CHAPTER 117: SEXUALLY ORIENTED BUSINESSES

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GENERAL PROVISIONS

§ 117.01 PURPOSE AND FINDINGS.

(A) *Purpose.* It is the purpose of this chapter 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 regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. 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 to the United States Constitution or the corresponding provisions of the Minnesota Constitution, 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 chapter to condone or legitimize the distribution of obscene material.

(B) *Findings.* Based on evidence of the adverse secondary effects of adult uses presented in reports made available to the City Council as set forth in the ordinance enacting this chapter, and on findings, interpretations, and narrowing constructions incorporated in the cases described in the ordinance, the City Council has made specific findings concerning the adverse secondary effects of sexually oriented businesses and the need for additional requirements for the operation of such businesses.
(Ord. 1134.10, passed 8-2-10)

§ 117.02 DEFINITIONS.

For the purpose of this chapter, the words and phrases defined in the sections hereunder, whether or not the terms are capitalized in the text of the chapter, shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

ADULT ARCADE. Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly 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 their emphasis upon matter exhibiting or describing “specified sexual activities” or “specified anatomical areas”.

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE.

(1) A commercial establishment that devotes 50% or more of its interior sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas”; or

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

(2) The term ***ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE*** shall also include a commercial establishment which regularly maintains one or more "adult arcades." Floor space shall be measured by dividing the floor space where patrons or customers of the establishment are permitted where the primary sales or displays are of materials described above by the total floor space where patrons or customers of the establishment are permitted regardless of the materials.

ADULT CABERET. A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment which features persons who appear semi-nude. Regularity of appearances are not required for an establishment to constitute an adult cabaret; a single occasion of such appearance or appearances shall be sufficient to cause the establishment to be classified as an adult cabaret.

ADULT MOTEL. A motel, hotel, or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

CHIEF OF POLICE. The Chief of Police of the City of Benson or his or her designee.

CONTROLLING INTEREST. The power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote 20% or more of any class of voting securities or ownership interests of a business. The ownership, control, or power to vote 20% or more of any class of voting securities or ownership interests of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON. The dominant or principal theme of the object described by such phrase. For instance, when the phase refers to films which are distinguished or characterized by an emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas", the films so described are those whose dominant or principal character and theme are the exhibition or description of "specified anatomical areas" or "specified sexual activities".

DUAL PURPOSE BUSINESS. A commercial establishment that devotes at least 10% of its interior sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas";

(2) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others; and which does not meet the definition of ***ADULT BOOKSTORE***, ***ADULT NOVELTY STORE*** or ***ADULT VIDEO STORE*** set forth above. Floor space shall be measured by dividing the floor space where patrons or customers of the establishment are permitted where the primary sales or displays are of materials described above by the total floor space where patrons or customers of the establishment are permitted regardless of the materials.

EMPLOY, EMPLOYEE, AND EMPLOYMENT. Describes and pertains to any 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. ***EMPLOYEE*** does not include an independent contractor or a person working for an independent contractor who performs any service on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises, or for the rendition of services incidental to the business of the establishment but not an integral part thereof, such as accounting or legal services.

ESCORT. A person who, for compensation, agrees or offers to engage in any of the following acts:

(1) Act as a social companion, guide, or date for another person;

(2) Privately model lingerie with the intention of and for the purpose of providing sexual stimulation or sexual gratification to the customer;

(3) Privately disrobe for another person with the intention of providing sexual stimulation or sexual gratification to the customer;

(4) Agree to come to a specified location for the purpose of disrobing and for the purpose of providing sexual stimulation or sexual gratification to the customer;

(5) To perform a massage where one or more of the persons is nude, semi-nude or in a state of nudity or for the purpose of providing sexual stimulation or sexual gratification to the customer.

ESCORT AGENCY. A person or business association who, whether on or off the licensed premises, furnishes, offers to furnish, or advertises to furnish escorts, as defined herein, for compensation.

ESTABLISH OR ESTABLISHMENT.

(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; or

(3) The addition of any sexually oriented business to any other existing sexually oriented business.

(4) The relocation of any sexually oriented business.

EXOTIC DANCE SERVICE. Any business or person who provides exotic dancers to perform at a private residence, business, or other location (other than an adult cabaret) within the city limits.

EXOTIC DANCER. A male or female dancer that performs semi-nude or nude for compensation.

LICENSEE. A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

MASSAGE CENTER. A commercial business which allows its employees who do not have a diploma or certificate of graduation from a school by the American Massage Therapist Association or other similar reputable massage association, and its employees have also not completed 100 hours of training in massage, and who, for compensation, manipulate soft tissue including effleurage (stroking), patrissage (kneading), tapotement (percussion), compression, vibration, friction, (active/passive range of motion), Shiatsu, and acupressure, either by hand, forearm, elbow, foot, or with mechanical appliances for the purpose of body massage.

