

Chapter 9

**LICENSING AND REGULATION OF
SEXUALLY ORIENTED BUSINESSES**

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State law references – Adult Entertainment Establishments, M.S.A. 617.242; authority for local regulation allowed, M.S.A. § 617.242, subd. 7.

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LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES

Sec. 9-1. Purpose.

The purpose of this Chapter is to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of Afton, to guard against the inception and transmission of disease, and to establish reasonable and uniform regulations. The provisions of this Chapter 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 Chapter 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.

The City Council further finds that experience from other cities demonstrates that sexually oriented businesses conducted in private by members of the same or the opposite sex, and employing personnel with no specialized training, are susceptible to operation in a manner contravening, subverting or endangering the health, safety and welfare of members of the community by being the sites of acts of prostitution, illicit sex, and occasions of violent crimes, thus requiring close inspection, licensing, and regulation.

Sec. 9-2. Classification.

The following are classified as sexually oriented businesses:

- (a) Sexually oriented arcades
- (b) Sexually oriented bookstores or sexually oriented video stores
- (c) Sexually oriented cabarets
- (d) Sexually oriented conversation/rap parlors
- (e) Sexually oriented massage parlors
- (f) Sexually oriented motels
- (g) Sexually oriented motion picture theaters
- (h) Sexually oriented saunas
- (i) Sexually oriented theaters
- (j) Escort agencies
- (k) Nude model studios
- (l) Adult Entertainment Establishments

Sec. 9-3. License Required.

(a) A sexually oriented business may not be operated without a valid license, issued by the City of Afton for the particular type of business.

(b) An application for a license must be made on a form provided by the City Administrator. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with market dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 9.16 of this Chapter shall submit a diagram meeting the requirements of that Section.

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(c) The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with applicable laws and City Code provisions by the City's fire department and building officials.

(d) If a person who wishes to operate a sexually oriented business is an individual, the individual must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 9-4 and each applicant shall be considered a licensee if a license is granted.

Sec. 9-4. Issuance of a License.

(a) The City Administrator shall approve the issuance of a license to an applicant within 30 days after receipt of a complete application. If any of the following are true, the City Administrator may deny the license or immediately revoke an already approved license:

- (1) An applicant is under 18 years of age.
- (2) An applicant is delinquent in the applicant's payment to the City of taxes, fees, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually oriented business.
- (3) An applicant has intentionally failed to provide information reasonably necessary for issuance of the license or has intentionally falsely answered a question or request for information on the application form.
- (4) An applicant has been convicted of a violation of a provision of this Chapter within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (5) An applicant is residing with a person who has been denied a license by the City to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
- (6) The premises to be used for the sexually oriented business has not been approved by the City's fire department and building officials as being in compliance with applicable laws and City Code provisions. The City's fire department and building officials must inspect the premises and issue inspection reports within 30 days after the applicant identifies the premises and requests an inspection.
- (7) The license fee required by this Chapter has not been paid.
- (8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that the applicant is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers on two or more occasions during the preceding 12 month period.
- (9) An applicant or the proposed sexually oriented business proposed is in violation of or is not in compliance with this Chapter.
- (10) An applicant or an applicant's spouse has been convicted of a crime involving any of the following offenses:
 - A. Prostitution as described in Minnesota statutes
 - B. Solicitation, inducement or promotion of prostitution as described in Minnesota statutes
 - C. Receiving profit derived from prostitution as described in Minnesota statutes
 - D. Other prohibited acts relating to prostitution as described in Minnesota statutes
 - E. Obscenity as described in Minnesota statutes
 - F. Sale, dissemination, distribution, display or exhibition of harmful material to minors as described in Minnesota statutes
 - G. Sexual performance by a child as described in Minnesota statutes
 - H. Dissemination or possession of child pornography as described in Minnesota statutes
 - I. Indecent exposure as described in Minnesota statutes
 - J. Criminal sexual conduct as described in Minnesota statutes
 - K. Incest as described in Minnesota statutes
 - L. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which
 1. 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; or
 2. 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

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3. 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.

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

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(10) of this Section may qualify for a sexually oriented business license only when the time period required by Subsection (a)(10) of this Section has elapsed.

