

CHAPTER 44
ADULT BUSINESS LICENSES¹

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44.01 DEFINITIONS

In addition to the terms defined in Appendix A of this Code, capitalized terms, when used in this Chapter 44, shall have the following meanings:

Adult Business: Any establishment having as a substantial or significant portion of its stock in trade or business activity in a use such as, but not limited to the following: Adults-Only Bookstores, Adults-Only Motion Picture Theaters, Adult Entertainment Centers, Rap Parlors, Adults-Only Nightclubs or Adults-Only Saunas, where explicit sexual conduct is depicted and/or sexual activity is explicitly or implicitly encouraged or tolerated.

Adult Entertainment Business: Synonymous with "Adult Business," as defined herein.

Adult Entertainment Center: An enclosed building or part of an enclosed building, which contains one or more coin-operated mechanisms which when activated permit a customer to view a live person nude or in such attire, costume or clothing as to expose to view the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; or, female breast, at or below the areola thereof. In addition, the viewing of a live person, in the above described manner, after paying of any admission or fee for the viewing of same activity.

Adults-Only: Any items or activities emphasizing, depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity.

Adults-Only Bookstore: An adults-only establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity.

¹ Established by Ordinance 02-8-4, 8/26/02

An establishment, having adults-only items as a substantial or significant portion of its stock, that sells or displays adults-only items for sale to patrons therein.

Adults-Only Motion Picture Theater: An enclosed building used regularly and routinely for presenting adults-only material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation by patron therein.

Adults-Only Sauna: An establishment or place primarily in the business of providing a steam bath and/or massage services, where explicit sexual conduct is depicted and/or sexual activity is explicitly or implicitly encouraged or tolerated.

Booth: Any enclosure that is specifically offered to patrons of an Adult Business for the private viewing of any adults-only item or movie. Said definition does not include enclosures that are used as private offices by any operator, employee or agent for attending to the tasks of their employment and are not offered for use by the public.

Cubicle: Synonymous with "booth," as defined herein.

Door: Full, complete, non-transparent closure device that obscures the view or activity taking place within the enclosure.

Adults-Only Nightclub: An establishment or place either occasionally or primarily in the business of featuring topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers, where explicit sexual conduct is depicted and/or sexual activity is explicitly or implicitly encouraged or tolerated.

Nightclub: An establishment serving food and/or liquor and providing music and space for dancing by patrons only. A nightclub shall not include an "Adult Business."

Nudity: The display of the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; female breast, at or below the areola thereof, with no covering or with a less than fully opaque covering; or, male genitalia, in a discernible turgid state, with or without covering.

Obscene: Any material or performance is obscene if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value. [Statutory Reference: 720 ILCS 5/11-20]

Operator: For purposes of an Adult Business, as defined herein, any person, (whether said persons be an individual, partner, corporation, joint stock company, fiduciary, officer, director, stockholder, employee, or Administrator), which conducts, maintains or owns any Adult Business.

Patron: For purposes of an Adult Business, as defined herein, any customer, patron or visitor to an Adult Business who is not employed by any operator of said establishment.

Rap Parlor: An establishment or place primarily in the business of providing non-professional

conversation or similar services for adults, where explicit sexual conduct is depicted and/or sexual activity is explicitly or implicitly encouraged or tolerated.

Room: Synonymous with "booth," as defined herein.

Sadomasochistic Activity: Flagellation or torture by or upon a nude person; a person clad in undergarments, a mask or bizarre costume. In addition, the condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator and/or the recipient.

Sell: Includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

Sexual Conduct: Ultimate sex acts (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity. In addition, physical contact, intended to stimulate or arouse sexually the initiator and/or the recipient, with a person's unclothed genitalia, buttocks, perineum, anal or pubic regions, or female breast.

Underage: Any person under 18 years of age, the legally minimum age at which one can purchase or view adults-only items. (Statutory Reference: 720 ILCS 5/11-20)

Wall Sign: Any flat sign which is placed against a building or other structure and attached thereto in such manner that only one side is visible.

