

**CITY OF LAMBERTON
REDWOOD COUNTY, MINNESOTA**

ORDINANCE NO. 143

AN ORDINANCE PROVIDING FOR THE REGULATION OF ADULT ORIENTED BUSINESSES IN THE CITY OF LAMBERTON; PROVIDING FOR THE ISSUANCE OF LICENSES AND COLLECTION OF FEES THEREFORE; PROVIDING PENALTIES FOR THE VIOLATION THEREOF

The City Council of the City of Lambertton does ordain as follows:

ADULT ESTABLISHMENTS

Section 1 Purpose and Intent.

Subdivision 1. Findings. It is the purpose of this Ordinance to regulate Adult Oriented Businesses to promote the health, safety morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to:

- (a) Prevent additional criminal activity within the City;
- (b) Diminish the adverse impact of Adult Oriented Businesses by imposing locational requirements, licensing requirements and health requirements;
- (c) To locate Adult Oriented Businesses away from residential areas, schools, churches, parks and playgrounds;
- (d) Prevent concentration of Adult Oriented Businesses within certain areas of the City.

Subdivision 2. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including 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.

Subdivision 1. For purposes of this section the terms defined in this section have the meanings given them.

Subdivision 2. Adult Use. Any of the activities and businesses described below constitute "Adult Oriented Businesses" which are subject to the regulation of this Ordinance.

Subdivision 3. Adult Book and/or Media Store. An establishment which excludes minors and which has a substantial portion of its stock in trade or stock on display, including but not limited to books, magazines, films, videotape, or other media which are characterized by their emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.

Subdivision 4. Adult Cabaret. An establishment which provides dancing or other live entertainment if such establishment excludes minors by virtue of age from all or part of the establishment and if such dancing or other live entertainment is characterized by an emphasis on the performance, depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

Subdivision 5. Adult Establishment. Any business which offers its patrons services, entertainment, or the sale of merchandise characterized by an emphasis on matter depicting, exposing, describing, discussing, or relating to Specified Sexual Activities or Specified Anatomical Areas. Specifically included in the term, but without limitation, are adult book and media stores, adult cabarets, adult hotels or motels, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades, adult motion picture theaters, adult novelty businesses, and other adult establishments.

Subdivision 6. Adult 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.

Subdivision 7. Adult Mini-Motion Picture Theater.

- (a) A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity for less than 50 persons used for presenting motion pictures, including but not limited to film and videotape, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.
- (b) Any business which presents motion pictures, from which minors are excluded from all or part of the establishment, including films and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, for viewing on the premises including but not limited to private booths, viewing by means of coin operated or other mechanical devices, and the viewing of excerpt of motion pictures offered for sale or rent.

Subdivision 8. Adult Modeling Studio. An establishment, which excludes minors from all or part of the 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 such customers and who engage in Specified Sexual Activities or display Specified Anatomical Areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

Subdivision 9. Adult Motion Picture Arcade. Any place which excludes minors from all or part of the establishment wherein coin or token 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.

Subdivision 10. Adult Motion Picture Theater. A theater in an enclosed building, from which minors are excluded from all or part of the establishment, with a capacity of 50 or more persons used regularly and routinely for presenting live entertainment or motion pictures, including but not limited to film and videotapes, having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas for observation by patrons herein.

Subdivision 11. Adult Novelty Business. A business, from which minors are excluded from all or part of the establishment, which sells, offers to sell, or displays devices which simulate human genitals or devices which are designed for sexual stimulation.

Subdivision 12. Specified Anatomical Areas are any of the following conditions:

- (a) Less than completely and opaquely covered;
 - (1) human genitals, pubic region, or pubic hair;
 - (2) buttock; and
 - (3) female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernible turgid state, even if opaquely covered.

Subdivision 13. Specified Sexual Activities are any of the following conditions:

- (a) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.
- (b) Sadoomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound, or otherwise physically restricted on the part of one so clothed.
- (c) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ clothed or unclothed.
- (d) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of a female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

Section 3. Application of this Ordinance.

Except as in this Ordinance specifically provided, 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.

No Adult Oriented Business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the establishment which is prohibited by any ordinance of the City of Lamberton, the laws of the State of Minnesota, or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct 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.

All public and private schools located within the City of Lamberton are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

Section 4. Location.

