

## **Ordinance # 92 Adult Use Ordinance**

### **Section 1. FINDING & INTENT**

MN Statute 412.221, Subd.32, as it may be amended from time to time, states: "the City Council shall have power to provide for the government and good order of the city, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by the ordinances not inconsistent with the constitution and laws of the United States or of this state as it shall deem expedient," and the State Attorney General has prepared a report entitled Report of the Attorney General's Working Group on Regulation of Sexually Oriented Businesses, dated 6-06-1989. The report considered evidence from studies conducted in Minneapolis and St. Paul and in other cities throughout the country relating to sexually oriented businesses. The Attorney General's report, based upon the referenced studies and the testimony presented to it, has concluded "that sexually oriented businesses are associated with high crime rates and depression of property values." In addition, the Attorney General's Working Group heard testimony that the character of the neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property.

In *City of Renton v Playtime Theatres, Inc*, 475 US 41 (1986), the United States Supreme Court found that a city may rely on the experiences of other cities to determine whether certain businesses have adverse effects. The City of Vernon Center has characteristics, including residential and public institutional uses, that are similar to the cities cited in the Report of the Attorney General's Working Group and other studies. The City Council finds that, based upon the above mentioned studies, adult entertainment uses should be regulated in order to protect the public health, safety, and welfare; to protect property values; to eliminate or reduce blight; to prevent deterioration of neighborhoods; to prevent the exodus of residents and businesses from neighborhoods, and to prevent the increase of crime and juvenile delinquency. 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 adult oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to adult oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of adult oriented entertainment to their intended market.

### **Section 2. DEFINITIONS**

For the purposes of this ordinance, the following definitions shall have the meaning given:

**Adult Use Body Painting Studio.** An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when the body is wholly or partially nude in terms of specified anatomical areas.

**Adult Use Bookstore.** A building or portion of a building used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, DVD's or motion picture film if the building or portion of a building is not open to the general public generally but only to one or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of the items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

**Adult Use Cabaret.** A building or portion of a building used for providing dancing or other live entertainment, if the building or portion of a building excludes minors by virtue of age or if the dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas.

**Adult Use Companionship Establishment.** A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk, or discussion between an employee of the establishment and a customer if the service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Adult Use Conversation/Rap Parlor.** A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging or listening to conversation, talk or discussion, if the service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Adult Use Health/Sport Club.** A health/sport club which excludes minors by reason of age, or if the club is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Adult Use Hotel or Motel.** Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

**Adult Use Massage Parlor, Health Club.** A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if the service is distinguished by an emphasis on specified sexual activities or specified anatomical areas.

**Adult Use Mini-Motion Picture Theater.** A building or portion of a building with a capacity for less than 50 persons used for presenting material if the building or portion of a building as a prevailing practice excludes minors by virtue of age, or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.



**Adult Use Modeling Studio.** An establishment whose major business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to the customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by the customers.

**Adult Use Motion Picture Arcade.** Any place to which the public is permitted or invited wherein coin or slug operated or electronically, electrically, or mechanically controlled or operated still or motion picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

**Adult Use Motion Picture Theater.** A building or portion of a building with a capacity of 50 or more persons used for presenting materials if the building or portion of a building as a prevailing practice excludes minors by virtue of age or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

**Adult Use Novelty Business.** A business which has a principal activity the sale of devices which stimulate human genitals or devices which are designated for sexual stimulation.

**Adult Use Sauna.** A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Adult Use Steam Bathhouse Facility.** A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if the building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**Adult Uses.** Includes adult bookstores, adult motion picture theaters, adult motion picture rental, adult mini motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on

the presentation, display, depiction, or description of specified sexual activities or specified anatomical areas which are capable of being seen by members of the public.

**Adult Uses Accessory.** A use, business, or establishment having 10% or less of its stock in trade or floor area allocated to, or more than 20% or less of its gross receipts derived from movie rentals or magazine sales.

**Adult Uses Principal.** A use, business, or establishment having more than 10% of its stock in trade or floor area allocated to, or more than 20% of its gross receipts derived from any adult use.

