

Silver Bay Code

Chapter 3 Amendment

The City Council of Silver Bay, ordains as follows; Chapter 3 of the City Code is amended by adding Section 371 regulating **Adult Oriented Business**.

371.01 Findings and Purpose

371.01.1. The purpose of this section is to control, through licensing and zoning regulations, certain land uses that have a direct and detrimental effect on the character of the City's residential and commercial neighborhoods.

371.01.2. The Silver Bay City Council makes the following findings about the effect adult uses and sexually-oriented businesses have on the character of the City. In making the findings, the City Council accepts the recommendations and findings of other municipalities that have studied the experiences of other areas about such businesses. Based upon studies and findings, the Silver Bay City Council concludes:

371.01.2.1. Adult uses and sexually-oriented businesses can contribute to an increase in crime in the area where such businesses are located. This can be a burden to City crime-prevention programs and law enforcement services. In order to lessen the burden upon crime prevention programs, all adult-uses and sexually-oriented businesses, other than adult accessory uses, as defined and regulated in and by this section, shall be located in the Business Park District.

371.01.2.2. Adult uses and sexually-oriented businesses have adverse secondary impacts of the types discussed above.

371.01.2.3. It is necessary to provide for the special and express regulation of businesses, establishments or commercial enterprises that operate as adult body painting studios, adult bookstores, adult cabarets, adult car washes, adult companionship establishments, adult hotels or motels, adult massage parlors or health clubs, adult mini-motion picture theaters, adult modeling studios, adult motion picture arcades or theaters, adult novelty businesses, adult saunas and similar adult-oriented services operating under different names to protect the public health, safety and welfare, and to guard against the inception and transmission of disease.

371.01.2.4. The commercial enterprises such as the types described above and all other similar establishments whose services include sessions offered to adults conducted in private by members of the same or opposite sex, are susceptible to operations contravening subverting or endangering the morals of the City by being the site of acts of prostitution, illicit sex and occasions of violent crimes, and thus requiring close inspection, licensing and regulation.

371.01.2.5. Control and regulation of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by the police department and other departments of the City. These types of establishments can diminish the ability of the City to protect and promote the general health, welfare, morals and safety of the City.

It is necessary for the City to provide services to all areas of the City. In order to reduce the demand on law enforcement services and other government services, commercial establishment of these types, other than adult accessory uses, as defined in and regulated by this section, shall be allowed only in the Silver Bay Business Park District.

371.01.2.6. The City Council will adopt land use regulations and the licensing regulations pursuant to this section, recognizing that it has an interest in the present and future character of the City's residential and commercial neighborhoods. These regulations are to lessen the detrimental and adverse effects adult uses and sexually-oriented businesses have on adjacent land uses and to protect and promote the health, safety and welfare of the residents of Silver Bay.

371.01.2.7. It is not the intent of the City Council to prohibit adult uses or sexually-oriented business establishments from having an opportunity to locate in Silver Bay. It also is not the intent of the City Council to regulate these businesses on the basis of content, but only on the basis of likely adverse secondary effects.

371.02 Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

371.02.1. "Adult use" shall mean any or all of the following: adult body painting studios, adult bookstores, adult cabarets, adult car washes, adult hotels or motels, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health/sports clubs, adult saunas/steam rooms/bath houses, adult companionship establishments, adult rap/conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios and all other premises, enterprises, establishments, businesses and places open to some or all members of the public, in person or via electronic or Internet means, at or in which there is an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas which the public could see. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by state-licensed or registered persons. Activities classified as obscene, as defined by M.S. Section 5617.241, as it may be amended from time to time, are not lawful and are not included in the definition of adult uses.

371.02.2. "Adult Use, accessory" shall mean the offering of adult printed matter and/or adult video tapes and/or adult novelties where all of such items occupy no more than one or both of the areas described in Sections 371.02.2.1 and 371.02.2.2.

371.02.2.1. No more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or one hundred (100) square feet of floor space, whichever is less.

371.02.2.2. No more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or one hundred (100) square feet, whichever is less.