MASSAGIST. A person that does not have a diploma or certificate of graduation from a school approved by the American Massage Therapist Association or other similar reputable massage association, and has not completed 100 hours of training in massage, and who, for compensation, manipulates soft tissue including effleurage (stroking), patrissage (kneading), tapotement (percussion), compression, vibration, friction, (active/passive range of motion),

Shiatsu, and acupressure, either by hand, forearm, elbow, foot, or with mechanical appliances for the purpose of body massage.

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, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATE OR CAUSE TO OPERATE. To cause to function or to put or keep in a state of doing business. "Operator" means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

PERSON. Individual, proprietorship, partnership, corporation, association, or other legal entity.

PROSTITUTE. A person who has been convicted of prostitution or prostitution by massage, or who engages in activities, that, if prosecuted, would constitute the criminal offense of prostitution or prostitution by massage under M.S. Ch. 609; provided, however, that a person shall not be considered a prostitute if he or she is not currently engaging in activities, that, if prosecuted, would constitute the criminal offense of prostitution or prostitution by massage under M.S. Ch. 609; and if

(1) More than two years have elapsed since the date of the conviction or the date of release from confinement imposed for such person's last conviction of prostitution or prostitution by massage, whichever is the later date, if the conviction was for a misdemeanor offense; or

(2) More than five years have elapsed since the date of the conviction or the date of release from confinement imposed for such person's last conviction of prostitution or prostitution by massage, whichever is the later date, if the conviction was for a felony offense.

REGULARLY FEATURES OR REGULARLY SHOWN. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business.

SEMI-NUDE OR STATE OF SEMI-NUDITY. A state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola and nipple are not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO. Any place where a person, who regularly appears in a

state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. It is a defense to prosecution for any violation of this chapter that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

(1) By 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 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 semi-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.

SEXUALLY ORIENTED BUSINESS. Any establishment that is an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, massage center, exotic dance service, or semi-nude model studio as defined in this section, as well as any other establishment that regularly features or regularly shows any sexually oriented entertainment activity, including any dual purpose business.

SEXUALLY ORIENTED ENTERTAINMENT ACTIVITY. The sale, rental, or exhibition for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity.

SPECIFIED ANATOMICAL AREAS. Human genitals, anus, and/or the female breast areola or nipple.

SPECIFIED CRIMINAL ACTIVITY. Any of the following offenses:

(1) Rape and sexual battery; sexual offenses affecting minors; offenses concerning prostitution; offenses concerning disorderly places and obscenity; operating places of prostitution, voyeurism; offenses concerning controlled substances law; engaging in organized criminal activity relating to a sexually oriented business, specifically money laundering; tax evasion; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or offenses in other jurisdictions that, if the acts would have been committed in Minnesota would have constituted any of the foregoing offenses; for which:

(a) 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;

(b) 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

(c) 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.

(2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

SPECIFIED SEXUAL ACTIVITIES. Any of the following:

(1) Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or

(2) Excretory functions as a part of or in connection with any of the activities described in division (1) above.

TRANSFER OF OWNERSHIP OR CONTROL. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business shall mean any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities (including interests in a limited liability company or partnership) or other ownership interests 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 bequest or other operation of law upon the death of the person possessing the ownership or control.

VALID PHOTOGRAPHIC ID. VALID PHOTOGRAPHIC ID refers to a driver's license, selective service card or other lawful federal or state issued photographic identification, which, on its face, establishes the age and identity of the bearer, and leaves no reasonable doubt as to the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated or altered. If the identification submitted is a duplicate, the person shall submit additional identification which contains the name, date of birth and photograph of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as a valid photographic ID.

VIDEO. Includes image reproduction and display by videotape or any other medium,

such as digital video disk or compact disk, that produces moving or still images on a screen, wall, or other similar display.

VIEWING ROOM. Shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video or visual production or reproduction.
(Ord. 1134.10, passed 8-2-10)

§ 117.03 CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES.

Sexually oriented businesses shall be classified as follows:

(A) Adult arcades, adult bookstores, adult novelty stores, adult video stores;

(B) Adult cabarets;

(C) Adult motels;

(D) Adult motion picture theaters;

(E) Escort agencies;

(F) Exotic dance services;

(G) Massage centers;

(H) Dual purpose businesses;

(I) Other sexually oriented businesses.
(Ord. 1134.10, passed 8-2-10)

LICENSING

§ 117.15 LICENSE OR EMPLOYEE CARD REQUIRED.

(A) *Sexually oriented business license.*

(1) It shall be unlawful for any person to operate a sexually oriented business in the City of Benson without a valid sexually oriented business license. Separate sexually oriented business licenses shall be required for each place of business of an operator.

(2) (a) *Application form.* An applicant for a sexually oriented business

license or a sexually oriented business employee license shall file in person at the office of the City Clerk a completed application made on a form provided by the City of Benson. The application shall be signed by the applicant. An application shall be considered complete when it contains the following information and is accompanied by all the documents required by this section:

1. The applicant's full true name and any other names used in the preceding five years;

2. Current home address and, if desired by the applicant, another mailing address of the applicant;

3. Written proof of age, in the form of a valid photographic ID;

4. The business name, location, legal description, mailing address and phone number of the sexually oriented business;

5. The name and business address of the statutory agent or other agent authorized to receive service of process;

6. A statement whether the applicant has been convicted or has pled guilty or no contest to a specified criminal activity as defined in this chapter, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable; and

7. A statement whether the applicant, or any entity in which the applicant owns a controlling interest, has had a license or permit to operate a sexually oriented business or to be an employee of a sexually oriented business issued by the United States, any state, or by any political subdivision of any state, authorized to issue permits or licenses, revoked within two years prior to the application, or been convicted or had a judgment of court rendered against him involving violation of sexually oriented business ordinances by this or any other state or local government or by the United States within one year prior to the application.