**Specified Anatomical Areas.** Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola. Also human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified Sexual Activities.**

- a. Actual or simulated sexual intercourse, oral copulation, and intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship.
- b. Clearly depicted human genitals in the state of sexual stimulation or arousal.
- c. Use of a human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation.
- d. Fondling or touching of nude human genitals, public region, buttocks, or female breast(s).
- e. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving flagellation, torture, fettering, binding, or other physical restraint of any such persons.
- f. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being.
- g. Human erection, urination.

**Section 3. GENERAL PROVISIONS**

Except as specifically provided in this ordinance, no structure shall be erected, converted, enlarged, reconstructed, or altered, and no structure or land shall be used for any purpose nor in any manner which is not in conformity with this ordinance. Adult uses shall be prohibited from locating in any building that is also utilized for residential purposes.

No adult entertainment business shall engage in any activity or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited or regulated by other statutes or ordinances, including but not limited to statutes or ordinances prohibiting the exhibition, sale, or distribution of obscene material generally, or the exhibition, sale, or distribution of specified materials to minors.



No liquor license shall be issued to any adult use related premises, enterprise, business, establishment, or place open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction, description of, or participation in specified sexual activities or specified anatomical areas.

No adult use related premises, establishment, business, or place shall allow or permit the sale of 3.2% malt liquor, wine, or any alcoholic beverages for consumption on the premises or the sale or service of set ups to mix alcoholic drinks. No alcoholic beverages shall be consumed on the premises of the enterprise, establishment, business, or place.

An adult use that does not qualify as an accessory use (pursuant to the definition as found in Section 2) shall be classified as an adult uses principal.

#### **Section 4. LICENSING**

Adult uses principal shall not be owned or operated by any person without first having secured an Adult Use License from the City of Vernon Center.

The application for an Adult Use License shall be submitted on a form provided by the City of Vernon Center and shall include:

- a. If the applicant is an individual—the name, address, phone number, and birth date of the applicant.
- b. If the applicant is a partnership—the name, address, phone number, and birth date of each general and limited partner shall be provided.
- c. If the applicant is a corporation—the names, addresses, phone numbers, and birth dates of all persons holding more than 5% of the issued outstanding stock of the corporation.
- d. The name, address, phone number, and birth date of the operator and manager of the operation, if different from the owners.
- e. The address and legal description of the premises where the adult establishment is to be located.
- f. A statement detailing any gross misdemeanor or felony convictions relating to sex offenses, obscenity, or the operation of an adult establishment of adult business by the applicant, operator, or manager, and whether or not the applicant has ever applied for or held a license to operate a similar type business in any other community(s). In the case of a corporation, a statement detailing any felony convictions by the owners of more than 5% of the issued and outstanding stock of the corporation, and whether or not those property owners have ever applied for or held a license to operate a similar type of business in other community(s).
- g. The activities and types of business to be conducted.
- h. The hours of operation.
- i. Provisions to be utilized to restrict access by minors.
- j. A building plan of the premises detailing all internal operations and activities.

The granting of any permit or license pursuant to requirements of this ordinance, or other applicable City of Vernon Center ordinances shall not relieve applicants of their responsibility to obtain any required state or federal permits.

Each application for an Adult Use License shall be submitted to the City Clerk-Treas. and shall be accompanied by payment in full of the required fee for the adult use license. Each license shall be issued for a period of (1) calendar year. All licenses shall expire on the last day of December of each year. Any portion of a year less than 12 months shall be counted as a full year for the purposes of calculation of fees.

#### **Section 5. FEES**

The annual fee for an Adult Use License shall be detailed in the fee schedule established by the Vernon Center City Council. The fee may be adjusted from time to time by Council action. If any application for a license is rejected, the license fee shall not be refunded.

#### **Section 6. LICENSING PROCEDURE**

The Amboy-Vernon Center Public Safety Dept. shall investigate all facts set out in the application. Each owner of the establishment, be it individual, partner, limited partner, shall be subjected to a criminal history background check by the Police Chief or designee. Costs of the criminal history investigation shall be borne by the applicant according to the fee schedule established by the City. The application for the Adult Use License shall not be considered complete until all required information has been furnished, the investigation has been completed by the Public Safety Department and a report provided to the City Council.

