

CHAPTER 6

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CHAPTER 6

OTHER BUSINESS REGULATION AND LICENSING

SECTION 6.01. DEFINITIONS.

As used in this Chapter, the following words and terms shall have the meanings stated:

1. "Applicant" means any person making an application for a license under this Chapter.
2. "Application" means a form with blanks or spaces thereon, to be filled in and completed by the applicant as his request for a license, furnished by the City and uniformly required as a prerequisite to the consideration of the issuance of a license for a business.
3. "Bond" means a corporate surety document in the form and with the provisions acceptable and specifically approved by the City Attorney.
4. "Business" means any activity, occupation, sale of goods or services, or transaction that is either licensed or regulated, or both licensed and regulated, by the terms and conditions of this Chapter.
5. "License" means a document issued by the City to permit an applicant to carry on and transact a business.
6. "Licensee" means an applicant who, pursuant to their application, holds a valid, current, unexpired and unrevoked license from the City for carrying on a business.
7. "License fee" means the money paid to the City pursuant to an application and prior to issuance of a license to transact and carry on a business.
8. "Sale", "Sell" and "Sold" mean all forms of barter and all manner or means of furnishing merchandise to persons.

SECTION 6.02. APPLICATIONS.

All applications shall be made as follows:

Subdivision 1. Application Forms.

All applications shall be made at the office of the City Clerk-Treasurer upon forms that have been furnished by the City for such purposes.

Subdivision 2. Investigation Fee

All initial applications shall be accompanied by a fee set by council on an annual basis to cover the cost of investigation as herein provided.

Subdivision 3. Completeness of Application.

1. All such applications must be subscribed, sworn to, and include, such information as the Council shall deem necessary considering the nature of the business for which license application is made.

2. It is unlawful for any applicant to intentionally make a false statement or omission upon any application form. Any false statement in such application, or any willful omission to state any information called for on such application form, shall, upon discovery of such falsehood work an automatic refusal of license, or if already issued, shall render any license or permit issued pursuant thereto, void, and of no effect to protect the applicant from prosecution for violation of this Chapter, or any part hereof.

Subdivision 4. City Clerk – Treasurer Responsibilities.

The City Clerk-Treasurer shall, upon receipt of each application completed in accordance herewith, forthwith investigate the truth of statements made therein and the moral character and business reputation of each applicant for license to such extent as he deems necessary. For such investigation the City Clerk-Treasurer may enlist the aid of the Chief of Police. The Council shall not consider an application before such investigation has been completed.

Subdivision 5. Renewal.

Applications for renewal licenses may be made in such abbreviated form as the Council may by resolution adopt. (Note: Refer to Section 6.09)

SECTION 6.03. ACTION ON APPLICATION, TRANSFER, TERMINATION AND DUPLICATE LICENSE.

Subdivision 1. Granting.

The Council may grant any application for the period of the remainder of the then current calendar year or for the entire ensuing license year. Failure to pay any portion of a fee when due shall be cause for revocation. No license fee shall be refundable upon revocation or voluntarily ceasing to carry on the licensed activity. All applications, including proposed license periods, must be consistent with this Chapter.

Subdivision 2. Issuing.

If an application is approved, the City Clerk-Treasurer shall forthwith issue a license pursuant thereto in the form prescribed by the Council, payment of the appropriate license fee, and approval of the bond or insurance as to form and surety or carrier, if required. All licenses shall be on a calendar year basis unless otherwise specified herein as to particular businesses. Unless otherwise herein specified, license fees shall be prorated on the basis of 1/12th for each calendar month or part thereof remaining in the then current license year. Provided, that for licenses where the fee is less than \$100.00 a minimum license fee equal to one-half of the annual license fee shall be charged. Except as to licenses that are specifically citywide, licenses shall be valid only at one location and on the premises therein described.

Subdivision 3. Transfer.

A license shall be transferable between persons upon consent of the Council and payment of the investigation fee. No license shall be transferable to a different location without prior consent of the Council and upon payment of the fee for a duplicate license. It is unlawful to make any transfer in violation of this Subdivision.

Subdivision 4. Termination.

Licenses shall terminate only by expiration or revocation.

Subdivision 5. Refusal and Revocation.

The Council may, for any reasonable cause, refuse to grant any application, or revoke any license. No license shall be granted to a person of questionable moral character or business reputation. Before revocation of any license, the Council shall give notice to the licensee and grant such licensee opportunity to be heard. Notice to be given and the exact time of hearing shall be stated in the resolution calling for such hearing. Grounds for revocation may be, but are not limited to, any of the following:

- (1) That the licensee suffered or permitted illegal acts upon licensed premises;
- (2) That the licensee had knowledge of such illegal acts but failed to report the same to police;
- (3) That the licensee failed or refused to cooperate fully with police in investigating such alleged illegal acts; or,
- (4) That the activities of the licensee created a serious danger to public health, safety, or welfare.

Subdivision 6. Duplicate License.

The City Clerk-Treasurer may issue duplicates of all original licenses without action by the Council, upon licensee's affidavit that the original has been lost, and upon payment of a fee set by council on an annual basis for issuance of the duplicate. All duplicate licenses shall be clearly marked DUPLICATE.

SECTION 6.04. FIXING LICENSE FEES.