371.02.3. “Adult Use, principal” shall mean an Adult Use, other than an Adult Use, accessory, and shall include but not be limited to the following:”

371.02.3.1. “Adult body painting studio” shall mean an establishment or business that provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of specified anatomical areas.

371.02.3.2. “Adult bookstore” shall mean an establishment, building or business engaging in the barter, rental or sale of items or merchandise consisting of printed matter, pictures, slides, records, audiotapes, videotapes, computer or video disks, motion picture film or any other similar materials, if one or both of the areas described in (a) and (b) that follow have products or materials distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas:

- (a) more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of floor space, whichever is smaller.
- (b) more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of wall space, whichever is smaller.

371.02.3.3. “Adult cabaret” shall mean an establishment, building or business that provides dancing or other live entertainment if such dancing or other live entertainment is distinguished or characterized by an emphasis on the performance, presentation, display, depiction, or description of specified sexual activities or of specified anatomical areas.

371.02.3.4. “Adult car wash” shall mean a wash facility for any type of motor vehicle that allows employees, agents, independent contractors or persons to appear in a state of partial or total nudity in terms of specified anatomical areas.

371.02.3.5. “Adult companionship establishment” shall mean an establishment or business if such establishment excludes minors because of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

371.02.3.6. “Adult entertainment facility” shall mean a building or space in which an admission is charged for entrance, or food or nonalcoholic beverages are sold or intended for consumption, and in which may be observed live presentation of entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

371.02.3.7. “Adult establishment” shall mean an establishment, building or business engaging in any of the following activities or which uses any of the following business procedures or practices, either:

371.02.3.7.1. Any business conducted exclusively for the patronage of adults and about which minors are specifically excluded from patronage either by law or by the operators of such business; or

371.02.3.7.2. Any business that offers its patrons services, products or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.

371.02.3.7.3. Specifically included in the term, but without limitation are adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health clubs, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult car washes, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel and adult body painting studios.

371.02.3.8. “Adult hotel or motel” shall mean a hotel or motel from which minors are specifically excluded from patronage and in which material is presented that is distinguished or characterized by matter depicting, describing or relating to sexual activities or specified anatomical areas.

371.02.3.9. “Adult massage parlor, health/sport club” shall restrict minors because of age and provide the services of massage, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

371.02.3.10. “Adult mini-motion picture theater” shall mean a business, building or establishment in an enclosed building with a capacity for less than 50 persons used for presenting visual media material if:

371.02.3.10.1. Such business as a prevailing practice excludes minors by virtue of age; or

371.02.3.10.2. Said material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons.

371.02.3.11. “Adult modeling studio” shall mean an establishment or business 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 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.

371.02.3.12. “Adult motion picture arcade” shall mean any building or place to which the public is allowed or invited in which coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, computers or other image-producing devices that show images to five or fewer persons per machine at once, and where the images so displayed are distinguished or

characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

371.02.3.13. “Adult motion picture theaters” shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

371.02.3.14. “Adult novelty business” shall mean an establishment, building or business engaging in the barter, rental or sale of adult novelties, if one or both of the areas described in (a) and (b) that follow have products or materials distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas:

- (a) more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of floor space, whichever is smaller.
- (b) more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or more than one hundred (100) square feet of wall space, whichever is smaller.

371.02.3.15. “Adult printed matter” shall mean printed matter that is distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or of specified anatomical areas.

371.02.3.16. “Adult sauna/steam room/bathhouse” shall mean a sauna/steam room/bathhouse that excludes minors because of age, or which provides a steam bath or heat bathing room used for bathing, pleasure, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna/steam room/bathhouse is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

371.02.3.17. “Adult video tapes” shall mean tapes that are distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or of specified anatomical areas.

371.02.4. “Booths, stalls or partitions” shall mean enclosures specifically offered to persons for a fee or as an incident to performing sexual conduct, or enclosures which are part of a business operated on the premises which offers movies or any other type of entertainment dispensed for a fee. This definition does apply to enclosures which are private offices used by the managers, owners or persons employed on the premises for use during the course of business which are not held open to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or any other type of entertainment.