(b) The information provided pursuant to division (A)(2)(a)1. through 7. of this section shall be supplemented in writing by certified mail, return receipt requested, to the City Clerk within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(3) An application for a sexually oriented business license shall 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 shall 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 inches. Applicants who are required to comply with §§ 117.36 and 117.40 of this chapter shall submit a diagram

meeting the requirements of those sections. A valid certificate of occupancy, lease agreement or proof of ownership, articles of incorporation or organization, operating agreement, or other instruments indicating the true direct and indirect ownership of the applicant, beneficial or otherwise, evidence of measurement from protected activities, will also be required when making application.

(4) If a person who wishes to operate a sexually oriented business is an individual, he or she shall 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 officer, director, general partner or other person who will participate directly in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under § 117.16 and each applicant shall be considered a licensee if a license is granted.

(B) *Sexually oriented business employee card.*

(1) It shall be unlawful for any operator of a sexually oriented business to allow any employee to engage in employment requiring a sexually oriented business employee card unless such employee is in possession of a sexually oriented business employee card issued under the authority of this chapter. The license holder shall have such person obtain such a card prior to engaging in employment for which a permit is required by this chapter.

(2) It shall be unlawful for any person to be an employee, as defined in this chapter, of a sexually oriented business, or for an employee of a dual purpose business who engages in the activities described in § 117.40 of this chapter, in the city without a valid sexually oriented business employee card.

(3) (a) An applicant for a sexually oriented business employee card shall file in person at the office of the City Clerk a completed application made on a form provided by the City Clerk. The application shall be signed by the applicant. An application shall be considered complete when it contains the following information:

1. The applicants full true name and any other names used in the preceding five years;

2. Current home address and, if desired by the applicant, another mailing address of the applicant;

3. Written proof of age, in the form of valid photographic I.D.;

4. A statement whether the applicant has been convicted or has pled guilty or no contest to a specified criminal activity as defined in this chapter, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable; and

5. A statement whether the applicant has had a license, permit or card to be an employee of a sexually oriented business issued by the United States, any state, or by any political subdivision of any state, authorized to issue permits or licenses, revoked within two years prior to the application, or been convicted or had a judgment of court rendered against him involving violation of sexually oriented business ordinances by this or any other state or local government or by the United States within one year prior to the application;

(b) The information provided pursuant to division (B)(3)(a)1. through 5. of this section shall be supplemented in writing by certified mail, return receipt requested, to the City Clerk within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(C) *Fingerprinting.* All applicants for licenses or cards under this chapter shall be fingerprinted.

(D) *Confidentiality of information.* The information provided by an applicant in connection with an application for a license or card under this chapter shall be maintained pursuant to the requirements and regulations set forth in the Government Data Practices Act, M.S. Ch. 13, as amended or as may otherwise be required by governing law or court order. (Ord. 1134.10, passed 8-2-10)

§ 117.16 ISSUANCE OF LICENSE OR EMPLOYEE CARD.

(A) *Sexually oriented business license.*

(1) Within 30 days after the filing of a completed application under § 117.15 for a sexually oriented business license, the Planning Commission will review the application and make recommendation to the City Council, and the City Council shall then either approve the application or shall issue a written denial of the application. Each person having a controlling interest in any entity applying for a sexually oriented business license shall be considered an applicant, and each such person must meet the requirements for the approval of the issuance of the license to the entity. The City Council shall approve the issuance of a license unless one or more of the following is found to be true:

(a) An applicant is less than 18 years of age;

(b) An applicant has failed to provide information as required by § 117.15 for issuance of a license or has falsely answered a question or request for information on the application form;

(c) Any taxes, fees or charges due to the city by the applicant or his or her business have not been paid;

(d) An applicant has been shown to have committed a violation of § 117.18(A), § 117.21(B), § 117.39(A),(B), or (C) of this chapter within the previous year;

(e) The sexually oriented business premises are not in compliance with the interior configuration requirements of this chapter or are not in compliance with location requirements established in the applicable zoning regulations;

(f) An applicant has been convicted of a specified criminal activity, as defined in this chapter;

(g) An applicant, or the entity in which an applicant has a controlling interest, is not the owner of the premises or the tenant under a bona fide written lease therefor;

(h) An applicant, or an entity in which an applicant has a controlling interest, has had a license or permit to operate an sexually oriented business issued by the United States, any state, or by any political subdivision of a state, authorized to issue permits or licenses, revoked within two years prior to the application, or been convicted or had a judgment of a court of competent jurisdiction rendered against him involving violation of sexually oriented business ordinances by this or any other state or local government or by the United States for two years prior to the application;

(i) Any applicant is a person interposed for another person who does not meet the requirements for the issuance of a license. A person is considered an interposed person if such person is subsidized, financed or employed by an applicant to operate a sexually oriented business without disclosing the true and beneficial ownership of the business; or

(j) An applicant has any outstanding warrants for arrest for any crime.