Except as otherwise herein provided, all fees for licenses and investigation of applicants under this Chapter shall be fixed and determined by the Council on an annual basis, adopted by resolution, and uniformly enforced. A copy of the resolution setting forth currently effective license fees shall be kept on file in the office of the City Clerk-Treasurer, and open to inspection during regular business hours. For the purpose of fixing such fees, the Council may subdivide and categorize licenses under a specific license requirement, provided, that any such subdivision or categorization shall be included in the resolution authorized by this Section.

SECTION 6.05. CARRYING OR POSTING.

All solicitors shall at all times when so engaged, carry their license on their person. All other licensees shall post their licenses in their place of business near the licensed activity. Provided, however, that in the case of machine or other device licensing, the City may provide a sticker for the current license year which shall be affixed to each machine or device requiring such sticker. All licensees shall display their licenses upon demand by any officer or citizen.

SECTION 6.06. PENALTY FOR PROPERTY OWNER.

It is unlawful for any person to knowingly permit any real property owned or controlled by that person to be used, without a license, for any business for which a license is required by this Chapter.

SECTION 6.07. RESPONSIBILITY OF LICENSEE.

The conduct of agents or employees of a licensee, while engaged in performance of their duties for their principal or employer under such license, shall be deemed the conduct of the licensee.

SECTION 6.08. CONDITIONAL LICENSES.

Notwithstanding any provision of law to the contrary, the Council may, upon a finding of the necessity therefore, place such conditions and restrictions upon a license as it, in its discretion, may deem reasonable and justified.

SECTION. 6.09. RENEWAL OF LICENSES.

Applications for renewal of an existing license shall be made at least thirty (30) days prior to the date of expiration of the license, and shall contain such information as is required by the City. The Council for good and sufficient cause may waive this time requirement.

SECTION 6.10. INSURANCE REQUIREMENTS.

Whenever insurance is required by a Section of this Chapter, after approval by the Council, but before the license shall issue, the applicant shall file with the City Clerk-Treasurer a policy or certificate of public liability insurance showing (1) that the limits are at least as high as required, (2) that coverage is effective for at least the license term approved, and (3) that such insurance will not be canceled or terminated without thirty days' written notice served upon the City Clerk-Treasurer. Cancellation or termination of such coverage shall be grounds for license revocation.

SECTIONS 6.11 THRU 6.29, INCLUSIVE, reserved for future expansion

SECTION 6.30. DANCES.

Subdivision 1. Definitions.

As used in this Section, the following words and terms shall have the meanings stated:

1. "Public dance" means any dance wherein the public may participate by payment, directly or indirectly, of an admission fee or price for dancing, which fee may be in the form of a club membership, or payment of money, directly or indirectly.
2. "Public dancing place" means any room, place, or space open to public patronage in which dancing, wherein the public may participate, is carried on and to which admission may be had by the public by payment, directly or indirectly, of an admission fee or price for dancing.

Subdivision 2. License Required.

It is unlawful for any person to operate a public dancing place, or hold a public dance, without a license therefore from the City only if alcohol is to be sold or consumed.

Subdivision 3. License Fee.

The license fee shall include the cost of providing attendance of a police officer, or officers.

Subdivision 4. Application and License.

1. A verified application for a dance license shall be filed with the City and shall specify the names and addresses of the person, persons, committee or organization that is to hold the dance, time and place thereof, and the area of the dance floor.
2. All applications shall be accompanied by affidavits of two residents showing that the applicant is of good character and reputation in the community in which he lives, that he has not been convicted of a felony, gross misdemeanor, or violation of any public dance laws within the past five years. No license shall be issued to any person who has been so convicted.
3. No license shall be granted by the Council for any place having so-called "private apartments" or "private rooms" furnished or used for any purposes other than a legitimate business purpose which adjoins such dancing place, or which may be reached by stairs, elevators, or passageway leading from such dancing place. Nor shall a license be granted for any place which is not properly ventilated and equipped with necessary toilets, washrooms or lighting facilities.
4. Applications may be referred by the Council to the Chief of Police for investigation and report prior to being acted upon by the Council.
5. The Council shall act upon all dance license applications at a regular or special meeting thereof, whether or not it is included in the call or agenda of the meeting.
6. At least one officer of the law shall be designated by the Chief of Police and employed by the City to be present at every public dance during the entire time said dance is being held. For purposes of this Subparagraph the term "officer of the law" means any person who is a full-time or part-time peace officer. In the discretion of the Council or Chief of Police more than one such peace officer may be required.
7. The dance license shall be posted in the public dancing place and shall state the name of the licensee, the amount paid therefore, and the time and place licensed. The license shall also state that the licensee is responsible for the manner of conducting the dance.
8. No license shall be issued to any applicant under the age of eighteen (18) years.

Subdivision 5. Dance Regulations.

1. Illumination. Every public dancing place shall be brightly illuminated while in public use, and dancing therein while the lights are extinguished, dimmed or turned low so as to give imperfect illumination is prohibited.

2. Certain Persons Prohibited. No licensee shall permit any unmarried person under the age of sixteen (16) years, unless said unmarried person is accompanied by his parent or guardian, to remain in a public dancing place. Nor shall any licensee permit any intoxicated person, or other person who persists in violating the law, to be or remain in a public dancing place.
3. Hours of Dancing. No public dance shall be held on any day between the hours of 1:00 o'clock A.M. and 6:00 o'clock A.M.

SECTION 6.31. TOBACCO.

Subdivision 1. Purpose.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws; and because studies, which are hereby accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. §144.391.

Subdivision 2. Definitions and Interpretations.