371.02.5. “Clean” shall mean the absence of dirt, grease, rubbish, garbage, semen, bodily excrement and other offensive, unsightly or extraneous matter.

371.02.6. “Entity” shall mean any corporation, limited liability partnership, partnership, limited liability company, joint venture or any other legally recognized business organization.

371.02.7. “Licensed family day-care home, licensed group family day-care home, licensed child-care center” shall mean a facility holding a license from Lake County or Minnesota pursuant to M.S. Chapter 245A, as it may be amended from time to time, and/or Minnesota Rules, Chapter 9502 or Chapter 9503, as they may be amended from time to time.

371.02.8. “Minor” shall mean any natural person under the age of 18 years.

371.02.9. “Nudity” shall mean the showing of the human male or female genitals or pubic area with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below a point immediately above the top of the areola; or the depiction or showing of the covered male genitals in a discernibly turgid state.

371.02.10. “Public library” shall mean any library that provides free access to all residents of a City or county without discrimination and is organized under the provisions of M.S. Chapter 134, as it may be amended from time to time.

371.02.11. “Public park” shall mean a park, reservation, open space, play ground, beach or recreation or community center in the City owned, leased or used wholly or in part, by the City, county, state, school district or federal government for recreation purposes.

371.02.12. “Place of worship” shall mean a building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship.

371.02.13. “School” shall mean a building or space that is principally used as a place where 25 or more persons receive a course of educational instruction. Any post-secondary or post-high school educational building, including any college or any vocational-technical college, shall not be deemed a “school” for purposes of this section.

371.02.14. “Sexually-oriented business” shall mean an adult book store, adult body painting studio, adult car wash, adult cabaret, adult hotel or motel, adult companionship establishment, adult motion picture theater, adult mini-motion picture theater, adult massage parlor, adult entertainment facility, adult health or sports clubs, adult novelty business, adult modeling studio or adult sauna as defined herein. Activities classified as obscene as defined by M.S. Section 617.241, as it may be amended from time to time, are not lawful and are not included in the definition of adult uses.

371.02.15. “Specified anatomical areas” shall mean anatomical areas consisting of:

371.02.15.1. Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, anus or female breast or breasts below a point immediately above the top of the areola or any combination of the foregoing; and

371.02.15.2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

371.02.16. “Specified sexual activities” shall mean activities consisting of the following:

371.02.16.1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation or fondling of unclothed genitals, pubic region, buttock or female breast, flagellation or torture in a sexual relationship, or the use of excretory functions in a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty;

371.02.16.2. Human genitals in the state of sexual stimulation, arousal or tumescence;

371.02.16.3. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus or masturbation;

371.02.16.4. Fondling or touching of human genitals, pubic region or pubic hair, buttocks or female breast or breasts;

371.02.16.5. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person;

371.02.16.6. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being;

371.02.16.7. Human excretion, urination, menstruation, vaginal or anal irrigation; or

371.02.16.8. Any combination of the above.

371.03 Licenses

371.03.1 License Required. No person, firm or corporation shall own or operate an adult use, principal or sexually-oriented business in Silver Bay without having first secured a license as provided herein.

371.03.2 Application. The City shall provide an application form for any license required hereunder. This application shall include:

371.03.2.1. The name, residence, phone number and birth date of the applicant, if an individual; and if an entity, the names, residences, phone numbers and birth dates of those owners holding more than 5% of the ownership interests in such entity;

371.03.2.2. The name, address, phone number and birth date of each operator and manager of such operation, if different from the owners;

371.03.2.3. The address and legal description of the building, establishment or premises where the adult use or sexually-oriented business is to be located;

371.03.2.4. A statement detailing each misdemeanor or felony relating to a sex offense and/or the operation of adult uses or sexually-oriented businesses and related activities of which the applicant or, for an entity, the owners of more than 5% of the ownership interest of such entity, have been convicted, and whether the applicant has ever applied for or held a license to operate a similar type of business in other cities; additionally, the applicant must provide a signed release of information to allow the City to conduct its own investigation into criminal background of the applicant;

