

ORDINANCE # 600-005
AN INTERIM ORDINANCE PLACING TEMPORARY RESTRICTIONS ON ADULT USES IN THE CITY OF HEWITT

The City Council of the City of Hewitt, does ordain as follows:

SECTION 1: DEFINITIONS

For the purpose of this Chapter, the following definitions shall be used, unless the context clearly requires or indicates otherwise.

Sexually Oriented Business: Shall include the following:

A business that meets any of the following criteria, measured on a daily, weekly, monthly or yearly basis:

1. Has more than 25% of its inventory, stock-in-trade or publicly displayed merchandise in sexually oriented materials; or
2. Devotes more than 25% of its floor area to sexually oriented materials; or
3. Derives more than 25% of its gross revenues from sexually oriented materials.

Or

A business that engages for any length of time in a sexually oriented use as defined herein or any other use that has an emphasis on specified sexual activities or specified anatomical areas.

Sexually Oriented Materials: Visual, printed or aural materials and other objects or devices that:

1. Contain, depict, simulate or describe specified sexual activities or specified anatomical areas; or
2. Are marked for use in conjunction with, or are primarily used only with or during specified sexual activities; or
3. Are designed for sexual stimulation.

Sexual Oriented Use: Any of the following activities or businesses, even if the activity exists only for a short period of time:

1. **Adult Body Painting Studio:** An establishment or business that provides the service of applying paint, ink or other substance, whether transparent or non-transparent, to the body of a patron when the patron or person is nude.
2. **Adult Bookstore:** An establishment or business used for barter, rental or sale of items consisting of printed material or matter, pictures, slides, records, audiotapes, videotape, movies or motion picture film if it meets the criteria established in the definition of "sexually oriented business" as defined in this section.
3. **Adult Cabaret:** A business or establishment that provides dancing or other live entertainment distinguished by an emphasis on the depiction of nudity, specified sexual activities or specified anatomical areas, or the presentation, display or depiction of matter that seeks to evoke, arouse or excite sexual or erotic feeling or desire.
4. **Adult Companionship Establishment:** A business or establishment that provides the service of engaging in or listening to conversation, talk or discussion distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
5. **Adult Conversation/Rap Parlor:** An establishment that provides the service of

- engaging in or listening to conversation, talk or discussion distinguished or characterized by an emphasis on specifies sexual activities or specified anatomical areas.
6. Adult Health/Sport Club: A health/sport club that is distinguished or characterized by an emphasis on specified sexual activities or specifies anatomical areas.
 7. Adult Hotel or Motel: a hotel or motel that presents material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specifies anatomical areas.
 8. Adult Massage Parlor/Health Club: A massage parlor or health club that provides massage services distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 9. Adult Mini-Motion Picture Theater: A business or establishment with a capacity of less than fifty (50) persons that, as a prevailing practice, presents on-premises viewing of movies, motion pictures or other materials distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
 10. Adult Modeling Studio: A business or establishment that provides live models who, with the intent of providing sexual stimulation or sexual gratification, engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted.
 11. Adult Motion Picture Arcade: Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors, or other image-producing devices are used 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.
 12. Adult Motion Picture Theater: A motion picture theater with a capacity of fifty (50) or more persons that, as a prevailing practice, presents material distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.
 13. Adult Novelty Business: An establishment or business that has a variety of items for sale if it meets the criteria established in division (1) of the definition of "sexually oriented business" as defined in this section.
 14. Adult Sauna: A sauna that excludes minors by reason of age, and that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation or reducing, if the service provided by the sauna is distinguished or characterized by an emphasis on specified sexual activity or specified anatomical areas.
 15. 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, if the building or portion of the building restricts minors by reason of age and 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.
 16. Specified Anatomical Areas: Shall include the following:
 1. Less than completely an opaquely covered human genitals, pubic area, buttocks, anus or female breast below a point immediately above the top or the areola; and
 2. Human male genitals in a state of sexual arousal, whether or not completely and opaquely covered.
 17. Specified Sexual Activities: Shall include the following:

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, the use of excretory functions in the context of a sexual relationship, anilingus, coprophilia, cunnilingus, fellatio, necrophilia, pedophilia, piquerism or zooerastia;
2. Clearly depicted human genitals in the state of sexual stimulation or arousal or tumescence;
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;
4. Fondling or touching of nude human genitals, pubic regions, buttocks or female breasts;
5. Situations involving a person or persons, any of whom are nude, who are clad in undergarments or in sexually revealing costumes and engaged in the flagellation, torture, fettering, binding or other physical restraint of any person;
6. Erotic or lewd touching or fondling or other sexually oriented contact with an animal by a human being; or
7. Human excretion, urination, menstruation or vaginal or anal irrigation.