The following terms shall have the definitions given to them:

1. "Compliance Checks" shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco related devices.
2. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

3. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.
4. "Moveable Place of Business" shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
5. "Retail Establishment" shall mean any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, restaurants, bars and lounges.
6. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
7. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the Customer and the licensee or employee. Self-service merchandising shall not include vending machines.
8. "Tobacco" means and includes tobacco in any form, including but not limited to, cigarettes, cigars, bagged, canned or packaged product.
9. "Tobacco" or "Tobacco products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, plug cut, crimp cut, ready-rubbed, and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobaccos, dipping tobaccos, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.
10. "Tobacco related devices" shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.
11. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices Upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.

Subdivision 3. License.

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the city.

1. Application. An application for a license to sell tobacco, tobacco products, or tobacco related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled council meeting. If the City Clerk shall determine that an application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.
2. Separate licenses shall be issued for the sale of tobacco at each fixed place of business, and no license shall be issued for a movable place of business.
3. Action. The City Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary.
4. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.
5. Revocations or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.
6. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

Subdivision 4. Moveable Place of Business.

No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

1. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

2. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subdivision 5. Fees.

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be fees set by council on an annual basis.

Subdivision 6. Basis for Denial of License.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

1. The applicant is under the age of 18 years.
2. The applicant has been convicted within the past five years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, or tobacco related devices.
3. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve months of the date of application.
4. The applicant fails to provide any information required on the application, or provides false or misleading information.
5. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section.

Subdivision 7. Prohibited Sales.

It shall be a violation of this ordinance for any person to sell or give away or offer to sell any tobacco, tobacco product, or tobacco related device:

1. To any person under the age of eighteen (18) years.
2. By means of any type of vending machine, except as may otherwise be provided in this ordinance.

3. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer.
4. By means of loosies as defined in Subdivision 2 of this Section.
5. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
6. By any other means, to any other person, on in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Subdivision 8. Vending Machines.

It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Subdivision 9. Self – Service Sales.

It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this ordinance is adopted shall comply with this Section within 90 days. This self-serve restriction described in this section shall not apply to retail stores which derive at least 90% of their revenue from tobacco and tobacco related products and which cannot be entered at any time by persons younger than 18 years of age.

Subdivision 10. Responsibility.

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

Subdivision 11. Compliance Checks and Inspections.

All licensed premises shall be open to inspection by local law enforcement or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors Used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained or attempted to be obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Subdivision 12. Other Illegal Acts.

Unless otherwise provided, the following acts shall be a violation of this ordinance.

1. Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any minor.
2. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
3. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.
4. Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
5. Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Subdivision 13. Violations.

1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.
2. Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. If a hearing is not requested by the accused violator within 15 (fifteen) days, the matter shall be submitted to the City Council for review to determine if a violation occurred and to determine the appropriate penalty.
3. Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 1300 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator: Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.
4. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the city in which the alleged violation occurred.
5. Misdemeanor Prosecution. Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.
6. Continued Violation. Each violation, and every day in which a violation occurs or continues, may constitute a separate offense.

Subdivision 14. Penalties.

1. Licenseses. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and **\$400** for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than **fourteen** days.
2. Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be charged an administrative fee of \$50.00 or complete ten hours of community service, said penalty to be determined by the hearing officer. Minors found in violation of this ordinance for a second time within a twelve month period shall be charged an administrative fee of \$100.00 or complete 20 hours of community service, said penalty to be determined by the hearing officer. Minors found in violation of this ordinance for a third time within a twelve month period shall be charged an administrative fee of \$200.00 or complete 40 hours of community service, said penalty to be determined by the hearing officer.
4. Misdemeanor. Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this ordinance.

Subdivision 15. Exceptions and Defenses.

Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

Subdivision 16. Severability and Savings Clause.

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

SECTION. 6.33. SOLICITORS.

Subdivision 1. Purpose.

This Section is not intended to in any way hinder, delay or interfere with legitimate business or organizational activities. The Council finds, however, that solicitors have used public streets and their direct contact with residents of the City for the illegitimate solicitation practices of harassment, nuisance, theft, deceit, or menacing, troublesome or unlawful activities. This Section is intended to ferret out and control:

- (1) Businesses and organizations using solicitation as a means of concealing unlawful activities; and,
- (2) Businesses and organizations which, though its activities be lawful or even commendable, use such illegitimate practices in solicitation; and,
- (3) Individual natural persons who, though they represent lawful businesses and organizations, use such illegitimate solicitation practices.

The Council further finds that a large number of the residents of the City are employed as their livelihood and means of support by manufacturing plants and other businesses on shifts rotating between night and day, and to disturb them during their sleeping hours for the purpose of solicitation is a source of nuisance or even harassment and should be subject to control.

Subdivision 2. Definitions.

The following terms, as used in this Section, shall have the meanings stated:

1. "Business solicitation" means an attempt by a solicitor, engaging in transactions of the same kind, to sell or distribute for a consideration any goods or services primarily for personal, family, or household purposes, when either the solicitor or person acting for him contacts the solicitee by telephone or in person, other than at the established place of business of solicitor, except:
 - (1) An attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the business firm or organization he represents, and the identity or kinds of goods, services or things of value offered; or,
 - (2) An attempted solicitation in which the solicitee has first initiated the contact with the solicitor; or,
 - (3) An attempted solicitation of a newspaper subscription in which the solicitor is a minor child engaged in both the delivery and sale of the newspaper; or,
 - (4) An attempted solicitation for the sale of products of a farm or garden occupied or cultivated by the solicitor, when facts of such occupancy or cultivation are proven by the solicitor.