371.03.2.5. The activities and types of business to be conducted;

371.03.2.6. The hours of operation;

371.03.2.7. The provisions made to restrict access by minors;

371.03.2.8. A building plan of the premises detailing all internal operations and activities, including floor plan and provisions designed to prevent the display or perception by the public from any sidewalk or other public right-of-way of any adult use materials depicting, describing or related to specified sexual activities or specified anatomical areas by any visual or auditory media, including display, decoration, sign, show window, sound transmission or any other means;

371.03.2.9. A description or building plan that details all proposed interior and exterior changes to an existing building or structure; and

371.03.2.10. A plan of the exterior of the premises detailing all activities designed to prevent, deter and curtail any criminal activity or secondary effects. This plan includes but is not necessarily limited to parking lot design, parking lot lighting, exterior lighting and placement of screening material.

371.03.3 License Fees

371.03.3.1. Each application for a license shall be accompanied by a receipt from the City for payment in full of the required application and investigative fee for the license as established from time to time by resolution of the City Council. All fees shall be paid into the general fund of the City.

371.03.3.2. All licenses shall expire on the last day of December in each year. The City shall issue each license for one year, except that if part of the license year has elapsed when the application is made, the City may issue a license for the remainder of the year. The fee for any license shall not be prorated in such event.

371.03.3.3. The annual fee for an adult use or sexually-oriented business license shall be as established from time to time by resolution of the City Council.

371.03.3.4. Each application shall contain a provision on the application in bold print stating that any withholding of information or the providing of false or misleading information will be grounds for the denial or revocation of a license and shall be a violation of this section punishable as a misdemeanor. Any changes in the information provided on the application or provided during the investigation shall be reported to the City Council by the applicant or licensee. If said changes take place during the investigation, the data shall be provided to the Chief of Police in writing and they shall report the changes to the City Council. Failure to report said changes by the applicant(s) or the licensee may result in a denial or revocation of a license.

371.03.4 Granting of License.

371.03.4.1. The City shall investigate all facts set out in the application. After the City finishes its investigation, the City shall hold a public hearing and shall give everyone present an opportunity to be heard for or against the granting of the license a chance to present his or her views. After the investigation and public hearing, the City Council shall grant or refuse the application.

371.03.4.2. The City shall only issue a license to the applicant. The license may not be transferred to another holder. The City shall only issue a license for the premises or location described in the application. When a licensed adult use or sexually-oriented business is sold or transferred, the existing licensee shall immediately notify the City Council of the sale or transfer. If the new owner or operator is to continue operating the adult use or sexually-oriented business, the proposed new owner or operator must immediately apply for a license pursuant to this section and cannot conduct an adult use or sexually-oriented business until such new owner or operator is issued a license under this section.

371.03.5 Persons Ineligible for License. The City shall not grant a license to, nor may one be held by, any person or entity who:

371.03.5.1. Has been convicted of any felony or been convicted of a misdemeanor involving sexual activities;

371.03.5.2. Is not the owner of the establishment for which the license is issued;

371.03.5.3. Has not paid the license and investigative fees required by this section;

371.03.5.4. Is not a citizen of the United States;

371.03.5.5. Has had an adult use or sexually-oriented business or similar license or permit revoked under an ordinance or statute similar to this; and/or

371.03.5.6. Already has been issued a license under this section.

371.03.6 Places Ineligible for License.

371.03.6.1. No license shall be granted for adult uses or sexually- oriented businesses on any premises where a licensee has been convicted of a violation, or where any license hereunder has been revoked for cause, until one year has elapsed after such conviction or revocation.

371.03.6.2. No license shall be granted for any adult use or sexually- oriented business that does not meet all City code requirements, all building and fire code requirements and all provisions of state and federal law.

371.03.6.3. No adult use, principal, shall be granted for adult uses or sexually-oriented businesses for any premises not located in a Silver Bay Business Park District.

371.03.8 Conditions of License.

371.03.8.1. Every license shall be granted subject to the condition in the following subdivisions and all other provisions of this section, and of any applicable sections of the Silver Bay City Code, state and federal law.

371.03.8.2. All licensed premises shall have the license posted in a conspicuous place.

371.03.8.3. No minor shall be allowed in or on the premises of an adult use or sexually-oriented business.

371.03.8.4. A designated inspection or law enforcement officer shall have the right to enter, inspect and search premises during business hours.