(2) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the sexually oriented business. The sexually oriented business 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 or in the case of a dual purpose business, the sexually oriented business license shall be posted in a conspicuous place in the area of the adult entertainment materials.

(B) (1) *Sexually oriented business employee card.* Within 30 days after the filing of a completed application under § 117.15 for a sexually oriented business employee card and the payment of a non-refundable application fee, the Planning Commission will review the application and make recommendation to City Council, and the City Council shall then either approve the application or shall issue a written denial of the application. The City Council shall approve the issuance of a card unless one or more of the following is found to be true:

(a) An applicant is less than 18 years of age;

(b) An applicant has failed to provide information as required by § 117.15;

(c) For issuance of a card or has falsely answered a question or request

for information on the application form;

(d) An applicant has been shown to have committed a violation of § 117.18(A), § 117.21(B), § 117.39(A), (B) or (C) of this chapter within the previous year;

(e) An applicant has been convicted of a specified criminal activity, as defined in this chapter;

(f) An applicant has had a card, license or permit to operate a sexually oriented business or to be an employee of a sexually oriented business issued by the United States, any state, or by any political subdivision of a state, authorized to issue cards, permits or licenses, revoked within two years prior to the application, or been convicted or had a judgment of a court of competent jurisdiction rendered against him involving violation of sexually oriented business ordinances by this or any other state or local government or by the United States for two years prior to the application; or

(g) An applicant has any outstanding warrants for arrest for any crime.

(2) An employee card issued pursuant to this section shall contain the card holder's photograph, full name, date of birth, race, sex and fingerprint. A sexually oriented business employee shall keep the employee's card on his or her person or on the premises where the card holder is then working or performing and shall produce such card for inspection upon request by a law enforcement officer or other city official performing functions connected with the enforcement of this chapter.

(C) *Issuance of license or card.* After any application for a license under this chapter has been approved, it shall be submitted to the City Clerk, who shall forthwith issue and sign the license or card upon payment of the prescribed fee. Any license for a sexually oriented business shall be restricted to the single location described in the application; that is, each location for a sexually oriented business must have a separate license. After any application for a sexually oriented business employee card under this chapter has been approved, the City Clerk shall issue the card. A sexually oriented business employee card shall be good and valid for use on the premises of any sexually oriented business, provided that the licensee has notified the city of the name and address of the sexually oriented business employee card holder within five days of the hire date.

(D) *Effect of failure to act.* The failure of the City Council to act on an application within the time set forth in this section shall be deemed a denial of the application for a license or card, and shall be deemed to be the issuance of a written notice of intent to deny the license or card.

(E) *Appeal from notice of intent to deny.* Upon issuance or deemed issuance of a written notice of intent to deny a license or card, the applicant may appeal the denial to the Swift County, Minnesota, District Court by making a written request for appeal to the City Clerk within ten days after issuance or deemed issuance of the written notice of intent to deny the license or card. The applicant's temporary license or card, if any, shall continue in effect during

such ten-day period. Upon timely appeal, the applicant's temporary license or card, if any, shall continue in effect until the Swift County, Minnesota, District Court has acted on the applicant's appeal or the applicant has withdrawn his or her appeal. The only issue on the appeal shall be whether the applicant meets the criteria for issuance of the license or card in question; the Swift County, Minnesota, District Court shall not have the authority to waive any of the requirements for the license or card in question.

(F) *Temporary sexually oriented business employee card.* The temporary sexually oriented business employee card issued pursuant to this section shall state on its face an expiration date 45 days after its date of issuance; provided, however, that, if the employee's card application or appeal from a denial of a card or card renewal is continuing at the end of each successive 45-day period, at the request of the applicant the City Clerk shall issue a renewal temporary card, which shall expire 45 days after its issuance. Notwithstanding the stated 45-day expiration date, the temporary card shall expire upon either the issuance of a permanent card, the withdrawal of any appeal from the denial of issuance of a card, or the termination of any appeal of the denial of issuance of a card. Upon the denial of the issuance of the card (if not appealed), or the unsuccessful or withdrawal of appeal of the denial of issuance of the card, the applicant shall immediately return the temporary card to the City Clerk. It shall be unlawful for any applicant to fail to return the temporary card to the City Clerk within three business days after the denial of the issuance of the card (if not appealed), or the unsuccessful or withdrawal of appeal of the denial of issuance of the card.
(Ord. 1134.10, passed 8-2-10)

§ 117.17 FEES.

(A) *Sexually oriented business license.* The annual fee for the issuance or renewal of a sexually oriented business license shall be determined by the City Council and set by resolution based on the cost of administering and regulating sexually oriented businesses.