2. "Contribution solicitation" means an attempt by a solicitor to obtain money from a solicitee for any cause or purpose, when either the solicitor or person acting for him contacts the solicitee by telephone or in person other than at the established place of meeting, business, service, or activity of the organization represented by the solicitor, except: (1) an attempted solicitation in which the solicitee personally knows the identity of the solicitor, the name of the organization he represents, and the identity of the services performed or offered by the organization, or, (2) an attempted solicitation in which the solicitee has first initiated the contact with the solicitor or the organization represented by him.

3. "Established place" means real estate in the City owned, leased on a month-to-month or term-certain longer than thirty (30) days. The term includes a booth, compartment, or area leased or assigned during and for the length of an event or occasion.

4. "Goods" means any tangible thing of value, but not including money, things in action or intangible personal property other than merchandise certificates or coupons as herein described. The term includes such chattels as are furnished or used at the time of sale or subsequently in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable there from. The term also includes merchandise certificates or coupons, issued by a retail

seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

5. "Services," means work, labor, or services of any kind.
6. "Solicitee" means the person solicited.
7. "Solicitor" means any person making the solicitation, including such common terms as "peddler", "transient merchant" and "canvasser".

Subdivision 3. Prohibited Solicitation Practices.

1. It is unlawful for any solicitor to engage in solicitation for any unlawful business or organizational purpose or activity.
2. It is unlawful for any solicitor to practice harassment, nuisance, theft, deceit, or menacing, troublesome or otherwise unlawful activities during the course of solicitation.
3. It is unlawful for any solicitor to enter, or attempt to gain entrance, to residential premises displaying at such entrance a sign at least 3-3/4 inches long and 3-3/4 inches high with the words "Peddlers and Solicitors Prohibited" or "Solicitors Prohibited" in type not smaller than 48 point.
4. It is unlawful for any solicitor to refuse to leave business premises when requested by the owner, lessee, or person in charge thereof.
5. It is unlawful for any person to engage in contribution solicitation without completion of licensing or registration as herein provided.
6. It is unlawful for any person to engage in business solicitation without a license as herein provided.

Subdivision 4. Application.

Applications for licensing or registration shall contain the name and address of the solicitor, the name and address of the business or organization for which solicitations are sought and such other information as may reasonably be required by the Council as a condition to registration or licensing or to permit investigation into the applicant's background and past solicitation practices.

Subdivision 5. Investigation, Approval or Disapproval.

1. All applications for licensing or registration shall be immediately referred to the Chief of Police, and by him or other person acting in his stead, investigated as to the truth thereof. The Chief of Police shall have five (5) business days within which to investigate and make a recommendation thereon.
2. If he finds no past history of the applicant indicating violations similar to those declared unlawful in this Section he shall recommend issuing a license or approving registration, as the case may be, and the City Clerk-Treasurer shall forthwith advise the applicant. The City Clerk-Treasurer shall issue a license, upon payment of the fee therefore, to the approved applicant for business solicitation, and shall approve the completion of registration by the applicant for a contribution solicitor.
3. If the Chief of Police finds a past history of the applicant indicating violations similar to those declared unlawful in this Section, he shall recommend denial of the license or registration. In all matters of recommended denial the applicant shall be forthwith advised thereof, and the application shall be referred to the Council and considered by it at its next regular or special meeting occurring more than ten (10) days thereafter. The applicant shall be afforded an opportunity to be heard at such meeting.

Subdivision 6. Duration of Contribution Solicitation Registration.

Registration of contribution solicitation shall expire sixty (60) days after registration is approved.

Subdivision 7. Exclusions.

The Council may, by resolution, exclude certain classes of solicitor events from compliance with licensing or registration provisions of this Section. Provided, however, that such exclusion shall not extend to the prohibited solicitation practices set forth in Subdivision 3, Subparagraphs 1-4, inclusive, of this Section.

SECTION. 6.34. GARBAGE AND REFUSE HAULERS.

Subdivision 1. Definitions.

The following terms, as used in this Section, shall have the meanings stated:

1. "Garbage" means all putrescible wastes, including animal offal and carcasses of dead animals but excluding human excreta, sewage and other water-carried wastes.
2. "Other refuse" means ashes, glass, crockery, cans, paper, boxes, rags and similar non-putrescible wastes but excluding sand, earth, brick, stone, concrete, trees, tree branches and wood.

Subdivision 2. License Required.

It is unlawful for any person to haul garbage or other refuse for hire without a license therefore from the City, or to haul garbage or other refuse from his own residence or business property other than as herein excepted.

Subdivision 3. Exception.

Nothing in this Section shall prevent persons from hauling garbage or other refuse from their own residences or business properties provided the following rules are observed:

- (1) That all garbage is hauled in containers that are water-tight on all sides and the bottom and with tight-fitting covers on top,
- (2) That all other refuse is hauled in vehicles with leak-proof bodies and completely covered or enclosed by canvas or other means or material so as to completely eliminate the possibility of loss of cargo, and,
- (3) That all garbage and other refuse shall be dumped or unloaded only at the designated sanitary landfill.

Subdivision 4. Hauler Licensee Requirements.