371.03.8.5. Every licensee shall be responsible for the conduct of their place of business and shall maintain conditions of this section and the Silver Bay Code.

371.03.8.6. No adult goods, materials or services shall be offered, sold, transferred, conveyed, given, displayed or bartered to any minor.

371.03.8.7. All performers, dancers and persons providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas in the licensed premises where such entertainment can be seen by patrons of the licensed premises shall remain at all times a minimum distance of ten feet from all patrons, customers or spectators and shall dance or provide such entertainment on a platform intended for that purpose, which shall be raised at least two feet from the level of the floor on which the patrons, customers or spectators are located.

371.03.8.8. No dancer, performer or person providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas shall fondle or caress any patron, customer or spectator.

371.03.8.9. No patron, customer or spectator of a licensed facility shall directly pay any gratuity to any dancer, performer or person, providing live entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. Neither shall any dancer, performer or other person solicit any pay or gratuity from any patron, customer or spectator.

371.03.9 Adult Use, Principal; Conditions. The City permits adult use, principal, only in the Silver Bay Business Park District. Adult use, principal, licenses shall be subject to the following conditions:

371.03.9.1. No adult use, principal, sexually-oriented business shall be located within the Silver Bay Business Park District closer than 1,000 feet from any preexisting residential lot line, place of worship, school, public park, open space, licensed family day-care home, licensed group family day-care home, public library or licensed child-care or day-care center. Measurements shall be made in a straight line, without regard to City boundaries, intervening structures or objects, from the nearest property line of the actual business premises of the adult use, principal, or sexually-oriented business to the nearest property line of the premises or building used as a dwelling or residence, place of worship, school, public park, open space, licensed family day-care home, licensed group family day care home, public library or licensed child-care or day-care center.

371.03.9.2. All adult uses and sexually-oriented businesses must follow and comply with all of the provisions of this section and the Silver Bay City Code.

371.03.9.3. No building owner or operator shall have more than one of the following uses, tenants or activities in the same building or structure: adult body painting studio, adult book store, adult cabaret, adult car wash, adult companionship establishment, adult entertainment facility, adult hotel or motel, adult modeling studio, adult sauna/steam room/bath house, adult motion picture theater, adult mini-motion picture theater, adult massage parlor, adult health/sports club or adult novelty business.

371.03.9.4. An adult use principal sexually-oriented business shall not sell or dispense 3.2 malt liquor, wine or intoxicating liquors, nor shall it be located in a building that contains a business that sells or dispenses 3.2 malt liquor, wine or intoxicating liquors.

371.03.9.5. No adult use, principal, sexually-oriented businesses shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult use establishment that is prohibited by any ordinance of Silver Bay, the laws of the State of Minnesota or the United States of America. Nothing in this section shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes, 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.

371.03.9.6. No adult use, principal, sexually-oriented business shall be conducted in any manner that permits the perception or observation from any property not licensed as an adult use of any materials depicting, describing or related to specified sexual activities or

specified anatomical areas by any visual or auditory media, including display, decoration, sign, show window, sound transmission or other means.

371.03.9.7. All adult use, principal, sexually-oriented businesses shall prominently display a sign at the entrance and located within two feet of the door opening device of the adult use establishment, “This business sells or displays activities and/or material containing adult themes. Persons under age 18 years of age shall not enter.”

371.03.9.8. No person under the age of 18 shall be permitted on or in the premises of an adult use or sexually-oriented business establishment. No person under the age of 18 shall be permitted access to material displayed, offered for sale, given, transferred, conveyed or rented by an adult use or sexually-oriented business. Proof of age may be established only by a valid driver's license or identification card issued by Minnesota, some other state or a province of Canada, and the proof of age shall include a photograph and date of birth of the licensed person, a valid military identification card issued by the United States Department of Defense or in the case of a foreign national from a nation other than Canada, a valid passport.

371.03.9.9. Adult use, principal, sexually-oriented businesses shall not be open between the hours of 1:00 a.m. and 10:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 noon on Sunday nor between 4:00 p.m. on December 24 and 12:00 noon on December 26.