The Planning Commission shall hold a public hearing and report its findings to the City Council within 30 days after the City Clerk-Treas. has received a complete application. At the hearing, opportunity shall be given to any person to be heard relating to the granting of the license. The City Council shall grant or deny the adult use license within 30 days of the conclusion of the hearing.

The adult use license shall be issued only to the applicant and shall not be transferable to another holder. If the licensee is a partnership or corporation, a change in the identity of any of the principals of the partnership or corporation shall be deemed to be a transfer of the license. Each license shall be issued only for the premises described in the application.

#### **Section 7. PERSONS INELIGIBLE FOR AN ADULT USE LICENSE**

The following are ineligible for an adult use license:

- a. Any person under 21 years of age.
- b. Anyone who is overdue in payments to a city, county, state, or federal government of taxes, fees, fines or penalties, or charges for municipal services and utilities assessed against them or imposed upon them.



- c. Anyone who has been convicted of a gross misdemeanor or felony, or of violating any law of the State of Minnesota or local ordinance relating to sex offenses, obscenity offenses, or adult establishments.
- d. Anyone who is not the proprietor of the establishment for which the license is issued.
- e. To any applicant who is acting as an agent for an individual who would be disqualified pursuant to the above criteria.
- f. Anyone who has not paid the required investigation/licensing fees required by this ordinance.

#### **Section 8. PLACES INELIGIBLE FOR AN ADULT USE LICENSE**

No license shall be granted for adult establishments on any premises where a licensee has been convicted of a violation of this ordinance, or where any license hereunder has been revoked for cause, until one year has elapsed after the conviction or revocation. No license shall be granted for any adult establishment which is not in compliance with the City of Vernon Center's land use regulations, zoning ordinance, or any fire, health, and safety codes and any and all provisions of federal and state law.

#### **Section 9. LICENSE CONDITIONS**

The following conditions must be met to be issued a license:

- a. All licensed premises shall have the license posted in a conspicuous place at all times.
- b. No minor shall be permitted on the premises.
- c. An applicant or licensee shall permit health officials, representatives of the Public Safety Department, Fire Department, and building inspectors to inspect the premises of an adult use business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license.
- d. No adult goods or materials shall be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.
- e. In granting a license for an adult establishment, the City Council may impose additional conditions to protect the best interest of the surrounding area or the City of Vernon Center as a whole.
- f. The licensee must keep itemized written records for all transactions involving the sale or rental of all items or merchandise for at least 1 year after the transaction. At a minimum, these records must describe the date of the transaction, a description of the transaction, the purchase or rental price, and a detailed description of the item or merchandise that is being purchased or rented. These written records must be provided to the City upon request.
- g. The licensee must cover or otherwise arrange all windows, doors, and apertures to prevent any person outside the licensed premises from viewing any items or merchandise inside the premises depicting specified sexual activities or specified anatomical areas.

## **Section 10. ADULT USE PRINCIPAL**

Provisions for Adult Use Principal are:

- a. Adult use principal activities will be allowed only by a license issued by the City Council and by conditional use in the M-I Industrial District of the current Zoning Ordinance.
- b. Adult use principal shall be located at least 500 radial feet, as measured in a straight line from the closest point of the building upon which the adult use principal is located to the property line of:
  1. A zoning district in which residential uses are specifically listed as a permitted or conditional use
  2. A licensed day care center
  3. A public or private educational facility classified as an elementary, junior high, or senior high
  4. A public library
  5. A public park
  6. Another adult use principal
  7. Any church or church related organization
  8. An on-sale liquor establishment
- c. No adult use principal shall be located in the same building or upon the same property as another adult use principal.
- d. Adult use principal businesses shall follow the sign regulations in the M-1 Industrial District of the current Zoning Ordinance.
- e. Hours of operation for an adult use principal shall be limited to 12:01 p.m. to 12:01 a.m. A differing time schedule may be approved by the City Council if it can be satisfactorily demonstrated by the operator to the City Council that all of the following will apply:
  1. Will not adversely impact or affect uses or activities within 500 feet
  2. Will not result in increased policing and related service calls
  3. Is critical to the operation of the business
- f. Adult use principal businesses shall follow the off street parking regulations in the M-1 Industrial District of the current Zoning Ordinance.