1. Hauler licenses shall be granted only upon the condition that the licensee have water-tight, packer-type vehicles in good condition to prevent loss in transit of liquid or solid cargo, that the vehicle be kept clean and as free from offensive odors as possible and not allowed to stand in any street longer than reasonably necessary to collect garbage or refuse, and that the same be dumped or unloaded only at the designated sanitary landfill, and strictly in accordance with regulations relating thereto.
2. Before a garbage and refuse hauler's license shall be issued, the applicant shall file with the City Clerk-Treasurer evidence that he has provided the following minimum insurance coverage: Comprehensive General Liability in the amount of \$200,000 per person & \$600,000 per occurrence; Personal Liability in the amount of \$200,000 per person & \$600,000 per occurrence; Comprehensive Automobile in the amount of \$200,000 per person & \$600,000 per occurrence; and Personal Injury in the amount of \$200,000 per person & \$600,000 per occurrence.
3. Licensees shall deliver all refuse to the designated waste facility and shall be required to pay non-resident rates for any refuse collected outside the City. Collection outside the City and failure to pay non-resident rates therefore shall be grounds for revocation of the license. The City requires that all waste removed from within the City limits to be hauled and disposed of at the Cottonwood County landfill.
4. The Council, in the interest of maintaining healthful and sanitary conditions in the City, hereby reserves the right to specify and assign certain areas to all licensees, and to limit the number of licenses issued.

5. The City of Westbrook maintains the right to request quotes in order to enter into an agreement with an approved garbage and waste hauler.
6. Each non-contracted applicant shall file with the City Clerk-Treasurer, before a garbage and refuse hauler's license is issued or renewed, a schedule of proposed rates to be charged by him during the licensed period for which the application is made. The schedule of proposed rates, or a compromise schedule thereof, shall be approved by the Council before granting the license. Nothing herein shall prevent a licensee from petitioning the Council for review of such rates during the licensed period, and the Council may likewise consider such petition and make new rates effective at any time. No licensee shall charge rates in excess of the rates approved by the Council.
7. The City of Westbrook allows dumpsters to be placed at residence locations for a limit of 30 days with a one time 10 day extension. The contracted waste hauler shall be required to be in contact with the City Clerk regarding verification of allowed dumpster use.

Subdivision 5. Weight Limitations.

The Council reserves the right to place reasonable weight limitations upon vehicles used by licensees, and to alter and vary such limitations with seasons of the year.

SECTION 6.35 FRANCHISES.

Subdivision 1. Definition.

The term "franchise" as used in this; Section shall be construed to mean any special privileges granted to any person in, over, upon, or under any of the streets or public places of the City, whether such privilege has heretofore been granted by it or by the State of Minnesota, or shall hereafter be granted by t-he City or by the State of Minnesota.

Subdivision 2. Franchise Ordinances.

The Council may grant franchises by ordinance. Franchise rights shall always be subject to the superior right of the public to the use of streets and public places. All persons desiring to make any burdensome use of the streets or public places, inconsistent with the public's right in such places, or desiring the privilege of placing in, over, upon, or under any street or public place any permanent or semi-permanent fixtures for the purpose of constructing or operating railways, telegraphing, or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the City or its inhabitants or any portion thereof, transportation facilities, water, light, heat, power, gas, or any other such utility, or for any other purpose, shall be required to obtain a franchise before proceeding to make such use of the streets or public places or before proceeding to place such fixtures in such places.

Subdivision 3. Power of Regulation Reserved.

The City shall have the right and power to regulate and control the exercise by any person, of any franchise however acquired, and whether such franchise has been heretofore granted by it or by the State of Minnesota.

Subdivision 4. Conditions in Every Franchise.

All conditions specified in this Section shall be a part of every franchise even though they may not be expressly contained in the franchise:

- A. That the grantee shall be subject to and will perform on its part all the terms of this Section and will comply with all pertinent provisions of the City Code, as the same may from time to time be amended.

- B. That the grantee shall in no case claim or pretend to exercise any power to fix fares, rates, and charges; but that such fares, rates, and charges shall at all times be just, fair and reasonable for the services rendered and shall in all cases be fixed and from time to time changed, unless regulated by an agency of the State of Minnesota, in the manner following:
 - 1. A reasonable rate shall be construed to be one which will, with efficient management, normally yield above all operating expenses and depreciation, a fair return upon all money Invested.

 - 2. If possible, maximum rates and charges shall be arrived at by direct negotiation with the Council.

 - 3. If direct negotiations fail to produce agreement, the Council shall, not less than thirty days before the expiration of any existing rate schedule or agreement, appoint an expert as its representative, the franchisee shall likewise appoint an expert as its representative and the two of them shall appoint a third person, preferably an expert, and the three of them shall constitute a board of arbitration. The board shall report its findings as soon as possible and the rates and charges it shall agree upon by majority vote shall be legal and binding, subject only to review by a court of competent jurisdiction upon application of one of the parties.

- C. That the Council shall have the right to require reasonable extensions of any public service system from time to time and to make such rules and regulations as may be required to secure adequate and proper service and to provide sufficient accommodations for the public.

- D. That the grantee shall not issue any capital stock on account of the franchise or the value thereof, and that the grantee shall have no right to receive upon condemnation proceedings brought by the City to acquire the public utility exercising such franchise, any return on account of the franchise or its value.