44.02 **LICENSE**

A. Except as provided in Section 44.02-D herein, from and after the effective date of this Chapter 44 (insert date), no Adult Business shall be operated or maintained in the City without first obtaining a license to operate issued by the City.

B. A license may be issued only for one Adult Business located at a fixed and certain place. Any person, partnership or corporation which desires to operate more than one Adult Business must have a license for each.

C. No license or interest in a license may be transferred to any person, partnership or corporation.

D. All Adult Businesses existing at the time of the passage of this Chapter 44 must submit an application for a license within 90 days of the passage of this Chapter 44. If an application is not received within said 90 day period, then such existing Adult Business shall cease operations.

44.03 **APPLICATION FOR LICENSE**

A. Any person, partnership or corporation desiring to secure a license shall make application to the Administrator. The application shall be filed in triplicate with and dated by the Administrator. A copy of the application shall be distributed promptly by the Administrator to the Police Department.

B. The application for a license shall be upon a form provided by the Administrator. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers or directors of a corporate applicant and all stockholders holding more than five percent of

the stock of a corporate applicant or any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:

1. Name and address, including all aliases.
2. Written proof that the individual is at least 18 years of age.
3. All residential addresses of the applicant for the past 10 years.
4. The applicant's height, weight, color of eyes and hair.
5. The business, occupation or employment of the applicant for 10 years immediately preceding the date of application.
6. Whether the applicant previously operated in this or any other county, City or state under an Adult Business license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
7. All criminal statutes, whether federal or state, or City ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.
8. Fingerprints and two portrait photographs at least two inches by two inches of the applicant.
9. The address of the Adult Business establishment to be operated by the applicant.
10. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent.

C. Within 21 days of receiving an application for a license the Administrator shall notify the applicant whether the application is granted or denied.

D. Whenever an application is denied, the Administrator shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within 10 days of receipt of notification of denial, a public hearing shall be held within 10 days thereafter before the City Council, as hereinafter provided.

E. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this Chapter 44, shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Administrator.

44.04 **STANDARDS FOR ISSUANCE OF LICENSE**

A. To receive a license to operate an Adult Business, an applicant must meet the following standards:

1. If the applicant is an individual:
 - a. The applicant shall be at least 18 years of age.
 - b. The applicant shall not have been convicted of, pleaded no contest or stipulated to the facts involving a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.
 - c. The applicant shall not have been found to have previously violated this Chapter 44 within five years immediately preceding the date of the application.
2. If the applicant is a corporation:
 - a. All officers, directors and stockholders required to be named under Section 44.03-B-10 herein shall be at least 18 years of age.
 - b. No officer, director or stockholder required to be named under Section 44.03-B-10 herein shall have been convicted of, pleaded no contest or stipulated to the facts involving a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.
 - c. No officer, director or stockholder required to be named under Section 44.03-B-10 herein shall have been found to have previously violated this ordinance within five years immediately preceding the date of the application.
3. If the applicant is a partnership, joint venture or any other type of organization where two or more persons have a financial interest:
 - a. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least 18 years of age.
 - b. No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of, pleaded no contest or stipulated to the facts involving a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.
 - c. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this Chapter 44 within five years immediately preceding the

date of the application.

B. No license shall be issued unless the Police Department has investigated the qualifications of the applicant to be licensed. The results of that investigation shall be filed in writing with the Administrator no later than 14 days after the date of the application.

44.05 FEES

A license fee of \$250.00 shall be submitted with the application for a license. If the application is denied, one-half of the fee shall be returned. License fees paid less than 12 months prior to renewal shall not be prorated.

44.06 DISPLAY OF LICENSE

The license shall be displayed in a conspicuous public place in the Adult Business such that it may be readily seen by a person entering the premises.