SECTION 2: This Chapter does not regulate the following:

1. Material with significant literary content or social commentary;
2. A business where sexually oriented materials are sold, bartered, distributed, leased, furnished or otherwise provided for off-site use or entertainment, if the sexually oriented material on each item is blocked from view by an opaque cover as required under Minnesota Statute 617.293, as may be amended from time to time, and each item is in an area accessible only by an employee of the business.
3. A person or organization exempted under Minnesota Statute 617.295;
4. Activity regulated under Minnesota Statute 617.251;
5. Displaying works of art showing specified anatomical areas, so long as no sexually oriented materials are for sale, and the business does not have a liquor license; and
6. Movies rated G, PG, PG-13, NC-17 or R.

SECTION 3: No person may own or operate a sexually oriented business within the City unless the person is currently licensed under this Chapter.

SECTION 4: No license may be issued to a person who:

1. Is not a citizen of the United States or a resident alien;
2. Is a minor at the time the application is filed;
3. Has been convicted of a crime directly related to the licensed occupation;
4. Holds a liquor license issued under or in accordance with the Code;
5. Has had a license for sexually oriented business or similar business revoked anywhere within five (5) years of the license application;
6. In the case of an individual, is not a resident of the state; in the case of a partnership, the managing partner is not a resident of the state; or in the case of a corporation, the manager is not a resident of the state. The required residency must be established at the time of application, and maintained throughout the existence of the license and all renewals.

No license may be issued to:

1. A place or a business ineligible for a license under City Ordinance, City Code or State Statute;
2. Operation in a zoning district where the business is not allowed, pursuant to this Code;
3. A place or business that is currently licensed as a tattoo establishment,

pawnshop, massage business or establishment that sells alcoholic beverages; or

4. Operation on a premises on which taxes, assessments or other financial claims of the city or other government agency are delinquent and unpaid.

SECTION 5: License Application:

1. The application for a sexually oriented business license under this Chapter must be made on a form supplied by the City and must provide the following information:
 1. The business in connection with which the proposed license will operate;
 2. The location of the business premises;
 3. The legal description of the premises to be licensed, including a map of the area for which the license is sought, showing dimensions, locations of the buildings, street access and parking facilities;
 4. Whether all real estate and personal property taxes that are due and payable for the premises to be licensed have been paid, and if not, the years and amounts that are unpaid;
 5. Whether the applicant is the owner and operator of the business, and if not, who is;
 6. Whether the applicant has ever been known by a name other than his or her true name, and if so, what was the name or names, and information concerning dates and places where used;
 7. Whether the applicant is married, or single. If married, the true name, place and date of birth and street address of applicant's spouse;
 8. Street address where the applicant and spouse have lived during the preceding ten (10) years;
 9. Kind, name and location of every business or occupation the applicant and spouse have been engaged in during the preceding ten (10) years;
 10. Name and addresses of the applicant's and spouse's employers and partners, if any, for the preceding ten (10) years;
 11. Whether the applicant or spouse has ever been convicted of a violation of a state law, or local ordinance, other than a non-alcohol related traffic offense. If so, the applicant must furnish information as to the time, place and offense for which convictions were had;
 12. Whether the applicant or spouse has ever been engaged as an employee or in operating a sexually oriented business, massage business or other business of a similar nature. If so, the applicant must furnish information as to the time, place and length of time;
 13. Whether the applicant has ever been in military service. If so, the applicant must, upon request, exhibit all discharges;
 14. If the applicant is a partnership, the name and address of all partners and all information concerning each partner as is required of a single applicant as above. A managing partner or partners must be designated. The interest of each partner or partners in the business must be submitted with the application and, if the partnership is required to file a certificate as to trade name under the provisions of Minnesota Statutes Chapter 333, as may be amended from time to time, a copy of the certificate must be attached to the application.
 15. If the applicant is a corporation or other organization, the applicant must submit the following:
 1. Name, and if incorporated, state of incorporation;
 2. Name and addresses of all officers;
 3. The name of the manager or proprietor or other agent in charge of, or to be in charge of the premises to be licensed, giving all information