- E. That no sale or lease of said franchise shall be effective until the assignee or lessee shall have filed with the City an instrument, duly executed, reciting the facts of such sale or lease, accepting the terms of the franchise, and agreeing to perform all the conditions required of the grantee there under.
- F. That every grant in said franchise contained of permission for the erection of poles, masts, or other fixtures in the streets and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits under the streets or public places, or for the placing in the streets or other public places of any permanent or semi-permanent fixtures whatsoever, shall be subject to the conditions that the Council shall have the power to require such alterations therein, or relocation or rerouting thereof, as the Council may at any time deem necessary for the safety, health, or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts, and other fixtures bearing wires and the placing underground of all facilities for whatsoever purpose used.
- G. Every franchise shall contain a provision granting the City the right to acquire the same in accordance with statute.
- H. That the franchisee may be obligated by the City to pay the City fees to raise revenue or defray increased costs accruing as a result of utility operations, or both, including, but not limited to, a sum of money based upon gross operating revenues or gross earnings from its operations in the City.

Subdivision 5. Further Provisions of Franchises.

The enumeration and specification of particular matters which must be included in every franchise or renewal or extension thereof, shall not be construed as impairing the right of the City to insert in any such franchise or renewal or extension thereof such other and further conditions and restrictions as the Council may deem proper to protect the City's interests, nor shall anything contained in this Section limit any right or power possessed by the City over existing franchises.

SECTIONS 6.36 THROUGH 6.98, INCLUSIVE, reserved for future expansion

SECTION 6.36. SEXUALLY ORIENTED BUSINESS.

Subdivision 1. **PURPOSE.**

It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the City and to establish reasonable and uniform regulation to prevent the deleterious location and concentration of sexually oriented businesses within the City.

Subdivision 2.

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 neither 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 the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

SECTION 6.37. FINDINGS.

Subdivision 1.

Based on evidence concerning the adverse secondary effects of adult uses in other communities including, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; and Beaumont, Texas; and also on findings found in the Report of Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

1. Sexually oriented businesses in the City will lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
2. Certain employees of sexually oriented businesses defined in this Ordinance as adult theaters and cabarets engage in higher incident of certain types of sexually oriented behavior at these businesses than employees of other establishments.
3. Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos or live sex shows, as defined under this Ordinance as adult book stores, adult novelty shops, adult video stores, adult motion picture theaters, or adult arcades.
4. Offering and providing such space encourage such activities, which create unhealthy conditions.
4. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
6. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to syphilis, gonorrhea, human immunodeficiency virus

infection (AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections.

7. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because of the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of those facilities to self-regulate those activities and maintain those facilities.

8. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view “adult” oriented films.

9. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

10. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented business. Further, such a licensing procedure will place a heretofore-nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as the citizens of the City. It is appropriate to require reasonable assurance that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

11. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

12. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

13. The disclosure of certain information by those persons ultimately responsible for the day to day operation maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

14. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Ordinance is designed to prevent or who are likely to be witnesses to such activity.

15. The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this Ordinance.

16. The barring of such individual from the management of adult uses for a period of five (5) years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

17. The general welfare, health and safety of the citizens of the City, will be promoted by the enactment of this Ordinance.

SECTION 6.37 DEFINITIONS

Subdivision 1. Adult Arcade

Any place to which the public is permitted or invited wherein coin operated, slug operated or for any form of consideration, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players 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 the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

Subdivision 2. Adult Bookstore, Adult Novelty Store, or Adult Video Store

A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides or other visual representations that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” or;
2. Instruments, devices or paraphernalia that are designed for use in connection with “specified sexual activities”.

A commercial establishment may have other principal business purposes that do not involve the offering the sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an Adult Bookstore, Adult Novelty Store, or Adult Video Store so long as one of its principal business purposes is the offering the for sale or rental for consideration the specified materials which are characterized by the depiction of description of “specified sexual activities” or “specified anatomical areas”.

Subdivision 3. Adult Cabaret

A nightclub, bar, restaurant, or similar commercial establishment that regularly features:

1. Persons who appear in a state of nudity or semi-nude; or
2. Live performances that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or

3. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.
4. Subdivision 4. Adult Motel

A hotel, motel or similar commercial establishment which:

1. Offers accommodation to the public for any form of consideration provides patrons with closed-circuit television transmissions, films, motion pictures, video cassette, slides or other pornographic 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 that advertises the availability of this type of photographic reproductions; or
2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. 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) days.

Subdivision 5. Adult Motion Picture Theater

Commercial establishments where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of “specified sexual activities”.

Subdivision 6. Adult Theater

A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude or live performances that are characterized by the exposure of “specified anatomical areas” or “specified sexual activities”.

Subdivision 7. Employee

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.

Subdivision 8. Escort

A person who, for consideration, agrees or offers to act as a companion, guide or date for another person; or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Subdivision 9. Escort Agency

A person or business association, who furnishes, offers to furnish or advertise to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

Subdivision 10. Establishment

Includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business.
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. The additions of any sexually oriented business to any other existing sexually oriented business; or
4. The relocation of any sexually oriented business.

Subdivision 11. Licensee

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.

Subdivision 12. Nude Model Studio

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 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:

1. 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
2. Where in order to participate in a class, a student must enroll at least three days in advance of the class; and

3. Where no more than one nude or semi-nude model is on the premises at any one time.

Subdivision 13. Nudity or a State of Nudity

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 discernible turgid state.

Subdivision 14. Person

An individual, proprietorship, partnership, corporation, association or other legal entity.

Subdivision 15. Semi-Nude or in a Semi-Nude Condition

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 rear of the body which lies between two imaginary lines running parallel to the ground when a person is standing, the first or top of such line drawn at the top of the cleavage of the nates and the second or bottom line drawn at the lowest visible point of the cleavage or the lowest point of the curvature or the fleshy protuberance, whichever is lower, and between two imaginary lines on each side of the body, which lines are perpendicular to the ground and to the horizontal lines described above, and which perpendicular lines are drawn through the point at which each nate meets the outer side of each leg. 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 suite or other wearing apparel provided the areola is not exposed in whole or in part.