During the term of this Ordinance, no Adult Oriented Businesses shall be located less than 300 feet from any site used for residential purposes, and less than 300 feet from any church site, from any school site, from any day care facility, public library, or from any public park. In addition, no Adult Oriented Business may be located within 300 feet of another Adult Oriented Business. For purposes of this Ordinance, this distance shall be a horizontal measurement from the nearest existing residential district boundary or site used for residential purposes, church site, school site, day care site, park site, or another Adult Oriented Business site to the nearest boundary of the proposed Adult Oriented Business site.

Section 5. Hours of Operation.

No Adult Oriented Business site shall be open to the public from the hours of 11:00 p.m. to 9:00 a.m.

Section 6. Operation.

Subdivision 1. Off-site Viewing. An establishment operating as an Adult Oriented Business shall prevent off-site viewing of its merchandise, which if viewed by a minor, would be in violation of Minnesota Statutes Ordinance 617 or other applicable Federal or State Statutes or local ordinances.

Subdivision 2. Entrances. All entrances to the business, with the exception of emergency fire exits which are not useable by patrons to enter the business, shall be visible from a public right-of-way.

Subdivision 3. Layout. The layout of the display areas shall be designed so that the management of the establishment and any law enforcement personnel inside the store can observe all patrons

while they have access to any merchandise offered for sale or viewing including but not limited to books, magazines, photographs, video tapes, or any other material.

Subdivision 4. Illumination. Illumination of the premises exterior shall be adequate to observe the location and activities of all person on the exterior premises.

Subdivision 5. Signs. All businesses regulated under this Ordinance shall comply with the following sign requirements:

- (a) All signs shall be wall signs.
- (b) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or in any area where they can be viewed from a public street or sidewalk in front of the building.
- (c) Window areas shall not be covered or made opaque in any way.
- (d) No sign shall be placed in any window.
- (e) A one square foot sign shall be placed on the door of the establishment to state hours of operation and admittance to adults only.

Subdivision 6. Responsibilities of Operator.

- (1) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- (2) Any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.
- (3) No employee of an Adult Oriented Business shall allow any minor to loiter around or to frequent an Adult Oriented Business or to allow any minor to view adult entertainment.
- (4) The operator shall maintain the premises in a clean and sanitary manner at all times.
- (5) The operator shall maintain at least ten foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination shall be maintained in such aisles, provided, however, as no time shall there be less than 1 foot candle of illumination in said aisles as measured from the floor.
- (6) All business transactions shall occur within the licensed building.
- (7) No employee shall have been convicted of any felony involving moral turpitude, prostitution, obscenity or other crime of a sexual nature or involving the use or distribution of a controlled substance as defined by Minnesota laws, or the use or distribution of a dangerous weapon. The fact that a conviction may be under appeal shall not affect the disqualification of the employee.
- (8) The operator shall ensure compliance of the establishment and its patrons with the provisions of this Ordinance.

Section 7. Additional Conditions for Adult Cabarets.

The following additional conditions apply to adult cabarets:

- (a) No owner, operator or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude.
- (b) No dancer, live entertainer, performer, patron or any other person shall be nude in an adult cabaret.
- (c) The owner, operator or manager of an adult cabaret shall provide the following information to the city concerning any persons who dance or perform live entertainment at the adult cabaret: The person's name, home address, home telephone number, date of birth and any aliases.
- (d) No dancer, live entertainer or performer shall be under 18 years old.
- (e) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.
- (f) No dancer or performer shall perform any dance or live entertainment closer than 10 feet to any patron.
- (g) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- (h) No patron shall pay or give any gratuity to any dancer or performer.
- (i) No dancer or performer shall solicit any pay or gratuity from any patron.

Section 8. Licenses.

Subdivision 1. Licenses Required. All establishments, including any business operating at the time this Ordinance become effective, operating or intending to operate Adult Oriented Business, shall apply for and obtain a license from the City of Lambertton. A person is in violation of the City Code if he or she operate an Adult Oriented Business without a valid license, issued by the City.

