

ORDINANCE NUMBER 2010-02

AN ORDINANCE ADOPTING CHAPTER 117 OF THE CITY CODE TO DEFINE AND REGULATE ADULT USES AND AMENDING SECTIONS 36, 111, AND 154 OF THE CITY CODE

The City Council of the City of Harris hereby ordains:

Section 1. The City Code for the City of Harris is amended by adding a new Chapter 117 as follows:

CHAPTER 117 ADULT ESTABLISHMENTS

117.01 Findings and Purpose. Studies conducted by the Minnesota Attorney General and the Texas City Attorneys' Association, as well as the cities of St. Paul, Alexandria, and Rochester, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; St. Croix County, Wisconsin; Adams County and the City of Denver, Colorado, have examined the impact that adult establishments have on their respective communities. These studies concluded that adult establishments have an adverse impact on surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council of the City of Harris is relying on the studies, many of which were conducted in larger cities, recognizing that the same or similar adverse impacts could occur in a small city such as the City of Harris. Based on these studies, the City Council makes the following findings regarding the need to regulate adult establishments:

- (A) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments.
- (B) Adult establishments have adverse secondary impacts of the types set forth above.
- (C) The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by location requirements, licensing requirements and health requirements.
- (D) It is not the intent to prohibit adult establishments from having a reasonable opportunity to locate in the city.
- (E) Many members of the public perceive areas within which adult establishments are located as less safe than other areas that do not have such uses.
- (F) A reasonable licensing procedure is an appropriate mechanism to place the burden of reasonable regulation on the owners and the operators of the adult establishment. A licensing procedure will place an incentive on the operators to see that the adult establishment is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually-oriented business, fully in possession and control of the premises and activities occurring therein.

- (G) The fact that an applicant for an adult use license has been convicted of a sexually-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Chapter.
- (H) The barring of individuals with sexually-related criminal convictions from the management of adult establishments for a period of years serves as a deterrent to and prevents conduct which may lead to the transmission of sexually-transmitted diseases.
- (I) The general health, safety, and welfare of the community is promoted by prohibiting nudity in adult establishments. This prohibition is based on concerns of potential adverse effects such as prostitution, the transmission of sexually-transmitted diseases, exposure to minors, obscenity and unsanitary conditions in public places.
- (J) Small cities experience many of the same adverse impacts of adult establishments present in larger communities.

117.02 Definitions. For the purposes of this chapter only, the words and phrases below are defined as follows:

- (A) **Adult Establishment.** Any business that:
 - (1) devotes a substantial or significant portion of its inventory, stock-in-trade, or publicly-displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas; or
 - (2) engages in any Adult Use as defined in Paragraph (B) of this section.
- (B) **Adult Use.** An adult use is any of the activities and businesses described below:
 - (1) **Adult Bookstore or Videostore.** An establishment or business used for the barter, rental, or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, movies, or motion picture film if a substantial or significant portion of its inventory, stock in trade, or publicly-displayed merchandise consists of, or if a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) is devoted to, or if substantial or significant portion of its gross revenues is derived from items, merchandise, devices or materials that are distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to specified sexual activities or specified anatomical areas.
 - (1) **Adult Entertainment Center.** A business or establishment that provides dancing or other live entertainment distinguished or characterized by an

emphasis on the presentation, display, or depiction of "specified sexual activities" or "specified anatomical areas."

- (2) Adult Companionship Establishment. A business or establishment that provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (3) Adult Conversation/Rap Parlor. A business or establishment that provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (4) Adult Health/Sport Club. A health/sport club, which is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (5) Adult Hotel or Motel. Adult hotel or motel means a hotel or motel 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."
- (6) Adult Massage Parlor, Health Club. A massage parlor or health club which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (7) Adult Motion Picture Theater. A motion picture theater that as a prevailing practice presents movies distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons.
- (8) Adult Modeling Studio. An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to 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.
- (9) Adult Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."
- (10) Adult Novelty Business. A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are

designed for sexual stimulation.

- (11) Adult Sauna. A sauna that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (12) Adult Steam Room/Bathhouse Facility. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(C) "Nude" or "Specified Anatomical Areas" means:

- (1) The showing of the human male or female genitals, pubic area, buttocks, or anus with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(D) "Specified Sexual Activities" means:

- (1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
- (2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; or
- (4) Fondling or touching of nude human genitals, pubic region, buttocks or female breast; or
- (5) Situations involving a person or person, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person; or

- (6) Actual or simulated erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being; or
 - (7) Human excretion, urination, menstruation, vaginal or anal irrigation.
- (E) “Substantial or Significant portion” means: 20 % or more.

117.03 Location. Adult establishments may only be located as permitted in Section 154.14(G) of the City Code.

117.04 Licensing of Existing Establishments. Adult establishments operating before the effective date of this Chapter shall be subject to all of the licensing requirements in Chapter 117, except that such pre-existing establishments may continue to operate with any intoxicating liquor, beer or wine license obtained before the effective date of this Chapter.

117.05 License Required. No person, firm or corporation shall own or operate an adult establishment without having first secured a license as provided for in this chapter.