Subdivision 16. Sexual Encounter Center

A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

Subdivision 17. Sexually Oriented Business

Means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

Subdivision 18. Specified Anatomical Areas

1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
2. 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.

Subdivision 19. Specified Criminal Activity

Means any of the following offenses:

1. 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 and penal code of other states or countries; for which;
 - i. 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;
 - ii. Less than five 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 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 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

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.

Subdivision 20. Specified Sexual Activities

Means any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
2. Sex acts, normal or perverted, actual or simulated, including intercourse, or copulation, masturbation or sodomy; or
3. Excretory functions as part of or in connection with any of the activities set forth in (i.) and (ii.) above.

Subdivision 21. Substantial Enlargement of a sexually oriented business

The increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the effective date of this ordinance.

Subdivision 22. Transfer of Ownership or Control of a sexually oriented business

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

SECTION 6.38 CLASSIFICATION

Subdivision 1. Sexually oriented businesses

Are classified as follows:

1. Adult arcades;
2. Adult bookstores, adult novelty stores or adult video stores;
3. Adult cabarets;
4. Adult motels;

5. Adult motion picture theaters;
6. Adult theaters;
7. Escort agencies;
8. Nude model studios; and
9. Sexual encounter centers.

SECTION 6.39 LICENSE REQUIRED

Subdivision 1.

It is unlawful:

1. For any person to operate sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this Ordinance.
2. 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 by the City pursuant to this Ordinance.
3. For any person to obtain employment with a sexually oriented business without having secured an oriented business employee license pursuant to this Ordinance.

Subdivision 2.

An application for a license must be made on a form provided by the City.

Subdivision 3.

All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

Subdivision 4.

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 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.

Subdivision 5.

The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen years of age.
2. If the applicant is a partnership, the 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.
3. If the applicant is a corporation, the 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.
4. 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' fictitious name and
 - (b) Submit the required registration documents.
5. 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.
6. 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 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 or a corporation that is licensed under this Ordinance whose license was previously 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.
7. 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.
8. The single classification of license for which the applicant is filing.

9. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
10. The applicant's mailing address and residential address.
11. A recent photograph of the applicant(s).
12. The applicant's driver's permit number, Social Security number, and/or/his/her state or federally issued tax identification number.
13. A sketch or diagram need not be professionally prepared, 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.
14. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area within 500 feet of the property to be certified. For purposes of the Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
15. 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, videocassettes, 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 6.48 below.

Subdivision 6.

Before any application may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:

1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
2. Age, date, and place of birth;
3. Height, weight, hair and eye color;
4. Present residence address and telephone number;
5. Present business and telephone number;

6. Date, issuing stated and number of driver's permit, other identification card information;
7. Social Security number; and
8. Proof that the individual is at least eighteen (18) years of age.

Subdivision 7.

Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face and the applicant's fingerprints on a form provided by the police department. The applicant shall pay any fees for the photographs and fingerprints.
2. 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. 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. A copy of any order of denial, revocation or suspension shall be attached to the application.
3. A statement whether the applicant has been convicted of a specified criminal activity as defined I the Ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

Subdivision 8.

Upon the filing of said application for a sexually oriented business employee license, the city shall start the investigation process. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the days from the date the completed application is filed. After the investigation, the City shall issue a license, unless it is determined by apreponderance of the evidence that one or more of the following findings is true:

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.
2. The applicant is under eighteen (18) years of age.

3. The applicant has been convicted of a “specified criminal activity” as defined in the Ordinance.
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 particular provisions of this Ordinance.
5. The application 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 is issued pursuant to this subsection shall be subject to appeal as set forth in Section 6.44, Subdivision 4.

Subdivision 9.

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 City 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 6.40 below.

Subdivision 10.

Within thirty (30) days after the receipt of a completed sexually oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. An applicant is under eighteen (18) years of age.
2. An applicant or a person with whom the 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.
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 a person with whom the applicant is residing has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months.
5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this Ordinance.
6. The premises to be used for the sexually oriented business has not been approved by the health department, fire department and the building official as being in compliance with applicable laws and ordinances.
7. The license fee required by this Ordinance has not been paid.

8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Ordinance.

Subdivision 11.

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 as found in Section 6.38 (“classification”). 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.

Subdivision 12.

The health department, fire department, and the building official shall complete their certifications that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the City.

Subdivision 13.

A sexually oriented business license shall be issued for only one classification as found in Section 6.38.

SECTION 6.40 **FEES**

Subdivision 1.

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, as set by the Council.

Subdivision 2.

All license applications and fees shall be submitted to the Administrator/Clerk of the City.

SECTION 6.41 **INSPECTION**

Subdivision 1.

An applicant of licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other City Departments or agencies to

inspect the premises of a sexually oriented business for the purposes of insuring compliance with the law, at any time it is occupied or open for business.

Subdivision 2.

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 application may be granted a license if at least ninety (90) days have elapsed since the dated denial became final.

SECTION 6.42 **EXPIRATION OF LICENSE**

Subdivision 1.

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 6.39. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) before the expiration date, the expiration of the license will not be affected.

Subdivision 2.

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 ninety (90) days have elapsed since the date denial became final.

SECTION 6.43. **SUSPENSION**

Subdivision 1.