Subdivision 2. Applications. An application for a license must be made on a form provided by the City and shall include:

- (a) If the applicant is an individual, the name, residence, phone number, and birthdate of the applicant. If the applicant is a partnership, the name, residence, phone number, and birthdate of each general and limited partner. If the applicant is a corporation, the names, residences, phone numbers, and birthdates of all those persons holding more than five (5) percent of the issued and outstanding stock of the corporation.
- (b) The name, address, phone number, and birthdate of the operator and manager of such operation, if different from the owners.
- (c) The address and legal description of the premises where the adult establishment is to be located.
- (d) A statement detailing any gross misdemeanor or felony convictions relating to sex offenses, obscenity or the operation of an adult establishment or adult business by the applicant, operator or manager and whether or not the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in other communities. In the case of a corporation, a statement detailing any felony convictions by the owners of more than five (5) percent of the issued and outstanding stock of the

corporation, and whether or not those owners have ever applied for or held a license to operate a similar type of business in other communities.

- (e) The activities and types of business to be conducted.
- (f) The hours of operation.
- (g) The provisions made to restrict access by minors.
- (h) A building plan of the premises detailing all internal operations and activities.

Subdivision 3. Investigations.

- (a) The police chief or other designated person shall complete the investigation within 30 days after the clerk receives a complete application and all license and investigative fees.
- (b) All police, fire and building code investigations shall be completed within twenty-one days after the date the application is filed with the City Clerk. Upon a showing of good cause and reasonable diligence on the part of an investigator, the City Council may extend the investigation period for a reasonable time. Any investigation not completed within the allotted time period shall be deemed to be waived.

Subdivision 4. Council Action. The City Council shall act to approve or disapprove the license application within 120 days from the date the application was submitted, provided that the application contains all of the information required by this ordinance. If the application is deficient, the Council shall act on the application within 120 days from the date that the deficiency has been corrected.

Subdivision 5. Standards for Issuing Licenses.

(1) To receive a license to operate an Adult Oriented Business, an applicant must meet the following standards:

- (a) The applicant must be eighteen years of age or older.
- (b) The applicant or his or her spouse has not been denied a similar license by any other city, county or state within the preceding twelve months or has not had such a license revoked or suspended within the preceding twelve months.
- (c) All current real estate taxes have been paid on the licensed premises.
- (d) The licensed premises meets all the provisions of this Ordinance as well as all building and fire codes.
- (e) The applicant or spouse has not been convicted of any felony involving the use or distribution of a controlled substance as defined by Minnesota laws, or the use or distribution of a dangerous weapon. The fact that a conviction may be under appeal shall not affect the disqualification of the applicant.
- (f) All license and investigation fees required by this Ordinance have been paid.
- (g) The applicant or spouse has not been convicted of a crime involving any of the following offenses:
 - (I) Any sex crimes as defined by Minn. Stat. 609.293 through 609.352 inclusive or as defined by any ordinance or statute in conformity therewith;
 - (II) Any obscenity crime as defined by Minn. Stat. 617.23 through 617.299 inclusive, or as defined by any ordinance or statute in conformity therewith; for which:

- 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.
 - less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
 - 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 conviction is of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.
- (III) The fact that a conviction is being appealed shall have no affect on disqualification of the applicant or applicant's spouse.

(2) For the purposes of this section the term "applicant" shall include an individual, all persons having a financial interest in a partnership or joint venture, and, in the case of a corporation, all officers, directors and stockholders required to be named in the application.

Subdivision 6. Requalification. An applicant who has been convicted of an offense listed in Section 8, Subdivision 5(1) (g), may qualify for an Adult Oriented Business license only when the time period required by Section 8, Subdivision 5(1) (g), has elapsed.

Subdivision 7. Posting. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Adult Oriented Business. The license shall be posted in a conspicuous place at or near the entrance to the Adult Oriented Business so that it may be easily read at any time.

Subdivision 8. Appeals. Within 90 days after the decision by the Council, the applicant may appeal to the District Court by serving a notice upon the Mayor or Clerk of the Municipality.

Section 9. Fees.

Subdivision 1. The annual license fee to operate an adult oriented business shall be \$5,000.00.

Subdivision 2. In addition to the annual license fee, an investigation fee of \$1,500.00 shall be paid at the time of the initial license application. This fee does not apply to an applicant who is already an Adult Oriented Business license holder in the City of Lambertton.

Subdivision 3. All appropriate fees shall be submitted along with the application for a new or renewal license.

Subdivision 4. If an application is denied, the license fee, but not the investigation fee shall be refunded to the applicant.

