

## **CHAPTER 114: SEXUALLY-ORIENTED BUSINESS**

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***FINDINGS AND PURPOSE***

**§ 114.01 PURPOSE.**

The purpose of this subchapter is to regulate the application for and the permitting of certain land uses in the city, which land uses have a direct and detrimental effect on the general welfare and character of the city's residential and commercial neighborhoods. Establishing comprehensive regulations for adult uses and sexually-oriented businesses to promote the health, safety, convenience and general welfare of the inhabitants by regulating the uses of land and the placement of all structures as described herein, and to manage the shore land areas and the floodplain areas within the city, all pursuant to M.S. Chapter 462, as it may be amended from time to time. (Ord. 02-04, passed 3-4-2002)

**§ 114.02 FINDINGS.**

(A) The City Council of the City of Breezy Point makes the following findings about the effect adult uses and sexually-oriented businesses have on the character of the city's neighborhoods.

(B) In making its findings, the City Council accepts and adopts the recommendations of city staff and the Planning Commission who have studied the experiences of other areas about the businesses. The Minnesota Attorney General, the League of Minnesota Cities, the American Planning Association, the City of Baxter, the City of Crosslake, the City of St. Paul, the City of Rochester and various other cities throughout the country have studied the impact of adult uses and sexually-oriented businesses on urban and rural areas. These studies have concluded that adult uses and sexually-oriented businesses have adverse impacts on the surrounding neighborhoods.

(C) Based on these studies, the City Council finds that:

(1) Adult uses and sexually-oriented businesses can contribute to an increase in crime in the area where the businesses are located. This can be a burden to the city crime prevention programs and law enforcement services;

(2) Adult uses and sexually-oriented businesses can significantly contribute to the deterioration of residential neighborhoods and can increase neighborhood blight.

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These businesses also can impair the character and quality of the residential housing in the area where the business are. This situation could lessen the amount of desirable housing for residents;

(3) The concentration of adult uses and sexually-oriented businesses in one area can greatly affect the area where the businesses are concentrated and can greatly affect the quality of life. A cycle of decay can result from the influx and concentration of adult uses and sexually-oriented businesses. Others may perceive the presence of the businesses as an indication that the area is deteriorating and the results can be devastating. That is, other businesses move out of the vicinity and residents flee from the area. Lower property values can result from the concentration of the businesses, erode the city's tax base and contribute to blight;

(4) Adult uses and sexually-oriented businesses have adverse secondary impacts of the types discussed above;

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

(6) The commercial enterprises such as the types described in division (C)(5) 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 attracting illegal acts and 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, permitting and regulations;

(7) Control and regulations of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by the Sheriff's Department and other departments of the county and city. It is necessary for the city to provide services to all of Breezy Point without concentrating the public services in one area. The concentrated use of city services detracts from and reduces the level of

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services available to the rest of Breezy Point. Thus, these types of establishments can diminish the ability of the city to protect and promote the general health, welfare, morals and safety of Breezy Point;

(8) The City Council adopts the following land use and permitting regulations, 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 effect 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 Breezy Point;

(9) Because of the small geographic size of the commercially zoned property within the city, the city restricts the number of any of the described permits or licenses to one within the City of Breezy Point; and

(10) In the 1997 Comprehensive Plan survey of citizens, a majority of the public did not want adult entertainment business within the city.

(D) It is not the intention of the city to prohibit adult uses or sexually-oriented businesses or establishments from locating in Breezy Point. It is not the intent of the city to regulate the businesses on the basis of content, but instead to regulate them on the basis of likely adverse secondary effects.

(Ord. 02-04, passed 3-4-2002)

### **§ 114.03 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

***ADULT USES.*** Adult body painting studios, adult book stores, adult car washes, adult hotels or motels, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health and/or sports clubs, adult sauna and/or steam room and/or bathhouses, adult companionship establishments, adult rap and/or conversation parlors, adult novelty businesses, adult motion picture arcade, adult modeling studios and other premises, enterprises or establishments, businesses or place open to some or all members of the public at or in which there is an emphasis on the presentation or 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

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medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by state licenses or registered persons. Activities classified as obscene, as defined by M.S. § 617.241, as it may be amended from time to time, are not lawful and are not included in the definition of **ADULT USES**.

**ADULT USES; ACCESSORY.** The offering of goods and/or services classified as adult uses on a limited scale that is incidental to the primary activity and goods and/or services offered by the establishment. Examples of the items include, but are not limited to, adult magazines, adult movies, adult novelties and the like.