The City shall revoke a license if a cause of suspension in Section 6.43 occurs and the license has been suspended within the preceding twelve (12) months.

Subdivision 2.

The City Shall suspend a license for a period not to exceed thirty (30) days if it determines that licensee or an employee of a licensee has:

1. Violated or is not in compliance with any section of this Ordinance;
2. A licensee has knowingly allowed possession, use or sale of controlled substances on the premises;

3. A licensee has knowingly allowed prostitution on the premises
4. A licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.
5. 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.
6. A licensee is delinquent in payments to the City, County or State for any taxes or fees past due.

Subdivision 3.

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

Subdivision 4.

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 judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

SECTION 6.45 TRANSFER OF LICENSE

Subdivision 1.

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 6.46 LOCATION OF SEXUALLY ORIENTED BUSINESS

Subdivision 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 an Industrial District defined and described in the City of Westbrook, Minnesota zoning code.

Subdivision 2.

A person commits an offense if the person operates or causes to be operated a sexually oriented business within 300 feet of:

1. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
2. A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, junior colleges and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
3. A boundary of a residential district as defined in the City of Westbrook, Minnesota zoning code; a public park or recreational area which has been designated for 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 that is under the control, operation or management of the city park and recreation authorities.
4. The property line of a lot devoted to residential use as defined in the City of Westbrook, Minnesota zoning code.
5. An entertainment business which is oriented primarily toward children or family entertainment.
6. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State of Minnesota.

Subdivision 3.

A person commits a misdemeanor if that person cause or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 300 feet of another sexually oriented business.

Subdivision 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.

Subdivision 5.

For the purpose of Subdivision 2 of this Section, measurement 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 Subdivision 2. 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.

Subdivision 6.

For purposes of Subdivision 3 of this Section, the distance between any two 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.

Subdivision 7.

Any sexually oriented business lawfully operating on the effective date of this ordinance in violation of Subdivision 2 and Subdivision 3 of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue under the same ownership until January 1, 2010, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 250 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

Subdivision 8.

A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in Subdivision 2 of this Section within 300 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

Subdivision 9.

Any sexually oriented business lawfully operating on the effective date of this ordinance shall have a period of sixty (60) days to make application for a license hereunder. During such application period and until such licensee is either issued or denied, such business may continue to operate notwithstanding the licensing requirements of this ordinance.

SECTION 6.47 ADDITIONAL REGULATIONS FOR ADULT MOTELS

Subdivision 1.

Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two 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.

Subdivision 2.

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

Subdivision 3.

For purposes of Subdivision 1 and Subdivision 2 of this Section, the terms “rent” or “sub rent” means that the act of permitting a room to be occupied for any form of consideration.

SECTION 6.48 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

Subdivision 1.

A person who operates or cause 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, videocassette, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

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 or more manager’s stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will 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 will 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 the 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 interior of the premises to an accuracy of plus or minus six inches (6”). 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.
2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager’s station may be made without the prior approval of the City.

4. It is the duty of the license of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
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 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 of the manager's stations. The view required is this subsection must be by direct line of sight from the manager's station.
6. It shall be the duty of the licensees to ensure that the view area specified above remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other material 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 which patrons will not be permitted in the application filed pursuant to this Section.
7. No viewing room may be occupied by more than one person at any time.
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 one foot-candle as measured at the floor level.
9. It shall be the duty of the licensees to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be construction of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight inches (48") of the floor.

Subdivision 2.

A person having a duty under this section commits a misdemeanor if he knowingly fails to fulfill that duty.

SECTION 6.49 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

Subdivision 1.

An escort agency shall not employ any person under the age of 18 years.

Subdivision 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 18 years.

SECTION 6.50 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS

Subdivision 1.

A nude model studio shall not employ any person under the age of 18 years.

Subdivision 2.

A person under the age of 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 18 years was in a restroom not open to the public view or visible to any other person.

Subdivision 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.

Subdivision 4.

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

SECTION 6.51 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDDITY

Subdivision 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.

Subdivision 2.

It shall be a misdemeanor for a person who knowingly or intentional 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 feet (10') from any patron or customer and on a stage at least two (2) feet from the floor.

Subdivision 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.

SECTION 6.52 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

Subdivision 1.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

SECTION 6.53 HOURS OF OPERATION

Subdivision 1.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) a.m. and six o'clock (6:00) a.m. on weekdays and Saturdays, and one o'clock (1:00) a.m. and ten o'clock (10:00) a.m. on Sundays.

SECTION 6.54 EXEMPTIONS

Subdivision 1.

It is a defense to prosecution under Section 6.51 that a person appearing in a state of nudity did so in a modeling class operated:

1. By a proprietary school, licensed under the State of Minnesota; a college, junior college or university supported entirely or partly by taxation.
2. 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 a taxation; or
3. In a structure:
 - a. 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
 - b. Where in order to participate in a class, a student must enroll in at least three (3) days in advance of the class; and
 - c. Where no more than one (1) nude model is on the premises at any one time.

SECTION 6.55 EFFECTIVE DATE

Subdivision 1.

This ordinance shall become effective upon passage and publication.

SECTION. 6.99. VIOLATION A MISDEMEANOR.

Every person violates a section, subdivision, paragraph or provision of this Chapter when he performs an act thereby prohibited or declared unlawful, or fails to act when such failure is thereby prohibited or declared unlawful, and upon conviction thereof, shall be punished as for a misdemeanor except as otherwise stated in specific provisions hereof.