- about said person or persons as is required in the case of a single applicant; and
4. A list of all persons who, single or together with a spouse, own or control an interest in said corporation or association in excess of 5% or who are officers of said corporation or association, together with their addresses and all information as is required for a single applicant.
 16. The amount of the investment that the applicant has in the business, land, building, premises, fixtures, furniture or stock-in-trade, and proof of the source of the money;
 17. A list of responsible persons, including the names of the owners, managers, assistant managers, who may be notified in writing or contacted by state or City employees in case of emergency. These persons must be residents of the State of Minnesota.
 18. Whether the applicant holds a current license for a sexually oriented business or similar business from another governmental unit;
 19. Whether the applicant has ever been denied a license for a sexually oriented business or similar business from another governmental unit; and
 20. Other information that the City deems appropriate.
2. No person may make a false statement or material omission in a license application or investigation. A false statement or material omission is grounds for denial suspension or revocation of a license.
 3. Each licensee has the continuing duty to properly notify the Director of Community Development of a change in the information or facts required to be furnished on the application for a license. This duty continues throughout the period of the license. Failure to comply with this section will constitute cause for suspension or revocation of the license.
 4. The application for renewal of an existing license must be made at least ninety (90) days prior to the date of the expiration of the license and must be made on the form which the City provides.

SECTION 6: Fees

6.01: Investigation Fee: An applicant must pay the City an investigation fee specified in the Master Fee Schedule, as may be amended from time to time. This fee will be for the purpose of conducting an preliminary background investigation and financial investigation of the applicant. If the City believes that the public interest so warrants, it may require a similar investigation at the time of renewal of a license. If an investigation is ordered at the time of a renewal of a license, the applicant must pay the fee specified above, except that fee will be smaller of the stated dollar amount or the actual cost of the investigation. There will be no refund of the investigation fee after the investigation has begun.

6.02: The annual fee for a license shall be that as set forth in the Master Fee Schedule, as may be amended from time to time.

6.03: Each license expires on December 31 of the year in which it was issued. Fees for licenses issued during the license year will be prorated according to the number of months remaining of the year. For this purpose, an unexpired fraction of a month shall be counted as a full month remaining.

6.04: No refund of a license will be made except as provided by this Chapter.

SECTION 7: Granting of Licenses

7.01: No license may be issued until the Todd County Sheriff has conducted an investigation or the representations set forth in the application, the applicant's moral character and the applicant's financial status. All applicants must cooperate with this investigation.

7.02: No license, except for a renewed license, may be issued for a sexually oriented business until the Council has held a public hearing. Notice of the hearing must be made in accordance with Minnesota Statutes. Council must grant the license unless the applicant or the location does not meet the requirements of the City Code, the application was incomplete, the application contained false information or the investigation yielded unfavorable results. If the application is denied, the City must notify the applicant in writing, stating the reason(s) for denial. Notification must be sent via Certified, United States Mail, return receipt requested. Within sixty (60) days after receipt of a complete application. An applicant wishing to appeal the action of the Council may seek a writ of certiorari before the Minnesota Court of Appeals.

7.03: A license will be issued only to an applicant and for the premises described in the application. No license may be transferred to another person or location without making application in the same manner required as for an application for a new license.

7.04: In the case of death of a licensee, the personal representative of a licensee may continue operation of the business for not more than ninety (90) days after the death of the licensee.

SECTION 8: Conditions of a License

8.01: A license is subject to the conditions in this Section, all other provisions of this Chapter, all provisions of this Code and all other Local, State and Federal Laws, Statutes, Rules and Regulations.

8.02: A licensee is responsible for the conduct of his or her place of business and the conduct of order in it. The act of an employee of the licensed premises is deemed the act of the licensee as well, and the licensee is liable for all penalties provided by this Code, equally with the employee.

8.03: The license must be displayed in a conspicuous place in the premises for which it is used.

SECTION 9: Restrictions and Regulations: A sexually oriented business is subject to the following restrictions and regulations:

9.01: No owner, manager or employee may allow sexually oriented materials to be visible or perceivable in any manner at any time from outside the business.

9.02: No owner or manager or employee may allow a person under the age of 18 to enter the business.

9.03: No owner, manager or employee may allow a person under the age of 18 to have access to sexually oriented materials, whether by sight, purchase, touch or other means.

9.04: No owner or manager may employ a person under the age of 18 on the licensed premises.