- (A) Applications. The application for an adult establishment license shall be submitted on a form provided by the city and shall include:
- (1) The name, residence, phone number and birth date of the applicant, if an individual; and if a corporation or partnership, the names, residences, phone number and birth dates of each partner and all officers, directors, and controlling stockholders for the business;
 - (2) The name, address, phone number and birth date of the manager of such operation, if different from the owners;
 - (3) Whether the applicant has ever used or has been known by a name other than the applicant’s name, and if so, the name or names used and information concerning dates and places where used;
 - (4) The address and legal description of the premises where the adult establishment is to be located;
 - (5) A statement detailing each gross misdemeanor or felony relating to a sex offense, obscenity offense or offense related to the operation of adult uses and related activities of which the applicant, or in the case of a corporation or partnership, the owners, partners, officers, directors and controlling stockholders have been convicted, and whether or not the applicant has ever applied for or held a license to operate a similar type of business in other communities;
 - (6) The activities and types of business to be conducted;
 - (7) The hours of operation, which shall be limited to Monday thru Saturday 10 a.m.-12 midnight;
 - (8) The provisions made to restrict access by minors;
 - (9) A building plan of the premises detailing all internal operations and activities.

(B) License Fees.

- (1) Each application for a license shall be accompanied by a receipt from the city for payment in full of the required fee for the license. All fees shall be paid into the general fund of the municipality. Upon rejection of any applications for a license, the Finance Director shall refund the amount paid.
- (2) All licenses shall expire on the last day of December in each year. Each license shall be issued for a period of one year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rated fee. In computing such fee, any unexpired fraction of a month shall be counted as one month.
- (3) The annual license fee for adult establishments shall be in the amount as set forth in the current City fee schedule.
- (4) No part of the fee paid for any license shall be refunded except in the following instances upon application to the City Council within 30 days from the happening of the event. There shall be refunded a pro rata portion of the fee for the unexpired period of the license, computed on a monthly basis, when operation of the licensed business ceases not less than one month before expiration of the license because of:
 - 1) Destruction or damage of the licensed premises by fire or other catastrophe;
 - 2) The licensee's illness;
 - 3) The licensee's death;
 - 4) A change in the legal status making it unlawful for the licensed business to continue.

(C) Granting of License.

- (1) The city council, or such persons as they designate, must complete their investigation within 30 days after the city council administrator receives a complete application and all license and investigative fees.
- (2) If the application is for a renewal, the applicant shall be allowed to continue business until the City Council has determined to renew or refuse to renew a license.
- (3) If, after such investigation, it appears that the applicant and the place proposed for the business are eligible for a license under the criteria set forth in this subsection, then the license shall be issued by the City Council within 30 days after the investigation is completed. Otherwise the license shall be denied.
- (4) Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the

premises described in the application. No license may be transferred to another premise without the approval of the City Council. If the licensee is a partnership or a corporation, a change in identity of any of the principals of the partnership or corporation shall be deemed a transfer of the license. All adult establishments existing at the time of the adoption of this subsection shall be required to obtain an annual license.

- (5) An applicant for any license under this section shall deposit with the city at the time an original application is submitted, an amount as set forth in the current City fee schedule to cover the costs involved in verifying the license application and to cover the expense of any investigation needed to assure compliance with this section. If the investigation and verification process is conducted outside the state of Minnesota, the city may require the actual investigation costs not exceeding the amount set forth in the current City fee schedule.

(D) Persons Ineligible for License. No license shall be granted to or held by any person:

- (1) Under 18.
- (2) Who has been convicted of a felony or of violating any federal law, state law or local ordinance relating to sex offenses, obscenity offenses or adult establishments, unless the applicant can show competent evidence of sufficient rehabilitation under Minn. Stat. § 364,05, subd. 3.
- (3) Who is not the proprietor of the establishment for which the license is issued.
- (4) Who has failed to supply all of the information requested on the license application;
- (5) Who gives false, fraudulent, or untruthful information on the license application;
- (6) Who has not paid the required license fee;
- (7) Who has been denied a license by the City or any other Minnesota municipal corporation to operate an adult establishment, or such license has been suspended or revoked, within the preceding twelve (12) months.

(E) Places Ineligible for License.

- (1) No license shall be granted for adult establishments on any premises where the owner or the applicant has been convicted of a violation of this chapter, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation.
- (2) Except for uses lawfully existing at the time of this ordinance adoption, no license shall be granted for any adult establishment, which is not in compliance with the city's zoning regulations or applicable building code.