44.07 RENEWAL OF LICENSE

A. Every license issued pursuant to this ordinance will terminate on April 30 of each year unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Administrator. The application for renewal must be filed no later than 60 days before the license expires. The application for renewal shall be filed in triplicate with and dated by the Administrator. A copy of the application for renewal shall be distributed promptly by the Administrator to the Police Department and to the operator. The application for renewal shall be upon a form provided by the Administrator and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

B. A license renewal fee of \$250.00 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$100.00 shall be assessed against the applicant who files for a renewal less than 60 days before the license expires. If the application is denied, one-half of the total fees collected shall be returned.

C. If the Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Administrator.

44.08 REVOCATION OF LICENSE

A. The City Council shall revoke a license for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
2. The operator or any employee of the operator, violates any provision of this Chapter 44 or any rule or regulation adopted by the City pursuant to this Chapter 44; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the City Council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive

knowledge.

3. The operator becomes ineligible to obtain a license.
4. Any cost or fee required to be paid by this Chapter 44 is not paid.
5. Any alcoholic liquor is served or consumed on the premises of the Adult Business.
6. Violation of any City ordinance, code or regulation and failure to pay the required fine or penalty or failure to cure the violations.
7. The transfer of a license or any interest in a license.

B. The City Council, before revoking or suspending any license, shall give the operator at least 10 days' written notice of the charges against him, and the opportunity for a public hearing before the City Council.

C. Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an Adult Business for six months from the date of revocation of the license.

44.09 **EMPLOYEES**

It shall be unlawful for any Adult Business licensee or his Administrator or employee to employ in any capacity within the Adult Business any person who is not at least 18 years of age.

44.10 **PHYSICAL LAYOUT OF ADULT BUSINESS**

A. Any Adult Business having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

1. Access: Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the Adult Business, and shall be unobstructed by any door, lock or other control-type devices.
2. Construction: Every booth, room or cubicle shall meet the following construction requirements.
 - a. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.
 - b. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.
 - c. All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, non-absorbent, smooth textured and easily cleanable.

- d. The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
 - e. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of 10 foot candles at all times, as measured from the floor.
3. Occupants: Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

B. Any Adult Business as defined herein which features dancers or other entertainers or forms of entertainment, must comply with the following requirements:

- 1. All dancing or other entertainment shall occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.
- 2. No dancing or other entertainment shall occur closer than 10 feet to any patron.
- 3. No dancer or other entertainer shall fondle or caress any patron and no patron shall fondle or caress any dancer or other entertainer.
- 4. No patron shall directly pay or give any gratuity or tip to any dancer or other entertainer and no dancer or other entertainer shall directly or indirectly solicit any pay or gratuity or tip from any patron.

44.11 RESPONSIBILITIES OF THE OPERATOR

A. The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, phone numbers, Social Security number, date of employment and termination and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

B. The operator shall make the register of employees available immediately for inspection upon demand of a member of the Police Department at all reasonable times.

C. Every act or omission by an employee constituting a violation of the provisions of this Chapter 44 shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

D. Any act or omission of any employee constituting a violation of the provisions of this Chapter 44 shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

E. No employee of an Adult Business shall allow any minor to loiter around or to frequent an Adult Business.

F. The operator shall maintain the premises in a clean and sanitary manner at all times.

G. The operator shall maintain at least 10 foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one foot candle of illumination in said aisles, as measured from the floor.

H. The operator shall insure compliance of the establishment and its patrons with the provisions of this Chapter 44.

44.12 EXCLUSIONS

All private schools and public schools, as defined in the Illinois Compiled Statutes, located within the City are exempt from obtaining a license hereunder when instructing pupils in sex education as part of their curriculum.

44.13 PENALTIES AND PROSECUTION

A. Any person, partnership or corporation who is found to have violated this Chapter 44 shall be fined not less than \$300 nor more than \$1,000 per offense plus costs of prosecution incurred by the City including reasonable attorney fees and shall result in the revocation of any license.

B. Each violation of this Chapter 44 shall be considered a separate offense, and any violation continuing more than one day shall be considered a separate offense.

44.14 ENFORCEMENT

The Police Department shall have the authority to enter any Adult Business at all reasonable times to inspect the premises and enforce this Chapter 44.