

CITY OF GEM LAKE, RAMSEY COUNTY, MINNESOTA

ORDINANCE NO. 82

AN ORDINANCE REPEALING ORDINANCE NO. 80 AND PROVIDING FOR THE LOCATION, REGULATION, LICENSING, OPERATION AND INSPECTION OF ADULT USES AND SEXUALLY ORIENTED BUSINESSES IN THE CITY OF GEM LAKE AND PENALTIES FOR VIOLATION OF SAID REGULATION.

SECTION 1. TITLE

- 1.1 This Ordinance shall be known as “City of Gem Lake Adult Use Ordinance”, except as sometimes referred to herein as the “Code” or this “Ordinance”.

SECTION 2. INTENT AND PURPOSE

- 2.1 Purpose. The purpose of this Ordinance is to control, through licensing and zoning regulations, certain land uses that have a direct and detrimental effect on the character of the City of Gem Lake’s residential and commercial districts.
- 2.2 Findings. The City Council makes the following findings about the effect adult uses and sexually oriented businesses have on the character of the City’s neighborhoods. In making the findings, the City Council accepts the recommendations of the City’s Planning Commission, which has studied the experiences of other urban areas about such businesses and has held a public hearing to solicit input on the contents of this Ordinance. Furthermore, the City Council is aware of a study conducted by the Minnesota Attorney General which examined the impact that sexually oriented Adult Establishments have in cities in Minnesota and throughout the country. This study concluded that Adult Establishments have an adverse impact on surrounding neighborhoods. Those impacts included increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. In addition, the City Council is also aware that the cities surrounding Gem Lake have adopted ordinances regulating adult uses and sexually oriented businesses, indicating that such ordinances were deemed important and necessary in the communities surrounding Gem Lake. Based on the studies and findings, the City Council concludes:
- a) 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 upon law enforcement services.
 - b) Adult uses and sexually oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can increase neighborhood blight. These businesses can impair the character and quality of the residential housing in the area where such businesses are located. This situation could lessen the amount of desirable housing for residents.
 - c) Adult uses and sexually oriented businesses have adverse secondary impacts of the types described in (a) and (b) above.
 - d) 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 theaters, adult novelty businesses, adult saunas, or that permit erotic adult dancing on their premises.
 - e) The commercial enterprises such as the types described in (d) above and all other similar establishments whose services include sessions offered to adults conducted in private by members of the same or opposite sex and employing personnel with no specialized training 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.
 - f) Control and regulation of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by law enforcement and other governmental functions of the city. Increased and concentrated use of city services for such control and regulation detracts from and reduces the level of services available to the rest of the City. Thus, 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.

- g) The City Council adopts the land-use and licensing regulations in this article, 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 the City.
- 2.3 It is not the intent of the City Council to prohibit adult uses or sexually oriented businesses or establishments from having an opportunity to locate in the City. 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.

SECTION 3. INTERPRETATION AND SEPARABILITY

- 3.1 Interpretation. In the interpretation and application of this Ordinance, its provisions shall be held to be minimum requirements and shall be construed so as to fully effect its purpose and shall not be deemed a limitation or repeal of any other power established by law or ordinance except as specifically provided herein. In the event that requirements imposed by this Ordinance conflict with requirements imposed by this Ordinance or by other ordinances of the City of Gem Lake or any other county, state or federal law or regulation, then the more restrictive provisions shall apply. The City Council shall rule on what is more restrictive and appeals from such decisions.
- 3.2 Separability. It is hereby declared to be the intention of the Mayor and City Council that the several provisions of this Ordinance are separable and that if any court of competent jurisdiction shall adjudge any provision of this Ordinance or application thereof to be invalid, such judgement shall not affect any other provision of this Ordinance not specifically included in said judgement.