(d) The license, if granted, shall state the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

Sec. 9-5. License fees; license investigation fees.

The annual fee for a sexually oriented business license shall be set by resolution of the City Council. The investigation fee for the purpose of issuing a license shall be set by resolution of the City Council. In the event that the license is denied upon application, the license fee shall be refunded; however, no part of the license investigation fee shall be returned to the applicant. No part of the annual license fee shall be refunded if the license is suspended or revoked.

Sec. 9-6. Inspection.

(a) An applicant or licensee shall permit representatives of the City's law enforcement department, fire department and City staff and building officials to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or their agent or employee commits a violation of this Chapter if the person refuses to permit a lawful inspection of the premises by the City's law enforcement officers at any time it is occupied or open for business.

(c) The provisions of this Section do not apply to areas of a sexually oriented motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Sec. 9-7. Expiration of License.

(a) Each renewal license shall be issued for a maximum period of one (1) year. All licenses expire on December 31 of each year. Each license may be renewed only by making application as provided in Section 9-3. Application for renewal should be made at least 90 days before the expiration date. If the City Administrator determines good and sufficient cause is shown by the applicant for failure to file a timely renewal application, the City Administrator shall, if other provisions of this Chapter are complied with, grant the application.

(b) When the City Administrator 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 Administrator finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

Sec. 9-8. Suspension.

The City Administrator may suspend a license for a period not to exceed thirty (30) days following written notice and an opportunity to be heard if the City Administrator determines that a licensee or an employee of a licensee has;

- (a) Violated or is not in compliance with this Chapter;

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- (b) Engaged in the sale, consumption or use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter;
- (d) Knowingly permitted unlawful gambling by any person on the sexually oriented business premises.
- (e) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officer.

Sec. 9-9. Revocation.

- (a) The City Administrator may revoke a license preceded by written notice and an opportunity to be heard if a cause of suspension in Section 9-8 occurs and the license has been suspended within the preceding 12 months.
- (b) The City Administrator may revoke a license if the City Administrator determines that:
 - (1) A licensee gave false or misleading information to the City during the application process;
 - (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substance on the sexually oriented business premises;
 - (3) A licensee or an employee has knowingly allowed prostitution on the sexually oriented business premises;
 - (4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) A licensee has been convicted of an offense listed in Section 9-4 (a)(10) for which the time period required in Section 9-4 (a)(10) has not elapsed;
 - (6) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 9-4 (a)(10), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;
 - (7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the meaning as it is defined in Minnesota statutes;
 - (8) A licensee is delinquent in payment to the City for ad valorem taxes, local lodging tax, or other taxes or fees related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) Section 9-9 (b)(7) does not apply to sexually oriented motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.
- (e) When the City Administrator revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the City Administrator finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license has revoked under Section 9-9 (b)(7) of this Chapter, an applicant may not be granted another license until the appropriate number of years required under Section 9-4 (a)(10) have elapsed.

Sec. 9-10. Appeal.

- (a) If the City Administrator requires a business establishment that is unlicensed to apply for a license, denies the issuance of a license, or suspends, or revokes a license, the City Administrator shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action, and the right to an appeal. The aggrieved party may appeal the decision of the City Administrator within 10 days of receiving notice of the City Administrator's action. The filing of an appeal stays the action of the City Administrator in requiring, suspending, or revoking a license until the City Council makes a final decision.

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(b) The City Council may appoint a committee of the City Council or an independent hearing officer to hear the matter, report findings of fact and a recommendation for disposition to the City Council. Hearings on the appeal shall be open to the public and the licensee or applicant shall have the right to appear and be represented by legal counsel and to offer evidence in its behalf. At the conclusion of the hearing, the City Council shall make a final decision.

(c) The City Council may condition denial, suspension, revocation, or non-renewal of a license upon appropriate terms and conditions.

Sec. 9-11. Transfer of License.

A licensee shall not transfer a 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.

Sec. 9-12. General Restrictions.

