through (B) above.

**Subd. 15. Substantial Enlargement of a Sexually Oriented Business.** Means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this Ordinance takes effect.

**Subd. 16. Transfer of Ownership or Control of a Sexually Oriented Business.** Means and includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Section 450.3. Classification.** Sexually oriented businesses are classified as follows:

**Subd. 1.** Adult motels;

**Subd. 2.** Escort agencies; and

**Subd. 3.** Nude model studios.

**Section 450.4. License Required.**

**Subd. 1.** It is a misdemeanor for any person to operate or participate in a sexually oriented business without a valid sexually oriented business license issued pursuant to this Ordinance.

**Subd. 2.** It is a misdemeanor for any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee pursuant to this Ordinance.

**Subd. 3.** It is a misdemeanor for any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Ordinance.

#### **Section 450.5. Business License Requirements.**

**Subd. 1. Business License Requirement and Application.** No person will engage in the business of operating or participating in a sexually-oriented business either exclusively or in connection with any other business enterprise without being licensed as provided in this ordinance. A written application for a license to operate a sexually-oriented business shall be submitted on a form approved by the Chief of Police. Each application for a license, together with the appropriate license fee as described in Section 510 will be submitted to the St. Cloud Police Department not later than one month prior to the expiration of the previous license. A penalty will be added to the amount of the license fee and paid by the applicant if the application has not reached the St. Cloud Police Department by the dates designated. Any person who operates a sexually-oriented business without submitting an application and appropriate fee will be deemed to have violated this ordinance and will be subject to prosecution as provided in this ordinance.

**Subd. 2. Qualification of Application.** All applications must be qualified according to the provisions of this Ordinance. The application may request, and the applicant shall provide, such information as to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

**Subd. 3. Application Signatures.** If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

**Subd. 4. Application Information.** All Applicants must be eighteen (18) years old, whether applying as an individual, a partner of a partnership or a stockholder in a corporation and submit proof of age with the application. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents if the applicant is:

- A. An individual shall state his/her legal name and any aliases;

- B. A partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
- C. A corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

**Subd. 5. Assumed Name.** If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state:

- A. The sexually oriented business's fictitious name; and
- B. Submit the required registration documents.

**Subd. 6. Criminal History.** Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this Ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

**Subd. 7. Previous License.** Whether the applicant, or a person residing with the applicant, has had a previous license under this Ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

**Subd. 8. Multiple Licenses.** Whether the applicant or a person residing with the applicant holds any other licenses under this Ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

**Subd. 9. License Classification.** The single classification of license for which the applicant is filing.

**Subd. 10. Location of Business.** The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

**Subd. 11. Mailing Address.** The applicant's mailing address and residential address.

**Subd. 12. Photograph.** A recent photograph of the applicant(s).

**Subd. 13. Identification Cards.** The applicant's driver's license number, Social Security number, and/or his/her state or federally issued Tax Identification Number.

**Subd. 14. Diagram of Premises.** 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 it 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 (6) inches.

**Subd. 15. Survey.** A current certificate and straight-line drawing prepared by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within five hundred (500) feet of the property to be certified; or the property lines of any established religious institutions/synagogue, school, or public park or recreation area within one thousand (1,000) feet of the property to be certified shall be submitted with the application. The survey must have been prepared within 30 days of the application submission. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

**Subd. 16. Requirements for Business with Viewing Room.** If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 450.11.

**Subd. 17. Criminal Background Checks.** The applicant will submit with the completed new or renewal application form an executed release of information authorizing the Chief of Police to obtain any information pertaining to the character or criminal history of the applicant, employee or licensee which may be deemed confidential, private, or privileged by the laws of the United States or of any state. The criminal background check may include fingerprinting by the St. Cloud Police Department. If an applicant, employee or licensee is found to have been convicted of a specified criminal activity or a crime related to a specified sexual activity, in the State of Minnesota or elsewhere, a license will not be issued or renewed.

**Section 450.6. Issuance of Business License Application.** Within 30 days after receipt of a completed sexually oriented business application, the St. Cloud Police Department shall approve or deny the issuance of a license to an applicant.

**Section 450.7. Non-Issuance of Business License Application.** The St. Cloud Police Department shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

**Subd. 1.** An applicant is under eighteen (18) years of age.

**Subd. 2.** An applicant or a person with whom applicant is residing is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

**Subd. 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.

**Subd. 4.** An applicant or a person with whom the applicant is residing has been denied a license to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

**Subd. 5.** An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this Ordinance.

**Subd. 6.** The premises to be used for the sexually oriented business have not been approved by the health inspector designated by the City, fire department, and the building official as being in compliance with applicable laws and ordinances.