(B) *Sexually oriented business employee card.* The fee for the application for issuance or renewal of a sexually oriented business employee card shall be determined by the City Council and set by resolution based on the cost of administering and regulating employees of sexually oriented businesses.
(Ord. 1134.10, passed 8-2-10)

§ 117.18 INSPECTION.

(A) Sexually oriented businesses and sexually oriented business employees shall permit officers or agents of the city to inspect the business premises for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(B) The provisions of this section do not apply to areas of an adult motel which are

currently being rented by a customer for use as a permanent or temporary habitation.
(Ord. 1134.10, passed 8-2-10)

§ 117.19 TERM; RENEWAL.

(A) *Sexually oriented business license.*

(1) A sexually oriented business license issued under this chapter shall be dated from the effective date as shown on the license and be valid for one year from the date of issuance, unless sooner suspended or revoked. Application for the renewal of such a license shall be filed in the manner provided by this chapter for the initial license on or before 60 days prior to the expiration date as shown on the existing license. The renewal license will be dated from the date of expiration of the existing license.

(2) The City Council shall approve or deny the renewal within 30 days after receipt of the completed renewal application. If approved, the renewal license shall be issued as provided in § 117.16. If denied, the City Council shall issue a written notice of intent to deny the renewal application in the same manner as for the denial of an initial license application, and the appeal rights and any rights to continue operating set forth in § 117.16 shall apply to such renewal application. The failure of the City Council to act on an application within the time set forth in this section shall be deemed a denial of the application for a license or card, and shall be deemed to be the issuance of a written notice of intent to deny the license or card application.

(3) If a licensee fails to complete its renewal application within the time set forth in this section, its application shall be treated as a new application under §§ 117.15 and 117.16 hereof, but the late filing shall not affect the expiration of the previous license; that is, if the license renewal application has not been acted upon prior to the expiration of the existing license, the existing license shall expire, and the business shall not be entitled to operate as a sexually oriented business unless and until a new license is issued.

(B) *Sexually oriented business employee card*.

(1) A sexually oriented business employee card issued under this chapter shall be dated from the effective date as shown on the card and be valid for two years from the date of issuance, unless sooner suspended or revoked. Application for the renewal of such a card shall be filed in the manner provided by this chapter for the initial card on or before 60 days prior to the expiration date as shown on the existing card. The renewal card will be dated from the date of expiration of the existing card.

(2) The City Council shall approve or deny the renewal within 30 days after receipt of the completed renewal application. If approved, the renewal card shall be issued as provided in § 117.16. If denied, the City Council shall issue a written notice of intent to deny the renewal application in the same manner as for the denial of an initial card application, and the appeal rights and any rights to continue operating set forth in § 117.16 shall apply to such renewal application. The failure of the City Council to act on an application within the time set

forth in this section shall be deemed a denial of the application for a license or card, and shall be deemed to be the issuance of a written notice of intent to deny the license or card applied for.

(3) If a card holder fails to complete his or her renewal application within the time set forth in this section, his or her application shall be treated as a new application under §§ 117.15 and 117.16 hereof, but the late filing shall not affect the expiration of the previous card; that is, if the card renewal application has not been acted upon prior to the expiration of the existing card, the existing card shall expire, and the person shall not be entitled to be employed by a sexually oriented business (or in certain operations of a dual purpose business, as the case may be), unless and until a new card is issued.
(Ord. 1134.10, passed 8-2-10)

§ 117.20 SUSPENSIONS.

(A) The following shall be the causes for the suspension of a sexually oriented business license.

(1) If any applicant who possessed the qualifications for the license at the time of issuance of the license fails to maintain such qualifications during the licensed year.

(2) If there was any misstatement or suppression of fact in the application for the license.

(3) If the license was granted to any person who is or has been engaged in a sexually oriented business with a person whose application for a license has been denied or whose license has been revoked.

(4) If the license was issued to an interposed person.

(5) If the licensee has violated any section of this chapter.

(6) If any sexually oriented business licensee allows any person to consume any intoxicating liquor or 3.2% malt liquor on the licensed premises or on any parking lot or open or closed space within or contiguous to the licensed premises.

(7) Violation of any controlled, dangerous substance law on the premises of the business holding the sexually oriented business license.

(8) Violation of any obscenity law on the premises of the sexually oriented business.

(9) If the licensee knowingly permits an employee to violate any section of this chapter on the licensed premises.

(B) The following shall be the causes for the suspension of a sexually oriented business employee card.

(1) If any applicant who possessed the qualifications for the card at the time of issuance of the license fails to maintain such qualifications during the term of the card.

(2) If there was any misstatement or suppression of fact in the application for the card.

(3) If the card holder has violated any section of this chapter.

(C) The City Attorney shall issue a written letter of intent to suspend the license or card in question for a period not to exceed six months if the City Council finds that probable cause exists to believe that grounds exist for the suspension or revocation of a sexually oriented business license or a sexually oriented business employee card. The licensee or card holder shall have ten days following the issuance of the letter of intent to suspend the license or card within which to appeal the suspension to the Swift County, Minnesota District Court. The appeal shall be perfected by making a written request for appeal to the City Clerk. If no appeal is perfected within such time, the license or card holder shall be suspended in accordance with the written letter of intent to suspend the license or card. If the licensee or card holder perfects an appeal, no suspension shall take effect until after the Swift County, Minnesota District Court has acted on the appeal or the appeal has been withdrawn.