371.03.10 Adult Use, Accessory; Conditions. Adult use, accessory uses authorized in the Business Park District may only be operated under the following conditions:

371.03.10.1. The Adult Use, accessory, shall comprise no more than one or both of the areas described in (a) and (b) that follow:

- (a) No more than ten percent (10%) of the floor space of the establishment that is dedicated to retail sales or no more than one hundred (100) square feet of floor space, whichever is smaller.
- (b) No more than ten percent (10%) of the internal wall space of the establishment that is dedicated to retail sales or no more than one hundred (100) square feet of wall space, whichever is smaller.

371.03.10.2 . “Display areas for adult video tapes and adult novelties shall be restricted from general view and shall be located in a separate room, for which the access is in clear view and in the control of the person responsible for the business establishment. The sign required by Section 371.03.9.7 shall be placed at the entrance to such separate room.”

371.03.10.3. Unless located in the separate room required by Section 371.03.10.2 hereof, adult printed matter shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any materials other than the publication title.

371.03.10.4. Persons under age 18 may not be prohibited in the establishment.

371.03.10.5. The business must be conducted so as to fully comply with the provisions of Minn. Stat. Section 617.291-617.296.

371.03.10.6. No Adult Use, principal may be conducted in the establishment.

371.03.10.7. No use of adult novelties or viewing of adult videos shall be allowed in the establishment.

371.03.11 Revocation, Suspension and Renewal.

371.03.11.1. The City Council may revoke, suspend or not renew a license upon the recommendation of the City Administrator that shows the licensee, its owners, managers, employees, agents or any other interested parties have engaged in any of the following conduct:

371.03.11.1.1. Fraud, deception or misrepresentation about securing the license;

371.03.11.1.2. Habitual drunkenness or intemperance in the use of drugs including, but not limited to the use of drugs defined in M.S. Section 618.01, as it may be amended from time to time, barbiturates, hallucinogenic drugs, amphetamines, Benzedrine, Dexedrine or other sedatives, depressants, stimulants or tranquilizers;

371.03.11.1.3. Engaging in conduct involving moral turpitude or permitting or allowing others within their employ or agency to engage in conduct involving moral turpitude or failing to prevent agents, officers, or employees in engaging in conduct involving moral turpitude;

371.03.11.1.4. Failure to follow any requirements of the ordinances of Silver Bay about sanitary and safety conditions, zoning requirements, building code requirements or ordinances, or failure to follow the requirements of this section; and/or

371.03.11.1.5. Conviction of an offense involving moral turpitude.

371.03.11.2. The certificate holder may appeal such suspension, revocation or non-renewal to the City Council. The Council shall consider the appeal at a regularly scheduled public hearing on or after ten days from service of the notice of appeal to the City Administrator. At the conclusion of the hearing, the Council may order:

371.03.11.2.1. Revocation, suspension or non-renewal be affirmed;

371.03.11.2.2. Revocation, suspension or non-renewal be revoked and that the license be returned to the license holder; and/or

371.03.11.2.3. The Council may impose, at their discretion, any additional terms, conditions or stipulations for the suspension or issuance of the license.

371.03.12 Limitations

371.03.12.1. No more than one adult use license may be directly or indirectly issued to any one person, partnership or corporation or for any one place or location in the City of Silver Bay.

371.03.12.2. No person, partnership or corporation shall have or possess a direct or indirect interest in more than one adult use license in the City of Silver Bay.

371.03.12.3. The term “interest” as used in this section includes any pecuniary interest in the ownership, operation, management or profits of an adult use or sexually-oriented business does not include loans, rental agreements, open accounts or other obligations held with or without security arising out of the ordinary and regular course of business of selling or leasing merchandise, fixtures or supplies to the establishment.

371.03.12.4. A person, partnership or a corporation which receives monies from time to time directly or indirectly from a licensee in the absence of a bona fide consideration therefor, and excluding bona fide gifts or donations, shall be deemed to have a pecuniary interest in such adult use license.