SECTION 4. DEFINITIONS

- 4.1 Construction. Words used in the present tense include the past and future tense; the singular includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the masculine gender includes the feminine.
- 4.2 Definitions. For the purposes of this ordinance only, the words and phrases below are defined as follows:

Adult Establishment. A business engaged in any of the following activities or which utilizes any of the following business procedures or practices:

- a) A business that is conducted exclusively for the patronage of adults and as to which minors are specifically excluded from patronage, either by operation, law or by the owners of such businesses, except any business licensed under Ordinance No. 9 of the Gem Lake City Code.
- b) Any business that has a substantial or significant portion of its floor space that is characterized by an emphasis on material depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas.
- c) An adult establishment includes, but is not limited to, any adult use defined in this ordinance.

Adult Use. An adult use is any of the activities and businesses described below:

Adult Body Painting Studio. An establishment or business which 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.

Adult Bookstore. A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description or specified anatomical areas.

Adult Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas.

Adult Companionship Establishment. A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee or independent contractor of the establishment and a customer, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult Conversation Parlor. A conversation parlor which excludes minors by reason of age, or which 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.

Adult Health or Sports Club. A health or sports club which excludes minors by reason of age, or which is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult Hotel or Motel. Adult hotel or motel means a hotel, motel or portions thereof from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult Massage Parlor. A massage parlor which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Adult Mini-Motion Picture Theater. A building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

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.

Adult Motion Picture Theater. A building or portion of a building used for presenting motion picture or other similar moving motion image material if such building or portion of a building as a prevailing practice excludes minors by virtue of age or is such material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patrons therein.

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.

Adult Sauna. A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, 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.

Adult 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 utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the bathhouse facility is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Specified Anatomical Areas. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, female breasts below a point immediately above the top of the areola, or human penis in a discernibly turgid or erect state, even if completely or opaquely covered.

Specified Sexual Activities. Specified sexual activities are any of the activities described below:

- a) 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 or zoerasty.
- b) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence.
- c) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation.
- d) Fondling or touching of nude human genitals, pubic region, buttocks or female breast.
- e) Situations involving a person or persons, 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(s).
- f) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being.
- g) Human excretion, urination, menstruation, vaginal or anal irrigation.

Substantial or significant. For the purposes of this Ordinance, the use of the words “substantial or significant” means that at least twenty (20%) percent of the portion of the floor area of the business (not including storerooms, stock areas, bathrooms, basement or any portion of the business not open to the public) is devoted to items, merchandise or other material that is distinguished or characterized by an emphasis on the depiction or description of specific sexual activities or specified anatomical areas.

SECTION 5. LOCATIONS

- 5.1 Adult Establishments shall be located only in districts zoned GB or GB-II and shall be located at least three-hundred (300') radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult establishment is located, to the property line of:
- a) residentially zoned property (R1, R2, R3, R4);
 - b) any licensed day care center;
 - c) any public or private educational facility classified as an elementary, junior high or senior high school; or
 - d) any church or similar place of worship recognized by the city.