**ADULT USES; PRINCIPAL.** The offering of goods and/or services classified as adult uses as a primary or sole activity of a business or establishment and include, but are not limited to, the following.

**ADULT BODY PAINTING STUDIO.** 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 the body is wholly or partially nude in terms of a specified anatomical area.

**ADULT BOOK STORE.** An establishment, building or business engaging in the barter, rental or sale of items or merchandise consisting of printed matter, pictures, slides, records, audio tapes, video tapes, computer or video disks, motion picture film or any other similar materials, if the shop is not open to the public generally but only to one or more classes of the public, excluding any minor because of age, if more than 20% of the useable floor area of the establishment, building or business or if at least 500 square feet, whichever is smaller, has products or materials distinguished or characterized by an emphasis on matters depicting, describing or related to specified sexual activities or specified anatomical areas.

**ADULT CABARET.** An establishment, building or business that provides dancing or other live entertainment if the dancing or live entertainment is distinguished or characterized by an emphasis on the performance or presentation, display, depiction or description or specifies anatomical areas.

**ADULT CAR WASH.** 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.

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***ADULT COMPANIONSHIP ESTABLISHMENTS.*** An establishment of business, if the establishment excludes minors because of age, or which provides the service of engaging in listening to conversation, talk or discussion between an employee of the establishment and a customer, if the service is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

***ADULT ENTERTAINMENT FACILITY.*** A building or space in which an admission is charged for the entrance or where food or non-alcoholic beverages are sold or intended for consumption, and in which may be observed live presentation of entertainment distinguished by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

***ADULT ESTABLISHMENT.*** An establishment, building or business engaging in any of the following activities or which uses any of the following business procedures or practices, either:

(a) Any business conducted exclusively for the patronage of adults and about which minors are specifically excluded from patronage there at either by law or by the operator of the business; or

(b) Any other business that offers its patrons services, products or entertainment characterized by an emphasis on matters depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas. Specifically included in the term, but without limitation, are adult book stores, adult motion pictures theaters, adult mini-motion picture theaters, adult massage parlors, adult health clubs, adult saunas, adult companionship establishments, adult cabarets, adult car washes, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels or motels and adult body painting studios.

***ADULT HOTEL or MOTEL.*** A hotel or motel from which minors are specifically excluded from patronage and in which material is presented that is distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

***ADULT MASSAGE PARLOR, HEALTH/SPORTS CLUB.*** A massage parlor or health and/or sport club that restricts minors because of age or law, which provides the services of massage if the service is distinguished or characterized by an emphasis on

specified sexual activities or specified anatomical areas.

**ADULT MINI-MOTION PICTURE THEATER.** A business, building or establishment in an enclosed building with a capacity for less than 50 persons used for the presenting of visual media material of the business as a prevailing practice excludes minors by virtue of age or law, or if the material is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas for observation by patron.

**ADULT MODELING STUDIO.** An establishment or business whose major business is provision to customers of figure models who are provided with the intent of providing sexual stimulation or sexual gratification to the customers who engage in specified sexual activities or specified anatomical areas, while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by the customers.

**ADULT MOTION PICTURE ARCADE.** 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 show images to five or fewer persons per machine at once, characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

**ADULT MOTION PICTURE THEATER.** A business premises with an enclosed building with a capacity of 50 or more persons used for presenting visual media material of the business as prevailing practice excludes minors by virtue of age, or if the material is distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for the observation by patrons.

**ADULT NOVELTY BUSINESS.** A business that has, as a principle activity, the sale of materials or devices that stimulate human genitals or devices designed for sexual stimulation or which depict or which relate to specified sexual activities or specified anatomical areas.

**ADULT SAUNA** and/or **STEAM ROOM** and/or **BATHHOUSE.** A business that excludes minors because of age, or which provides a steam bath or heat bathing room

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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 and/or steam room and/or bathhouse is distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

**LICENSED FAMILY DAY CARE, LICENSED GROUP FAMILY DAY CARE, LICENSED CHILD CARE CENTER.** A facility holding a license from Breezy Point or Minnesota pursuant to M.S. Chapter 245A, as it may be amended from time to time, and/or Minn. Rules, Subchapter 9502 or Subchapter 9503, as amended.

**MINOR.** Any natural person under the age of 18 years.

**NUDITY.** The showing of the human male or female genitals or pubic area with less than fully opaque covering, the showing of the female breast with less than fully opaque covering of any portion thereof below a point immediately above the top of the areola, or the depiction of or showing of the covered male genitals in a discernibly turgid state.