- (3) Establishments holding an intoxicating liquor, beer or wine license are ineligible for a license.
 - (4) No license shall be granted for operation on any premises upon which taxes, assessment, or installments thereof, or other financial claims of the city, are owed by the applicant and are delinquent and unpaid.
- (F) Conditions of License.
- (1) Every license shall be granted subject to the following conditions and all other provisions of this chapter, and of any applicable sections of the code of the city, state law, or federal law, which ever is more restrictive.
 - (2) All licensed premises shall have the license posted in a conspicuous place at all times.
 - (3) No minor shall be permitted on the licensed premises.
 - (4) Any designated inspection officer of the city shall have the unqualified right to enter, inspect and search the premises of a licensee during business hours.
 - (5) Every licensee shall be responsible for the conduct of his or her place of business and shall maintain conditions of order.
 - (6) An adult establishment shall not sell or dispense non-intoxicating or intoxicating liquors nor shall it be located in a building which contains a business that sells or dispenses non-intoxicating or intoxicating liquors.
- (G) Additional Conditions for Adult Entertainment Centers. In addition to all other conditions set forth in this ordinance, the following conditions apply to adult entertainment centers:
- (1) No owner, operator or manager of an adult entertainment center shall permit or allow any dancer or other live entertainer to perform nude.
 - (2) No dancer, live entertainer, patron or any other person may be nude in an adult entertainment center.
 - (3) No dancer, live entertainer or performer shall be under 18 years old.
 - (4) 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.
 - (5) No dancer or performer shall fondle, touch, or caress any patron and no patron shall fondle, touch, or caress any dancer or performer.
 - (6) No patron shall pay or give any gratuity directly to any dancer or performer.

- (7) No dancer or performer shall solicit any pay or gratuity from any patron.
- (8) *Partitions facilitating sexual activity.* A licensee under this section shall not allow any partition between a subdivision, portion, or part of the licensed premises having any aperture which is designed or constructed to facilitate sexual intercourse, sodomy, or fondling or other erotic touching of human genitals, pubic region or pubic hair, buttocks, or female breast between persons on either side of the partition.
- (9) *Restrictions on booths, stalls, and partitions.* A licensee under this section shall not allow or have on the licensed premises or adjoining areas any booths, stalls, or partitions used for the viewing of motion pictures or other forms of entertainment, including but not limited to live entertainment that have doors, curtains, or portal partitions, unless such booths, stalls, or partitions have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Such areas shall be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms. No reclining surfaces inside any booths, stalls, or partitions used for the viewing of motion pictures or other forms of entertainment including but not limited to live entertainment shall be permitted.

(H) Suspension and Revocation.

- (1) Any violation of this chapter shall be a basis for the suspension or revocation of any license granted hereunder. In the event that the City Council proposes to revoke or suspend the license, the licensee shall be notified in writing of the basis for such proposed revocation or suspension. The Council shall hold a hearing for the purpose of determining whether to revoke or suspend the license, which hearing shall be within 30 days of the notice.
- (2) The City Council shall determine whether to suspend or revoke a license within 30 days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner, and shall notify the licensee of its decision within that period.

117.07 Penalty. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by state law.

117.08 Severability. The provisions of this chapter shall be severable. If any provision is found to be void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially connected with the void provisions so that the court cannot presume the Council would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone are incomplete and incapable of being executed in accordance with the legislative intent.

117.09 State Law. Minnesota Statutes, section 617.242 shall not apply in the City.

Section 2. Section 36.01 of the City Code for the City of Harris is amended as follows:

Code Section	Item	Cost
117.04(B)(3)	Annual License Fee for Adult Establishments	\$7,500.00

Section 3. Section 111.115 of the City Code for the City of Harris is amended as follows:

§ 111.115 NUDITY OR OBSCENITY PROHIBITED.

- (A) Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NUDITY. The showing of the human male or female genitals, pubic area, buttocks, or anus with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Section 4. Section 154.14(G) of the City Code for the City of Harris is amended as follows:

(G) I Industrial District.

(1) Permitted Uses.

- (a) New and used automobile sales.
- (b) Recreation vehicle sales and service.
- (c) Boats and recreational equipment sales and service.
- (d) Contractor yards and offices.
- (e) Lumberyards.
- (f) Welding shops.
- (g) Cabinet shops and sales.
- (h) Utility trailer sales and service.
- (i) Full service gasoline stations and truck stops.
- (j) Implement, tractor-trailer, and construction equipment sales and service.
- (k) Mini storage facilities.
- (l) “Adult Establishments” subject to the requirements of Chapter 117 of the City Code.

Section 5. Section 154.14(G) of the City Code for the City of Harris amended by adding the following new paragraph (7):

(7) Location of Adult Establishments.

(a) New establishments. Adult establishments as defined by Chapter 117 of the City Code shall be located only in the district zoned Industrial and shall be located at least 500 radial feet from another adult use and:

1. At least 500 radial feet as measured in a straight line from the closest point of the principal building on the property upon which the adult establishment is located, to the property line of: residentially-zoned property; a licensed day care center; a public park; the B General Business District; or a community center; and

2. At least 1,500 radial feet as measured in a straight line from the closest

point of the principal building on the property upon which the adult establishment is located, to the property line of: a public or private educational facility classified as an elementary, junior high, middle school or senior high or a place of worship.

(b) Existing Establishments. Adult establishments operating before the effective date of Chapter 117 of the City Code are not subject to the location requirements in this section unless the establishment relocates to another site within the City.

Section 6. This ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Harris.

Diane Miller, Mayor

ATTEST:

Dawn Luke, City Clerk