Section 10. Inspection.

Subdivision 1. Access. An applicant or licensee shall permit health officials, representatives of the police department, fire department and building inspection division, to inspect the premises of an Adult Oriented Business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

Subdivision 2. Refusal to Permit Inspections. A person who operates an Adult Oriented Business or his agent or employee commits an offense if she or he refuses to permit a lawful inspection of the premises by health officials, representatives of the police department, fire department, and building inspection division at any time it is occupied or open for business. Refusal to permit inspections may result in the suspension of the license as provided in Section 12.

Subdivision 3. Exceptions. 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

Section 11. Expiration and Renewal.

Subdivision 1. Expiration. Each license shall expire at the end of the calendar year and may be renewed only by making application as provided in Section 8, Subdivision 2. Application for renewal must be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

Subdivision 2. Denial of Renewal. When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

Section 12. Suspension.

Subdivision 1. Causes of Suspension. The City may suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

- (a) Violated or is not in compliance with any provision of this Ordinance.
- (b) Engaged in the use of alcoholic beverages while on the Adult Oriented Business premises other than at an Adult Hotel or Motel.
- (c) Refused to allow an inspection of the Adult Oriented Business Premises as authorized by this Ordinance
- (d) Knowingly permitted gambling by any person on the Adult Oriented Business premises.
- (e) Demonstrated inability to operate or manage an Adult Oriented Business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

Subdivision 2. Notice. A suspension by the City shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 days' notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The notice may be served upon the licensee personally, or by leaving the same at the licensed business premises with the person in charge thereof

Section 13. Revocation.

Subdivision 1. Suspended Licenses. The City may revoke a license if a cause of suspension in Section 12 occurs and the license has been suspended within the preceding 12 months.

Subdivision 2. Causes of Revocation. The City shall revoke a license if it determines that:

- (a) A licensee gave false or misleading information in the material submitted to the City during the application process;
- (b) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (c) A licensee or an employee has knowingly allowed prostitution on the premises;
- (d) A licensee or an employee knowingly operated the Adult Oriented Business during a period of time when the licensee's license was suspended;
- (e) A licensee has been convicted of an offense listed in Section 8, Subdivision 5(1)(g), for which the time period required in Section 8, Subdivision 5(1)(g), has not elapsed;
- (f) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 8, Subdivision 5(1)(g), for which a conviction has been obtained, and the person or person were employees of the Adult Oriented Business at the time the offenses were committed;
- (g) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises.

Subdivision 3. Appeals. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Subdivision 4. Exceptions. Section 13, Subdivision 2(g), does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

Subdivision 5. Granting a License After Revocation. When the City revokes a license, the revocation shall continue for one year and the licensee shall not be issued an Adult Oriented Business license for one year from the date revocation became effective. If subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Section 13, Subdivision 2(e), an applicant may not be granted another license until the appropriate number of years required under Section 8, Subdivision 5(1)(g), has elapsed.

Subdivision 6. Notice. A revocation by the City shall be proceeded by written notice to the licensee and a public hearing. The notice shall give at least 10 day's notice of the time and place of the hearing and shall state the nature of the charges against the licensee, The notice may be served upon the licensee personally, or by leaving the same at the licensed premises with the person in charge thereof.

Section 14. Transfer of License.

A licensee shall not transfer this license to another, nor shall a licensee operate an Adult Oriented Business under the authority of a license at any place other than the address designated in the application.

Section 15. Severability.

Every section, provision, or part of this Ordinance or any permit issued to this ordinance is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this Ordinance or any permit issued pursuant to this ordinance shall be held invalid by a court of competent jurisdiction it shall not invalidate any other section, provision, or part thereof.

Section 16. Violations.

Any violation of this Ordinance shall be a misdemeanor. The City may enforce any provision of this Ordinance by mandamus, injunction, or any other appropriate civil remedy any court of competent jurisdiction would allow.

Section 17. Effective Date of Ordinance.

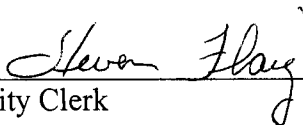
This ordinance shall become effective upon its passage and publication as provided by law.

Passed by the City Council this 14th day of November, 2005.



Mayor

ATTEST:



City Clerk

A Summary of this Ordinance was published in the Lambertton News on _____.