(D) No person whose sexually oriented business license or sexually oriented business employee card has been suspended shall operate a sexually oriented business or be employed in a sexually oriented business during the period of such suspension.
(Ord. 1134.10, passed 8-2-10)

§ 117.21 REVOCATION.

(A) The City Attorney shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee card if the City Council finds that a cause of suspension in § 117.20 occurs and the license has been suspended within the preceding 12 months.

(B) The City Attorney shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee card if the City Council determines that:

(1) The licensee or card holder has knowingly given false information in the application for the sexually oriented business license or employee card;

(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 knowingly operated the sexually oriented business during a period of time when the license was suspended, or a card holder was employed by a sexually oriented business or in the sexually oriented activity area of a dual purpose business during a period when the card holder's sexually oriented business employee card was suspended;

(5) A licensee has knowingly allowed any "specified sexual activity" to occur in or on the licensed premises; or

(6) The licensee or card holder has failed to maintain any qualification required for initial issuance or renewal of the license.

(C) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) *Nature of revocation.* When, after the notice and hearing procedure described in § 117.22, a sexually oriented business license or a sexually oriented business employee card is revoked, the revocation shall continue for two years and the licensee or card holder shall not be issued a sexually oriented business license or sexually oriented business employee card for two years from the date revocation becomes effective, provided that, if the conditions of § 117.22(I) are met, a provisional license or card will be granted pursuant to that section. No person whose sexually oriented business license or sexually oriented business employee card has been revoked shall operate a sexually oriented business or be employed in a sexually oriented business, unless and until a new sexually oriented business license or sexually oriented business employee card has been issued to such person pursuant to the provisions of this chapter.
(Ord. 1134.10, passed 8-2-10)

§ 117.22 HEARING; DENIAL; REVOCATION; AND SUSPENSION; APPEAL.

(A) Any notice or letter of intent issued under this chapter for the denial, suspension, or revocation of a license under this chapter shall be in writing, shall be addressed to the applicant, licensee or card holder (respondent), shall set forth the grounds therefor, and shall be delivered by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the city for the respondent.

(B) In hearings of the City Council which finally result in withholding the issuance of a license or in suspending or revoking a license, the City Council shall assess the costs of the hearing to the applicant or licensee. The costs are recoverable by the City Council in any appellate proceeding instituted by the applicant or licensee or in any other appropriate judicial proceeding.

(C) An applicant or licensee who is aggrieved by a decision of the City Council to withhold, suspend or revoke his or her license may, within ten days of the notification of the decision, or within ten days of the deemed action of the City Council, may seek appeal to the district court having jurisdiction over his place of business, and on such appeal, the trial shall be de novo. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the

city's enforcement of the denial, suspension, or revocation, the city shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's appeal or other action to restrain or otherwise enjoin the city's enforcement.

(D) Sexually oriented businesses or sexually oriented business employees operating or working under temporary cards or licenses, provisional cards or licenses, or de facto temporary cards or licenses shall be subject to the provisions of §§ 117.23, 117.35, 117.36, 117.37, 117.39 and 117.40 of this chapter.
(Ord. 1134.10, passed 8-2-10)

§ 117.23 TRANSFER OF LICENSE.

A licensee shall not transfer his or her license to another, transfer ownership or control or permit the transfer of ownership or control of the licensee, either voluntarily or by operation of law, or operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

REGULATIONS

§ 117.35 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) A person commits a misdemeanor if the person operates or causes to be operated a sexually oriented business in any zoning district other than industrial as defined and described in Chapter 154 of this code or laws amendatory thereof or supplementary thereto.

(B) A person commits an offense if the person operates or causes to be operated a sexually oriented business within 750 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, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities, school includes the school grounds, but not include facilities used primarily for another purpose and only incidentally as a school;

(3) A boundary of a residential district as defined in Chapter 154 of this code

or laws amendatory thereof or supplementary thereto;

(4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pools, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas;

(5) The property line of a lot devoted to residential use as defined in Chapter 154 of this code or laws amendatory thereof or supplementary thereto;

(6) An entertainment business which is oriented primarily towards children or family entertainment; or

(7) Another business that sells or dispenses intoxicating liquor or 3.2% malt liquor.

(C) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 750 feet of another sexually oriented business.

(D) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one 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.

(E) For the purpose of division (B) 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 division (B). 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.

(F) For purposes of division (C) 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.

(G) Any sexually oriented business lawfully operating on, January 1, 2010, that is in violation of division (A) through (F) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of 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 750 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.

(H) 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 division (B) of this section within 750 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.
(Ord. 1134.10, passed 8-2-10)

§ 117.36 HOURS OF OPERATION.