9.05: No owner or manager or employee may have been convicted of a sex crime, as identified in Minnesota Statutes 609.293 to 609.352, 609.746 to 609.749, 609.79 or 518B.01, as may be amended from time to time, or related to statute dealing with sexual assault, sexual conduct, harassment, obscenity or domestic assault or domestic abuse within the past ten (10) years.

9.06: No business may exceed 5,000 square feet in gross floor area.

9.07: No owner, manager or employee may allow a patron, employee or other person on the premises to physically contact, in public view, a specified anatomical area of himself or herself or of another person.

9.08: A live performer must remain at all times a minimum distance of ten (10) feet from members of the audience, and must perform on a platform intended for that purpose, that must be raised at least two (2) feet from the level of the floor on which the audience is located. No performer may solicit or accept money, a tip, or other item from a member of the audience.

9.09: No business may have booths, stalls, partitioned portions of a room or individual rooms, except as follows:

1. Restrooms are allowed as long as they are no larger than necessary to serve the purpose of a restroom, not other activities are provided or allowed in the rooms, and there are no benches, chairs or reclining surfaces in the room; and
2. Storage rooms and private offices are allowed, if the storage rooms and offices are used solely for running the business and no person other than the owner, manager and employees is allowed in them.

9.10: A license must not be open for business between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday and 1:00 a.m. and 12:00 p.m. on Sundays.

SECTION 10: Suspension and Revocation of License: The City shall suspend or revoke a license for any of the following reasons:

1. Delinquent taxes of the premises or other delinquent claims from any government agency;
2. Violation or violations of this Code or any local, state or federal statute, law rule or regulation; or
3. Conviction of a sex crime of any owner, manager, or employee of the licensed premises;

SECTION 11: Providing for Protection of the Planning Process:

11.01: To protect the planning process and the health, safety and welfare of the citizens of the City, the City is hereby placing temporary location restrictions on adult uses within the City of Hewitt. This will allow for adult uses, as defined herein, but subject to certain location requirements until the City can complete a comprehensive study and enact permanent zoning regulations relating to adult uses. This ordinance does not have an effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials protected by the First Amendment.

11.02: A number of studies have been conducted in the State of Minnesota considered evidence from studies conducted throughout the State of Minnesota and the Country relating to sexually oriented businesses; specifically "Report of the Attorney General's Working Group on Regulation of Sexually Oriented Businesses" dated June 6, 1989, "Adult Entertainment Report" dated March 2, 1988 and "A 40-Acre Study" prepared by the St. Paul division of Planning in 1967, hereinafter collectively referred to as "reports".

11.03: Findings of these reports conclude that

1. "sexually oriented businesses are associated with high crime rates and depression of property values;"
2. adult uses have an impact on the neighborhoods surrounding them, which is distinct from the impact caused by other commercial uses;
3. residential neighborhoods located within close proximity to adult use establishments experience increased crime rates; and
4. among the crimes which tend to increase either within or in the near vicinity of adult uses are rape, prostitution, child molestation, indecent exposure and other lewd and lascivious behavior.

11.04: The City Council finds that adult uses will have secondary effects upon certain pre-existing land uses within the City and the City's current zoning ordinance does not address such secondary effects.

11.05: There is a need for a study to be conducted so that the City, as part of its planning process, can adopt a comprehensive plan and land use zoning regulations pertaining to adult establishment uses.

11.06: Minnesota Statute Section 462.355, Subdivision 4 permits the adoption of an interim zoning ordinance during the planning process.

11.07: A study is authorized to be conducted by the City and City staff to determine how adult uses should be regulated within the City. The scope of the study should include, but not be limited to particular zoning districts in which adult establishments should be

allowed as permitted uses, the density and concentration of such uses, and the effect of such uses on other uses in the surrounding areas.

11.08: Temporary Location Requirements: Pursuant to Minnesota Statutes 462.355, Subdivision 4, the following temporary location requirements are imposed on adult uses within the City of Hewitt:

1. Adult uses permitted in the areas of the City currently zoned Industrial, so long as the property lines of the land upon which the building is located is not within 1000 radial feet of any:
 1. Residential property;
 2. Schools;
 3. Churches or places of worship;
 4. Any City-owned facility;
 5. Any park or recreational property; or
 6. Any daycare facility.

SECTION 12: This Ordinance shall take effect the day after the date of its publication.

Passed by at least a 4/5ths majority vote of the City Council of the City of Hewitt, County of Todd and State of Minnesota, on this 7th Day of May, 2009.

By: Juanita Mitchell, Mayor

Attest: Miriam A. Collom, City Clerk/Treasurer