SECTION 6. LICENSE REQUIRED

- 6.1 License Required. No person, firm, corporation or other business entity shall own or operate an Adult Establishment without having first secured a license as provided for in this Ordinance.
- 6.2 Applications. The application for an Adult Establishment license shall be submitted on a form provided by the City and shall include, but not be limited to, the following information:
- a) The name, residence, phone number and birth date of the applicant, if an individual; and if a corporation or other business entity, the names, residences, phone number and birth dates of all owners holding more than a five (5%) percent ownership interest in such corporation or business entity;
 - b) The name, address, phone number and birth date of a person or persons who shall be designated as the operations manager(s) of the establishment, whether or not such person is an owner;
 - c) The address and legal description of the premises where the adult establishment is to be located;
 - d) A statement detailing each gross misdemeanor or felony relating to a sex offense and/or the operation of adult uses and related activities of which the applicant or any persons named in (a) or (b) above 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;
 - e) The activities and types of businesses to be conducted;
 - f) The proposed hours of operation;
 - g) Provisions made to ensure access to minors is restricted; and
 - h) A building plan of the premises with details about all internal operations and activities.
- 6.3 License fees.
- a) License Fee. Each application for a license shall be accompanied by payment in full of the required fee for the license. Upon rejection of any application for a license, the City Clerk shall authorize the City Treasurer to refund the amount paid as License Fee.
 - b) Origination Fee. An applicant for a license under this ordinance shall deposit with the city at the time of original application a non-refundable Origination Fee which is supplemental to the License Fee which shall be used to cover costs associated with investigating matters contained in the original application.
 - c) Term. All licenses shall be issued for a period of one (1) calendar year and shall expire on the last day of December in each year. Any application made or license issued for a portion of a calendar year shall be subject to payment of the full amount required for the calendar year for which the license is issued.
 - d) Refunds. If any of the events identified herein occur within the first half of any license period/calendar year, a refund equal to twenty-five (25%) percent of the total license fee paid shall be refunded, presuming a written claim for said refund is received by the City Clerk within thirty (30) days of the event. No refund shall be provided for claims received for incidents which happen after the first half of any license period/calendar year. Events for which refunds may be available include:
 - 1) Destruction or damage of the licensed premises by fire or other catastrophe;
 - 2) The licensee's dissolution if a business entity, or death if an individual;
 - 3) A change in law making the licensed activity unlawful to continue.
 - e) Fee Amounts. The amount of all fees related to this Ordinance shall be set annually by the City Council as part of the Fee Schedule adopted in January and all fees shall be paid into the general fund of the City.

- 6.4 Granting of license.
- a) The City shall complete its investigation within sixty (60) days after receipt of a complete application, including all license fees. Applications that are not complete will be returned without being reviewed; the applicant will be notified of incomplete items and may resubmit a completed application anytime thereafter.
 - b) If the application is for license renewal, the applicant shall be allowed to continue business until the City Council has determined to renew or refuse to renew a license.
 - c) 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 ordinance, then the license shall be approved by the City Council within thirty (30) days after the investigation is completed. In all other cases the license shall be denied.
 - d) 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 or holder without approval of the City Council. If the licensee is a business entity other than a sole proprietorship, a change in identity of the business entity, including the participation of new principals with more than a five (5%) percent ownership interest in the entity, shall be deemed a transfer of the license.
- 6.5 Persons ineligible for license. No license shall be granted to or held by any person who:
- a) Is under 21 years of age;
 - b) Has been convicted of a felony or of violating any law of this state or local ordinance relating to sex offenses and/or adult establishments; or
 - c) Is not the proprietor of the establishment for which the license is issued.
- 6.6 Places Ineligible for license.
- a) 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 Ordinance, or where any license hereunder has been revoked for cause, until one (1) year has elapsed after such conviction or revocation.
 - b) Except for uses lawfully existing at the time this Ordinance is adopted, no license shall be granted for any Adult Establishment which is not in compliance with the City's zoning regulations.
- 6.7 Conditions of License. Every license shall be granted subject to the following conditions and all other provisions of this Ordinance, and of any applicable sections of other codes of the City, Ramsey County or State of Minnesota.
- a) All licensed premises shall have the license posted in a conspicuous place at all times.
 - b) No minor shall be permitted on the licensed premises.
 - c) Any designated inspection officer of the City shall have the unqualified right to enter, inspect and search the premises of a licensee.
 - d) Every licensee shall be responsible for the conduct of their place of business and shall maintain conditions of order.