No sexually oriented business shall be or remain open for business between 1:00 a.m. until 8:00 a.m. weekdays and Saturdays, and from the hours of 1:00 a.m. to 12:00 p.m. on Sundays.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

§ 117.37 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall 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 Council 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 or acknowledged by the applicant before a notary.

(3) No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the City Council.

(4) It shall be the duty of the operator, and of any employees present on the premises, 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 division (A)(1) of this section.

(5) The interior 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. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(6) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(7) It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

(8) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.

(9) It shall be the duty of the operator, or of any employee who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

(10) It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

(11) It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind, documented by appropriate logs.

(12) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(a) That no loitering is permitted in viewing rooms;

(b) That the occupancy of viewing rooms is limited to one person;

(c) That sexual activity on the premises is prohibited;

(d) That the making of openings between viewing rooms is prohibited;

(e) That violators will be required to leave the premises; and

(f) That violations of this section are unlawful.

(13) It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.

(15) It shall be the duty of the operator to ensure that premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures.

(a) The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.

(b) The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least twice each week. Prior to collection solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(c) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

(16) 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, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed 32 square feet of floor area. 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 paragraph must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(17) It shall be the duty of the operator or manager of the business to ensure that no

sexually oriented entertainment activity or visual depictions characterized by an emphasis on actual “specified anatomical areas” or “specified sexual activities” are visible from a public right of way adjacent to the establishment.

(B) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

§ 117.38 LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS.

(A) It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on the premises; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 90 minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within a manager’s station.

(B) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

§ 117.39 PROHIBITED ACTS OF SEXUALLY ORIENTED BUSINESS PREMISES GENERALLY.

(A) *Generally*. No person holding a sexually oriented business license, and no employee of any such person, shall do or permit any of the following acts to be done on or about the licensed premises:

(1) Serve or allow on the premises of a sexually oriented business, any person under the age of 18 years, unless such person submits a valid photographic I.D. which, on its face, establishes the age of the person as 18 years or older, and there is no reasonable doubt as to the authenticity or correctness of the identification; provided, however, that the prohibition of this § 117.39(A)(1) shall apply only to the partitioned area for sexually oriented activity of a dual purpose business;

(2) Intentionally entice, aid or permit any person under the age of 18 years to visit or loiter in or about any sexually oriented business; provided, however, that the prohibition of this § 117.39(A)(2) shall apply only to the partitioned area for sexually oriented activity of a dual purpose business;

(3) Permit any prostitute to frequent the licensed premises or to solicit patrons for prostitution on the licensed premises;

(4) Intentionally conduct illegal gambling as defined by law, on the premises described in the application for the license;

(5) Fail to keep the premises clean and sanitary, including any parking lot, sidewalk, vacant lot, or open or closed space within or contiguous to the licensed premises which is under the control of the permit holder by lease, ownership, or otherwise; or

(6) Illegally distribute, sell, offer for sale, possess or permit the consumption or distribution on or about the licensed premises of any kind or type of narcotics or habit-forming drug.

(B) *Prohibition on liquor.*

(1) Sexually oriented businesses shall not sell or dispense intoxicating liquor or 3.2% malt liquor nor shall the sexually orientated business be located in a building or on a premise that contains a business that sells or dispenses intoxicating liquor or 3.2% malt liquor.

(2) The sale and consumption of alcohol is prohibited on the premises of a sexually orientated business, including, but not limited to, any parking areas or lots that are owned or leased by the adult establishment or its owner, or used by patrons when they are at the sexually orientated business.

(3) No sexually orientated business may be operated in a building or structure lying immediately adjacent to, or having a common wall with, a business that sells or dispenses intoxicating liquor or 3.2% malt liquor.

(C) Violation of this section by any sexually oriented business licensee, agent, associate, employee, representative or servant shall be considered the licensee's act for the purposes of suspension or revocation of a license.

(D) Notwithstanding the issuance of a license by way of renewal, the Chief of Police or the city may request revocation or suspension of such license as prescribed by this chapter, for violations of this section occurring during the license period immediately preceding the issuance of such license.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

§ 117.40 ADDITIONAL REGULATIONS CONCERNING LIVE PUBLIC NUDITY.

(A) It shall be a violation of this chapter for a patron, employee, or any other person knowingly or intentionally, in a sexually oriented business, to appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(B) It shall be a violation of this chapter for a person, knowingly or intentionally, in a sexually oriented business to appear in a semi-nude condition unless the person is an employee

who, while semi-nude, shall be at least six feet from any patron or customer and on a permanent immovable stage at least 18 inches from the floor.

(C) It shall be a violation of this chapter for any employee of a sexually oriented business, while semi-nude, to knowingly or intentionally touch a customer or the clothing of a customer.

(D) It shall be a violation of this chapter for any person to knowingly or intentionally touch an employee of a sexually oriented business or such employee's clothing or costume, while such employee is semi-nude.

(E) A sign in a form to be prescribed by the Chief of Police and summarizing the provisions of divisions (A), (B), (C), and (D) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. It shall be a violation of this chapter for an operator to operate a sexually oriented business at any time when the required sign is not posted and clearly visible to patrons entering the business.