(a) All performers, dancers, and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed facility or in areas adjoining the licensed premises where such entertainment can be seen by patrons of the licensed premises shall remain at all times a minimum distance of ten (10) feet from all patrons, customers, or spectators and shall dance or provide such entertainment on a platform intended for the purpose, which shall be raised at least two (2) feet from the level of the floor on which patrons, customers or spectators are located.

(b) No dancer, performer, or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas in the licensed premises or in areas adjoining the licensed premises where entertainment can be seen by patrons of the licensed premises shall fondle or caress any patrons, customers or spectators.

(c) No customers, spectators, or patrons of a licensed premises shall directly pay or give any gratuity to any dancer or performer, and no dancer or performer shall solicit any pay or gratuity from any patrons, customers or spectators.

(d) Except for licenses for a sexually oriented motel, a licensee shall not be open for business to the public during the following hours on the following days: Monday through Sunday: not open before 8:00 a.m. nor after 6:00 p.m.

(e) A licensee under this Chapter shall be responsible for the conduct of the sexually oriented business being operated and shall not allow any illegal activity to take place on or near the licensed premises,

including but not limited to prostitution, public indecency, indecent exposure, disorderly conduct, or the sale or use of illegal drugs. Every act or omission by an employee or independent contractor of the licensee constituting a violation of this Chapter shall be deemed the act or omission of the licensee, if such act or omission occurs either with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the employee's or independent contractor's conduct.

(f) No sales, consumption or use of any alcoholic beverages shall be permitted at any time within the licensed premises.

Sec. 9-13. Additional Regulations For Adult Entertainment Uses.

(a) The City of Afton shall hereby reference in its entirety Minnesota State Statute 617.242 subd. (1), (2), (3), (4), (6), and (7) for additional regulations of adult entertainment uses above and beyond any of the requirements of this chapter.

Sec. 9-14. Additional Regulations For Escort Agencies.

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

(c) A person commits a violation of this Chapter if that person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

Sec. 9-15. Additional Regulations For Nude Model Studios.

(a) Nude model studios shall not employ any person under the age of 18 years.

(d) A person commits a violation of this Chapter if he or she 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.

Sec. 9-16. Additional Regulations For Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters.

(a) A person commits a violation of this Chapter if he or she knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of a sexually oriented theater or sexually oriented motion picture theater.

(b) It is a defense to prosecution under 9-15 (a) of this Section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

Sec. 9-17. Additional Regulations For Sexually Oriented Motels.

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is a sexually oriented motel as that term is defined in this Section.

(b) A person commits a violation of this Chapter if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he or she rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, the person rents or subrents the same sleeping room again.

(e) For purposes of this Section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

Sec. 9-18. Regulations Pertaining To Exhibits of Sexually Explicit Films or Videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film video cassette, 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 business 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 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, or granted. A professionally prepared diagram in the nature of any engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (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 Administrator.
- (4) It is the duty of the owners and operator of the premises to ensure that at least one 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

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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 in this section must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in subclause 5 above, remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 9-17 (a)(1).
- (7) 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 (1.0) foot candle as measured at the floor level.
- (8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(b) A person having a duty under subclauses 1 through 8 of Section 9-17 (a), commits a violation of this Chapter if the person knowingly fails to fulfill that duty.

Sec. 9-19. Enforcement.

(a) Any violation of the provisions of this Chapter is a misdemeanor offense; and person violating a provision of this Chapter, upon conviction, is punishable by a fine not to exceed \$1,000.00 and/or (90) days in jail.

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

- (1) By a proprietary school licensed by the State of Minnesota; a college, junior college, or university supported entirely or partly by taxation; or
- (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 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 at least three days in advance of the class; and
 - (C) Where no more than one nude model is on the premises at any one time.

Sec. 9-20. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this Chapter is subject to a suit for injunctive/equitable relief as well as prosecution for criminal violations.

Sec. 9-21. Severability.

If any section, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions and provisions of this Chapter. The City Council hereby declares that it would have adopted the Chapter and any sentence, clause, or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of this Chapter is declared invalid.

(Ord. 2005-15, 11/15/05)

State law references – Adult Entertainment Establishments, M.S.A. 617.242; authority for local regulation allowed, M.S.A. § 617.242, subd. 7.