SECTION 7. ADDITIONAL RESTRICTIONS

- 7.1 Additional Conditions for Adult Cabarets. In addition to all other conditions set forth in this Ordinance, the following conditions apply to adult cabarets:
- a) No owner, operator or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude.
 - b) No dancer, live entertainer, patron or any other person shall be nude in an adult cabaret.
 - c) The owner, operator or manager of an adult cabaret shall provide the following information to the city concerning any persons who dance or perform live entertainment at the adult cabaret: the person's name, home address, home telephone number, date of birth and any aliases.
 - d) No dancer, live entertainer or performer shall be under eighteen (18) years old.
 - e) All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least 30 inches from the level of the floor.
 - f) No dancer or performer shall perform any dance or live entertainment closer than eight (8) feet to any patron.
 - g) No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
 - h) No patron shall pay or give any gratuity to any dancer or performer.
 - i) No dancer or performer shall solicit any pay or gratuity from any patron.

SECTION 8. ADMINISTRATION AND ENFORCEMENT

- 8.1 Administration. The City Clerk shall develop and maintain applications for such licenses and shall distribute same to applicants upon request.
- 8.2 Right Of Entry And Enforcement. For purposes of inspection to insure compliance with regulations adopted herein the Zoning Administrator, Code Enforcement Officer and all law enforcement officials with whom the City has contracted to provide law enforcement are hereby empowered as law enforcement officers for the strict application of this Ordinance and may enter upon the premises at any time to investigate compliance with the various provisions of this ordinance.

SECTION 9. PENALTIES

- 9.1 Penalties.
 - a) Any person violating any provision of this ordinance is guilty of a misdemeanor and upon conviction shall be punished by not more than the maximum penalty for a misdemeanor as prescribed by state law.
 - b) 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.
 - c) 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 for the date of the notice, whichever is sooner, and shall notify the licensee of its decision within that period.

SECTION 10. ADOPTION AND ENACTMENT

- 10.1 Repealer. When this Ordinance is adopted by the City Council and placed in full force and effect, Gem Lake Ordinance No. 80 shall hereby be repealed.
- 10.2 Adoption. Adopted by a unanimous vote of the City Council of the City of Gem Lake on the 19th day of April, 2004 and ordered for publication.
- 10.2 Effective. This ordinance shall take effect and be in full force following publication of a summary of the ordinance in the City's official Legal Publication.

FOR THE CITY OF GEM LAKE

Paul R. Emeott

Paul R. Emeott, Mayor
Dated: 19 April 2004

ATTEST

Frederic C. Magnuson

Frederic C. Magnuson, City Clerk
Dated: 19 April 2004

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Paul Emeott, Mayor

Fritz Magnuson, City Clerk

Sarah Cobian, Treasurer

PUBLIC NOTICE NO. 2004-14

DATE: 06 May 2004
FROM: Fritz Magnuson, City Clerk
TO: Press Publications, Legal Publications @ legals@sherbtel.net
RE: Legal Notice To Be Published

To Whom It May Concern,

The following Legal (Public) Notice is to be published in the Legal Notices Section of the **12 May 2004** edition of the White Bear Press. Please confirm receipt and verify content is in acceptable form for use.

City of Gem Lake
Public Notice No. 2004-14
ORDINANCE NO. 82

On 19 April 2004, the Gem Lake City Council enacted City of Gem Lake Ordinance No. 82., AN ORDINANCE REPEALING ORDINANCE NO. 80 AND PROVIDING FOR THE LOCATION, REGULATION, LICENSING, OPERATION AND INSPECTION OF ADULT USES AND SEXUALLY ORIENTED BUSINESSES IN THE CITY OF GEM LAKE AND PENALTIES FOR VIOLATION OF SAID REGULATION. This Ordinance will take full force and effect upon publication of this public notice or 01 May 2004, which ever is later.

To be known as the "Gem Lake Adult Use Ordinance", copies of the entire ordinance may be obtained by sending a written request accompanied by a \$10.00 printing and handling fee plus \$0.65 sales tax (\$10.65 total) and a self-addressed stamped (\$0.60) envelope to the City Clerk at 1369 East County Road E, Gem Lake, MN 55110-5231.

Ss//FredericC. Magnuson, City Clerk

Fritz Magnuson