**Subd. 7.** The license fee and/or application fee required by this Ordinance has not been paid.

**Subd. 8.** An applicant of the proposed business is in violation of, or is not in compliance with, any of the provisions of this Ordinance.

**Subd. 9.** A person who is not of good moral character or repute.

**Section 450.8. 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, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section III. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

**Section 450.9. Inspection.** The health inspector designated by the City, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the St. Cloud Police Department.

**Section 450.10. One Classification.** A sexually oriented business license shall issue for only one classification as found in Section 450.3.

**Section 450.11. Employee Application.**



**Subd. 1. Employee Identification Information.** Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the St. Cloud Police Department the following information:

- A. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- B. Age, date, and place of birth;
- C. Height, weight, hair and eye color;
- D. Present residence address and telephone number;
- E. Present business address and telephone number;
- F. Date, issuing state and number of driver's permit or other identification card information;
- G. Social Security Number; and
- H. Proof that the individual is at least eighteen (18) years of age.

**Subd. 2. Employee Photographs.** A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the St. Cloud Police Department shall be attached to the application form for a sexually oriented business employee license. Any fees for the photographs and fingerprints shall be paid by the applicant.

**Subd. 3. Employee Statement.** A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

**Subd. 4. Employee Criminal History.** A statement whether the applicant has been convicted of a specified criminal activity as defined in this Ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

**Section 450.12. Issuance of Employee License.** Upon the filing of said application for a sexually oriented business employee license, the St. Cloud Police Department shall issue a temporary license to said applicant. The application shall then be referred to the appropriate departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the

completed application is filed. After the investigation, the St. Cloud Police Department shall issue a license.

**Section 450.13. Non-Issuance of Employee License.** A sexually oriented business employee license shall not be issued if it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

**Subd. 1.** The 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;

**Subd. 2.** The applicant is under the age of eighteen (18) years;

**Subd. 3.** The applicant has been convicted of a “specified criminal activity” as defined in this Ordinance;

**Subd. 4.** The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance; or

**Subd. 5.** The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this Subsection shall be subject to appeal as set forth in Section 450.19.

**Section 450.14. Annual Renewal of Licenses.** A license granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the St. Cloud Police Department that the applicant has not been convicted of any specified criminal activity as defined in this Ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 450.15, Subd. 3.

**Section 450.15. Fees.** The following fees shall be submitted to the St. Cloud Police Department at the time of application for business and/or employee licenses:

**Subd. 1. Application Fee.** Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee established in the St. Cloud Fee Schedule Ordinance Section 510.

**Subd. 2. License Fee.** In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee established in the St. Cloud Fee Schedule Ordinance Section 510 within thirty (30) days of license issuance or renewal.

**Subd. 3. Employee License Fee.** Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual, non-refundable application, investigation, and license fee established in the St. Cloud Fee Schedule Ordinance Section 510.

**Section 450.16. Random Inspections.**

**Subd. 1. Inspection.** An applicant or licensee shall permit representatives of the Police Department, health inspector designated by the City, Fire Department, Zoning Department, or other City departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

**Subd. 2. Penalty.** A person who operates a sexually oriented business or his/her agent or employee commits a misdemeanor if he/she refuses to permit such lawful inspection of the premises at any time it is open for business.

**Section 450.17. Expiration and Renewal of License.**

**Subd. 1. Expiration.** All licenses issued by the St. Cloud Police Department unless sooner revoked by the St. Cloud Police Department as hereinafter provided will expire on December 31st of each year.

**Subd. 2. Renewal.** When the St. Cloud Police Department denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the St. Cloud Police Department 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 ninety (90) days have elapsed since the date denial became final.

**Section 450.18. Suspension.** The St. Cloud Police Department shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

**Subd. 1.** Violated or is not in compliance with any Section of this Ordinance;

**Subd. 2.** Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.

**Section 450.19. Revocation.**

**Subd. 1. Revocation Determination.** The St. Cloud Police Department shall revoke a license if a cause of suspension in Section 450.18 occurs and the license has been suspended within the preceding twelve (12) months. The St. Cloud Police Department may also revoke a license if it determines that:

- A. A licensee gave false or misleading information in the material submitted during the application process;
- B. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- C. A licensee has knowingly allowed prostitution on the premises;
- D. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- E. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
- F. A licensee is delinquent in payment to the City, County, or State for any taxes or fees past due.