## **Section 11. ADULT USE ACCESSORY**

Provisions for Adult Use Accessory are:

- a. Adult use accessory shall be permitted in the B-1 Central Business District and B-2 General Business District in the current Zoning Ordinance as a permitted use, provided the accessory use conforms with the provisions of this ordinance.
- b. Adult use accessory shall:
  1. Comprise no more than 10% of the floor area of the establishment in which it is located
  2. Comprise no more than 20% of the gross receipts of the entire business operation.



3. Not involve or include any activity except the sale or rental of merchandise.
- c. The following restrictions shall apply:
  1. Adult use accessory shall be restricted from and prohibit access to minors by the physical separation of the following items from general public access:
    - a. Movie Rentals—Display areas shall be restricted from general view and shall be located within a separate room, the access of which is in clear view and under the control of the persons responsible for the operation.
    - b. Magazines—Publications classified or qualifying as adult uses shall not be physically accessible to minors and shall be covered with wrappers or other means to prevent display of any material other than publication title.
    - c. Other Use—Adult uses accessory not specifically cited shall comply with the intent of this ordinance subject to the approval of the City Council.
  2. Adult use accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

## **Section 12. ADULT CABARET REGULATIONS**

The following restrictions shall apply to adult cabarets:

- a. No person, firm, partnership, corporation, or other entity shall advertise or cause to be advertised an adult cabaret without a valid Adult Use License.
- b. An adult use license holder shall maintain and retain for a period of 2 years the names, addresses, and ages of all persons engaged, hired, or employed as dancers or performers by the licensee.
- c. An adult cabaret shall be prohibited in establishments where alcoholic beverages or the sale or service of set-ups to mix alcoholic drinks are served.
- d. No owner, operator, or manager of an adult cabaret shall permit or allow any dancers or other live entertainer to perform nude unless as provided in divisions (g) and (h) below.
- e. No patron or any person other than a dancer or live entertainer, as provided in divisions (g) and (h) below, shall be nude in an adult cabaret.
- f. No dancer, live entertainer, or performer shall be under 18 yrs of age.
- g. All dancing shall occur on a platform intended for that purpose which is raised at least 2 feet above the level of the floor.
- h. No dancer or performer shall perform or dance closer than 10 feet from any patron unless the dancer or performer is enclosed behind a floor to ceiling glass partition.
- i. No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- j. No person under 18 yrs of age shall be admitted to an adult cabaret.

**Section 13. NONCONFORMING ADULT USE PRINCIPAL OR ACCESSORY**

Adult uses which are in existence prior to July 8, 2002 shall be classified as legal nonconforming uses and may continue in accordance with provisions of this ordinance. If an adult use becomes nonconforming because of rezoning, the adult use shall be considered legal nonconforming and may continue in accordance with the provisions of this ordinance. In no instance shall a legal nonconforming adult use be allowed to structurally expand the use on the lot on which it is located when the use became legally nonconforming, or expand the adult use to include another lot on which the adult use was not located when it became legally nonconforming.

If the building in which a legal nonconforming adult use is located is destroyed by any means to an extent of greater than 50% of its market value, or if the building in which the legally nonconforming adult use is vacant for more than 12 months, an adult use shall not be re-established unless it is in conformance with this section.


**Section 14. ENFORCEMENT**


Enforcement of this ordinance shall include the following:

- a. Any person violating any provisions of this ordinance is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by state law.
- b. Any violation of this ordinance shall be a basis for suspension or revocation of the permit for the property or building in or on which the adult use is located. In the event the City Council proposes to revoke or suspend a permit, the property owner shall be notified in writing of the basis for such proposed suspension or revocation. The City Council shall hold a hearing for the purpose of determining whether to revoke or suspend the permit and the hearing shall be within 30 days of the date of the notice.
- c. The City Council shall determine whether to revoke or suspend the permit within 30 days after the close of the hearing or within 60 days of the dates of the notice, whichever is sooner, and shall notify the property owner of its decision within that period.

**Section 15. EFFECTIVE DATE**

This ordinance shall become effective from and after passage and publication. Passed by the Vernon Center City Council this 1<sup>st</sup> day of May, 2012.

  
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Dana Ziegler, Mayor

  
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Patricia Krosch  
City Clerk-Treas.