**PLACE OF WORSHIP.** A building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship.

**PREMISES.** The place or building, or the room in a building, designated in a license as the place where the licensed business is to be carried on, and all land adjacent thereto and used in connection with and in the operation of a licensed business, and all adjacent or contiguous rooms or buildings operated or used in connection with the buildings where the licensed business is carried on. If no place is described in any license, then **LICENSED PREMISES** means the building or place where the licensed business is carried on under the license.

**PRIVATE CLUB.** A corporation, partnership, unincorporated association or other business enterprise, which is not held open to the public, whether for profit or nonprofit, organized with the primary or non-primary purpose of providing a service or entertainment as regulated by this subchapter.

**PUBLIC LIBRARY.** Any library that provides free access to all residents of a city or county without discrimination and is organized under M.S. Chapter 134, as it may be amended from time to time.

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***PUBLIC PARK.*** A park, reservation, open space, playground, beach or recreation or community center in the county owned, leased or used wholly or in part by a city, county, state, school district or federal government for recreational purposes.

***SCHOOL.*** A building or space that is principally used as a place where 25 or more persons receive a full 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 subchapter.

***SEXUALLY-ORIENTED BUSINESS.*** Adult body painting studios, adult book stores, adult car washes, adult hotels or motels, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health and/or sports clubs, adult sauna and/or steam room and/or bathhouses, adult companionship establishments, adult rap and/or conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios and other premises, enterprises or establishments, businesses, or places open to some or all members of the public at or in which there is an emphasis on the presentation or 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. § 617.241, as it may be amended from time to time, are not lawful and are not included in the definitions of adult uses.

***SPECIFIED ANATOMICAL AREAS.*** Anatomical areas consist of:

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

(2) Human genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES.*** Activities consisting of the following:

(1) Actual or stimulated 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, and any of the following sexually-oriented acts or conduct: anilingus,

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buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy and zoerasty;

(2) Human genitals in the state of sexual stimulation, arousal or tumescence;

(3) Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus or masturbation;

(4) Fondling or touching of human genitals, pubic regions or pubic hair, buttocks or female breasts;

(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 person;

(6) Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being;

(7) Human excretion, urination, menstruation, vaginal or anal irrigation; or

(8) Any combination of the above.

(Ord. 02-04, passed 3-4-2002)

### ***PERMITTING OR LICENSING***

#### **§ 114.20 PERMIT OR LICENSE REQUIRED.**

(A) No person, firm or corporation shall own or operate an adult uses or sexually-oriented business in the City of Breezy Point, without having first secured a permit or license, including a conditional use permit hereunder and pursuant to the terms of the Zoning Ordinance, all as provided herein.

(B) An adult use principal, adult use accessory, or sexually-oriented businesses shall only be allowed in the Urban Reserve district. Both shall require Interim Use Permit pursuant to this subchapter and §153.124 and §114.28.

(C) A permit or license, sometimes referred to herein as permit/license or license/permit, shall be either:

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- (1) Adult use principal; or
- (2) Adult use accessory.

(D) A license/permit shall be revoked by the Council if the Interim Use Permit fails to remain valid as determined by the Planning Commission. Failure of the permit/license to remain valid as determined by the City Council may invalidate the Interim Use Permit.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010; Ord. 15-04, 3<sup>rd</sup> Series, passed 7-06-2015) Penalty, see § 114.99

### **§ 114.21 APPLICATION.**

(A) An applicant for a permit or license pursuant to this subchapter shall prepare and submit to the City Administrator/Clerk of the city, an application for an adult uses or sexually-oriented business permit or license and to the Zoning Administrator an Interim Use Permit application as required by this subchapter, and by the Zoning Ordinance in that form as required by the city.

(B) If granted, the permit/license shall be effective for a period of one year. If the permit/license holder wishes to renew the permit/license, then application shall be made pursuant to this subchapter and the Zoning Ordinance not less than 90 days before expiration of the permit/license.