371.03.12.5. In determining whether an interest exists, the transactions must have been bona fide and the reasonable value of the goods and things received as consideration for a payment by the goods and things received as consideration for a payment by the licensee and all other facts reasonably tending to prove or disprove the existence of a purposeful scheme or arrangement to evade the restrictions of this section must be considered.

371.03.12.6. Upon conviction for violation of this section the City Council may revoke all licenses in which such convicted person, partnership or corporation has an interest.

371.03.13 Payment of Taxes, Assessments, Other Charges.

371.03.13.1. No adult use license shall be granted hereunder for the operation on any premises on which real estate taxes, assessments or other financial claims of the City of Silver Bay are delinquent and unpaid.

371.03.13.2. In the event the applicant is the owner, either in fee or under a contract for deed of the real estate where the licensed business is to be located and there are delinquent real estate taxes and/or assessments and/or other financial claims of the City of Silver Bay against such real estate, the City Council may nevertheless, by affirmative vote of three members of the City Council, authorize and direct the issuance of such license, but only if the applicant shall submit a certified copy of an agreement under any laws of the State of Minnesota for the payment of such delinquent taxes and assessments and other financial claims.

371.03.13.3. In the event the applicant does not own the real estate where the licensed business is to be located and there are delinquent real estate taxes and/or assessments and/or other financial claims of the City of Silver Bay against such real estate, the City Council may nevertheless, by affirmative vote of three members of the Council, authorize and direct the issuance of such license, but only if the applicant shall submit

evidence to the City Council that the owner of said real estate and the applicant have entered into a written rental agreement or lease providing that rent paid shall first be applied to such delinquent real estate taxes and assessments and other financial claims.

371.04 Sign and Window Display Restrictions.

371.04.1. The following sign regulations shall apply to all adult use, principal uses and adult use, accessory uses in the City.

371.04.2. All signs shall be flat wall or freestanding signs. No signs shall be located on any roof, or contain any flashing lights, moving elements or electronically or mechanically changing messages.

371.04.3. The City's sign regulations for the zone district where the business is located shall regulate the amount of allowable sign area and the number of allowed signs for an adult use or sexually-oriented business as provided hereof and except that such businesses may have only one sign no larger than 100 square feet in size.

371.04.4. No merchandise, photos or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the adult use or sexually-oriented business is located.

371.04.5. Window areas shall not be covered nor made opaque in any way. No signs shall be placed in any window. The signs required by 371.03.9.7 may be placed on the door to state hours of operation and admittance to adults only.

371.04.6. All license holders under this section shall apply for and pay for any sign permit required by the applicable codes, rules and regulations of the Silver Bay City Code.

371.05 Sanitation and Health.

371.05.1 Partitions Facilitating Sexual Activity. No license holder shall 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, 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.

371.05.2 Restrictions on Booths, Stalls or Partitions. No license holder shall allow or have on the licensed premises any booths, stalls or partitions used for the viewing of motion pictures or other form of adult use 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. The interior of said booths, stalls or partitions shall be lighted in a manner so that the persons within the booths, stalls or partitions are clearly visible from the adjacent public rooms.

371.05.3 Limit of Persons in Partitioned Area. Any booths, stalls or partitioned areas of a room, or individual rooms used for the viewing of motion pictures, other forms video entertainment or live entertainment, shall not be occupied by more than one person at a time.

371.05.4 Authority for Inspection. The City Council and/or its designates shall have the authority to inspect or cause to have inspected the licensed premises and adjoining areas in order to determine compliance with this section.

371.05.5 Sanitation Requirement. All adult uses and sexually-oriented businesses shall at all times be kept clean as herein defined.

371.05.6 Duty to Supervise. The license holder shall not permit specified sexual activities to take place on the licensed premises and shall have the affirmative duty to supervise the licensed premises and prevent such activities.

371.06 Criminal Penalties. Any violation of this section shall be a misdemeanor. Each day of violation shall constitute a separate penalty.

371.07 Effective Date. This section shall become effective from and after its passage and publication according to law.

Adopted this 3rd day of February, 2003.

Robert Kind, Mayor

ATTEST:

Tom Smith, City Administrator