(F) The interior of any business that regularly features persons who appear in a state of semi-nudity shall be configured in such a manner that there is an unobstructed view from a manager's station or from a hallway accessible to all patrons to all places (and all parts of any room) where patrons are permitted access, excluding restrooms, for any purpose. In any business that regularly features persons who appear in a state of semi-nudity, no separate room, other than a restroom, where any patron is allowed access for any purpose, shall have any door that precludes viewing of all parts of any such room from a manager's station or a hallway to which all patrons are permitted access. A manager's station as described in the preceding sentences shall not exceed 32 square feet of floor area. The view required in this paragraph must be by direct line of sight from the manager's station or the hallway to all parts of the room in question. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises. It shall be a violation of this chapter for any person to operate a business in violation of this paragraph.

(G) It is unlawful for a sexually oriented business to knowingly violate the preceding regulations or to knowingly allow an employee or any other person to violate the preceding regulations.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

§ 117.41 REGULATION OF DUAL PURPOSE BUSINESSES.

It shall be unlawful for the operator of any dual purpose business to fail to comply with the following regulations.

(A) The operator shall maintain a physical barrier between any sexually oriented entertainment activity and other activity of the business. The barrier shall consist of a permanent opaque wall or room divider, or a separate room. The barrier will be a minimum of six feet high. The entrance to the separate sexually oriented entertainment activity area will be configured as to not allow a patron of the business below the age of 18 years to view the contents of the sexually oriented entertainment activity area from outside such area.

(B) The area containing sexually oriented entertainment activity shall be clearly marked by signs, with bold-face lettering in type or handwriting no less than the equivalent of 70 point type, stating that no persons under the age of 18 are allowed in the area. Such sign shall be not less than two feet wide and one foot high, in letters sharply contrasting in color with the background of the sign.

(C) The operator shall insure that only employees holding sexually oriented business employee cards and qualified patrons are permitted entry into the separate sexually oriented entertainment area; provided, however, that bona fide maintenance or cleaning employees may be permitted entry into such area to perform their maintenance or cleaning responsibilities.

(D) Any employee of a dual purpose business will be required to have a sexually oriented business employee card if the employee has any duties relating to the sale, rental, restocking, checking in and out of sexually oriented entertainment materials, or taking inventory of any sexually oriented entertainment material.

(E) The operator shall not advertise or display promotional materials for any of the materials or activities available in the partitioned sexually oriented activities section on the exterior of the premises or within the interior of the premises not partitioned for sexually oriented entertainment material.
(Ord. 1134.10, passed 8-2-10) Penalty, see § 117.99

§ 117.42 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY.

Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly allowed such act to occur on the premises, or if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises reasonably should have known that such act was occurring or likely to occur on the premises.
(Ord. 1134.10, passed 8-2-10)

§ 117.43 APPLICABILITY OF ORDINANCE TO EXISTING BUSINESSES AND

EMPLOYEES.

(A) The provisions of this chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this chapter. As of the effective date of this enacted chapter, any person or business who is engaged in a business or activity requiring a sexually oriented business license or a sexually oriented business employee card under this chapter shall apply for the appropriate license or card within 30 days after the effective date of this enacted chapter. If such person does not apply for the applicable license or card within such 30-day period, the person or business shall not be entitled to operate a sexually oriented business or be an employee of a sexually oriented business (or an employee of a dual purpose business required to hold a sexually oriented business employee card) after the expiration of such 30-day period, and such person shall be subject to prosecution or other action for violation of this chapter. During the pendency of any application for a sexually oriented business license or sexually oriented business employee card, and any appeal from the denial of any such license or card, the applicant is hereby granted a de facto temporary license or card, as the case may be, to continue operation or employment until the ultimate termination of the appeal process by completion or withdrawal of the appeal, subject to suspension or revocation provisions as provided in this chapter.

(B) Within 180 days after the effective date of this chapter, existing sexually oriented businesses and dual purpose businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this chapter.
(Ord. 1134.10, passed 8-2-10)

§ 117.44 SEXUALLY ORIENTED BUSINESS LOCATIONS: MEASUREMENTS.

Any measurement required to be conducted by the provisions of this chapter shall be performed by the Zoning Administrator, or his or her designee.
(Ord. 1134.10, passed 8-2-10)

§ 117.45 INAPPLICABILITY OF MINNESOTA STATUTE § 617.242.

The regulations provided in Chapter 117 of the City of Benson Code of Ordinances shall supersede M.S. § 617.242, which is authorized in M.S. § 617.242. The City of Benson hereby expressly “opts out” of the regulations set forth in M.S. § 617.242, and those regulations shall not apply within the city. The regulations set forth in Chapter 117 of the City of Benson Code of Ordinances shall apply within the city.
(Ord. 1134.10, passed 8-2-10)

§ 117.99 PENALTY.

Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties for a misdemeanor as prescribed by state law. Each day the violation continues shall be considered a separate misdemeanor offense punishable by a separate misdemeanor penalty. The city may also enforce any provision of this chapter by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.
(Ord. 1134.10, passed 8-2-10)