

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

10-034-0

REPLACEMENT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ADULT BOOKSTORES AND ADULT ENTERTAINMENT ESTABLISHMENTS.

BY COUNCILOR GARDNER:

The city of Duluth does ordain:

Section 1. That Section 5-20 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 5-20. Applications; fees; expiration date; no transfers.

Applications for a license to own or operate an adult book store or adult entertainment establishment shall be made to the city clerk on forms provided by the city clerk. Each application shall state the name of the owner and manager and the location of the premises to be licensed and how far such premises is from the nearest church, school, public park, residential zone and public skywalk. Each application shall state whether the applicant, owner, or manager has been convicted of a misdemeanor, gross misdemeanor or felony relating to sex or obscenity offenses. The application shall be accompanied by a fee, which shall be set in accordance with Section 31-6(a) of this Code, for said license. Licenses issued pursuant to this Article shall expire on May 31 each year. No licenses issued pursuant to this Section may be transferred to another location or person.

Section 2. That Section 5-21 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 5-21. Licenses not to be issued and operation prohibited in certain places.

No license for the ownership or operation of an adult book store or adult entertainment establishment shall be issued and operation of any adult entertainment establishment shall not be

allowed within the following areas:

(a) Within ~~600~~ 2,000 feet of a church, school, public park or building in which programmed, scheduled or supervised educational activity, recreational activity, religious training, behavioral guidance/correction activity or personal guidance counseling is regularly provided to children 12 years of age or younger;

(b) Within ~~600~~ 2,000 feet of a residential zone;

(c) In an area that is within or fronts on public skywalk;

(d) Within ~~400~~ 2,000 feet of a pedestrian plaza;

(e) Within 2,000 feet of another adult bookstore or adult entertainment establishment.

For purposes of this Section, distance shall be measured from the center of the closest doorway giving ingress or egress to the adult book store or adult entertainment establishment along a straight line to the closest boundary of the lot or parcel of property upon which is located the thing to which the measurement is made.

The restrictions of (a) thru ~~(d)~~ (e), above, and M.S.A. Section 617.242, or its successor, shall not apply to a location where an adult entertainment establishment that operated in a premises duly licensed for on sale intoxicating liquor sales or an adult book store had, on or before ~~May 26, 2006~~ August 19, 2010, been legally operating at that location.

Section 3. That Section 5-22 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 5-22. Denial of license, suspension, revocation, appeal.

(a) Licenses shall be denied by the city clerk only for the following reasons:

(1) Failure to submit a fully completed application

blank;

(2) Submission of an application blank which falsely states a material fact;

(3) Failure of the premises to be located in an area permitted by Section 5-21 of this Code;

(4) Failure to pay the application fee;

(5) Deterioration of the proposed licensed premises to the extent that the premises constitute a substantial hazard to the health or safety of its occupants. Such determination shall be made by the fire marshal, director of health, and building official using applicable health, fire and building codes; or

(6) The applicant, owner, or manager has been convicted of a misdemeanor, gross misdemeanor or felony relating to sex or obscenity offenses;

(b) Licenses may be suspended or revoked by the city council only for the following reasons:

(1) Submission of an application blank which falsely states a material fact;

(2) Deterioration of the licensed premises to the extent that the premises constitute a substantial hazard to the health or safety of its occupants. Such determination shall be made by the fire marshal, director of public health, and building official using applicable health, fire and building codes;

(c) No license shall be suspended or revoked until after a full evidentiary hearing is held before the city council. The licensee shall receive at least ten days notice of such hearing and may be represented by counsel at such hearing and present any relevant evidence or arguments at such hearing. The council shall use standards set forth in Subsection (b) of this Section in

reaching its decision;

(d) Any person denied a license by the city clerk may appeal therefrom to the city council by giving written notice of appeal to the city council within ten days of receiving notice of such denial. The council shall then hear the appeal within 14 days after notice of appeal is received. Appellant may be represented by counsel and may submit all relevant evidence and arguments concerning the matter. The council, after hearing all evidence and arguments, shall affirm or reverse the action of the clerk using standards set forth in Subsection (a) of this Section.

Section 4. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:

---

Attorney

CCREQ/ATTY SBH:cjk 7/13/2010

STATEMENT OF PURPOSE: The purpose of this ordinance is to add additional licensing requirements and restrictions on the operation and location of adult bookstores and adult entertainment establishments within the city.