**Subd. 2. Revocation Period.** When the St. Cloud Police Department revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the St. Cloud Police Department finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

**Subd. 3. Administrative Review.** After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt administrative review of such action by a hearing which will be held before an independent hearing officer pursuant to the procedure established in St. Cloud City Ordinance Section 1100, subd. 12. At the time of the hearing, the licensee may appear and present any material evidence. The hearing officer will make findings of fact as to whether a violation occurred to support the denial, suspension or revocation of the license. The decision of the hearing officer shall be final without any further right of administrative appeal.

**Subd. 4. Judicial Review.** An aggrieved party may obtain judicial review of the decision of the hearing officer by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minnesota Statute Section 606.01.

**Section 450.20. Transfer of License.** A licensee shall not transfer his/her 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.

**Section 450.21. Location and Penalties.**

**Subd. 1.** A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than those areas which are zoned as I-1 and I-2 pursuant to Article 10, Table 10-1 of the St. Cloud Land Development Code.

**Subd. 2.** A person commits an offense if the person operates, or causes to be operated, a sexually oriented business within one thousand (1,000) feet of:

- A. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- B. A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- C. A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the City which is under the control, operation, or management of the City park and recreation authorities;
- D. The property line of a lot devoted to a residential use;
- E. An entertainment business which is oriented primarily towards children or family entertainment; or
- F. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

**Subd. 3.** A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within five hundred (500) feet of another sexually oriented business.

**Subd. 4.** A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

**Subd. 5.** For the purpose of this Section, measurements shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the

nearest property line of the premises of a use listed in Subd. 2, Subsection B of this Section . Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

**Subd. 6.** For purposes of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

#### **Section 450.22. Adult Motels.**

**Subd. 1.** Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Ordinance.

**Subd. 2.** A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he/she rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he/she rents or sub-rents the same sleeping room again.

**Subd. 3.** For purposes of Subdivision 2 of this Section, the terms “rent” or “sub-rent” mean the act of permitting a room to be occupied for any form of consideration.

**Section 450.23. Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.** A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

**Subd. 1.** Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager’s stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons shall not be permitted. A manager’s station may not exceed thirty two (32) square feet of floor area. The diagram shall also designate the place at which the permit shall be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer’s or architect’s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6”) inches. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

**Subd. 2.** The application shall be sworn to be true and correct by the applicant.

**Subd. 3.** No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.

**Subd. 4.** It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

**Subd. 5.** The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.

**Subd. 6.** It shall be the duty of the licensee to ensure that the view area specified in Subdivision 5 remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons shall not be permitted in the application filed pursuant to Subdivision 1 of this Section.

**Subd. 7.** No viewing room may be occupied by more than one (1) person at any time.

**Subd. 8.** The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level.

**Subd. 9.** It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

**Subd. 10.** No licensee shall allow openings of any kind to exist between viewing rooms or booths.

**Subd. 11.** No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

**Subd. 12.** The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

**Subd. 13.** The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

**Subd. 14.** The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material.

No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.

**Section 450.24. Penalty.** A person having a duty under Subdivisions 1 through 14 of Section 450.23 commits a misdemeanor if he/she knowingly fails to fulfill that duty.

**Section 450.25. Escort Agencies.**

**Subd. 1.** An escort agency shall not employ any person under the age of eighteen (18) years.

**Subd. 2.** A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

**Section 450.26. Nude Model Studios.**

**Subd. 1.** A nude model studio shall not employ any person under the age of eighteen (18) years.

**Subd. 2.** A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this Subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

**Subd. 3.** A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

**Subd. 4.** A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**Section 450.27. Public Nudity.**

**Subd. 1.** It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.

**Subd. 2.** It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two (2) feet from the floor.

**Subd. 3.** It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.



**Subd. 4.** It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

**Section 450.28. Prohibition against Children in a Sexually Oriented Business.** A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

**Section 450.29. Hours of Operation.** No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 10:00 p.m. and 8:00 a.m. on weekdays and Saturdays, and 10:00 p.m. Saturday night to 12:00 p.m. on Sundays.

**Section 450.30. Exemptions.**

**Subd. 1.** It is a defense to prosecution under Section 450.27 that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the State of Minnesota, a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure:
  - (i) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (ii) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
  - (iii) where no more than one (1) nude model is on the premises at any one (1) time.

**Subd. 2.** The following sexually-oriented businesses are exempt from the requirements of this ordinance: adult bookstore, adult novelty store, adult video store, adult arcades, adult cabaret, adult motion picture theater, adult theater and sexual encounter establishment or center.

**Section 450.31. Injunction.** A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 450.22 of this Ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be a misdemeanor. Each day a sexually oriented business so operates is a separate offense or violation.

**Section 450.32. Severability.** If any Section, Subsection, or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining Sections, Subsections, and clauses shall not be affected.

**History:** New Ord. 2639 12-9-15;