(C) All application pursuant to the subchapter shall include:

(1) The name, residence address, phone number and birth date of the applicant, if an individual, and his or her spouse or domestic partner, adult siblings and adult children, and if a corporation, partnership, LLC or similar entity, the names, residences, phone numbers and birth dates of those owners holding more than 5% of the issued and outstanding stock of the corporation or ownership interest in a partnership, LLC or similar entity;

(2) The name, address, phone number and birth date of the operator and manager of the operation, if different from the owner;

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(3) The name, address, phone number and birth date of all employees of the operation. As new employees are added and/or hired, this information shall be provided to the City of Breezy Point for each new employee prior to the employee's hire date, together with that information described in divisions (C)(5) and (11) below;

(4) The address and legal description of the building, establishment or premises where the adult uses or sexually-oriented business is to be located;

(5) A statement detailing each misdemeanor, gross misdemeanor or felony relating to any sex offense, as defined by M.S. §§ 609.293 through 609.352, as they may be amended from time to time, inclusive, or as defined by any other ordinance or statute in conformity therewith, and any obscenity crime, as defined by any M.S. §§ 617.23 through 617.299, as they may be amended from time to time, inclusive, or as defined by any ordinance or statute in conformity therewith, or any crime involving the use, possession or distribution of controlled substances or a dangerous weapon, and any crime involving the operation of adult oriented businesses and related activities of which the applicant, his or her spouse or domestic partner, adult sibling or adult children or, for a corporation, the owners of more than 5% of the issued and outstanding stock of the corporation, or ownership interest in a partnership, LLC or similar entity, have been convicted, and whether the applicant, his or her spouse, domestic partner, adult sibling or adult children has ever applied for or held a license to operate a similar type of business in other counties, cities or states;

(6) The activities and type of business to be conducted;

(7) The hours of operation;

(8) The provisions made to restrict access by minors;

(9) A building plan of the premises detailing internal operations and activities;

(10) A description or building plan that details all proposed interior and exterior changes to an existing building or structure; and

(11) A statement detailing each misdemeanor, gross misdemeanor or felony relating to any conviction for activities as described in division (C)(5), above, of which the manager and/or any employee has been convicted of and whether the manager and/or employee ever applied for or held a license to operate a similar type of business

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in other counties, cities or states.

(12) A written statement by State Fire Marshal that the structure meets appropriate codes.

(D) All application, whether for initial licensing or renewals, shall be referred to the appropriate law enforcement agency for verification and investigation of the facts set forth in the application. The law enforcement agency shall make a written report and recommendation to the city as to the issuance and/or renewal or non-issuance and/or non-renewal of a license. The municipality may order and conduct the additional investigation, as it deems necessary.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010; Ord. 15-04, 3<sup>rd</sup> Series, passed 7-06-2015)

### **§ 114.22 PERMIT OR LICENSE FEES.**

(A) Each application for a permit/license shall be accompanied by a fee, as set by the city for payment in full of the required application and investigative fee for the license. All fees shall be paid at time of application.

(B) All permit/license shall expire on the last day of December in each year. The city shall issue each permit/license for one year, except if part of the permit/license year has elapsed when the application is made, the city may issue a permit/license for the remainder of the year for a prorated fee. In computing the fee, the city shall count any unexpired fraction of a month as one month.

(C) The annual fee and the investigative fee for the adult uses or sexually-oriented business permit/license shall be established by way of a City Council resolution.

(D) No part of the fee paid by any permit/license issued under this subchapter shall be refunded except in the following instances: upon application to the City Council within 30 days of the event. The city shall refund a pro-rated portion of the fee for the permit/license for the unexpired period of the permit/license, computed monthly, when operation of the permitted/licensed business ceases not less than one month before the expiration of the permit/license because of:

(1) Destruction or damage of the permitted/licensed premises by fire or other catastrophe;

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(2) The licensee's illness;

(3) The licensee's death; and

(4) A change in the legal status making it unlawful for the licensed business to continue.

(E) 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 permit/license. 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 permittee/licensee. If the changes take place during the investigation, the data shall be provided to the City Administrator/Clerk in writing, and the Administrator shall report the changes to the City Council. Failure to report the changes by the applicant(s) or the permittee/licensee may result in the denial or revocation of a permit/license.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010)

Penalty, see § 114.99

### **§ 114.23 GRANTING OF PERMIT AND/OR LICENSE.**

(A) The city shall investigate all facts set out in the application. After completion of the investigation, the Planning Commission shall hold a public hearing as part of the Interim Use and process pursuant to the Zoning Ordinance. Interim use permit decisions relative to the Zoning Ordinance shall be subject to the provisions of the Zoning Ordinance. Decisions relative to the permit/license application described herein shall be based on appropriate findings of fact, and the City Council shall decide all questions of law and fact relative to the permit/license application.

(B) The city shall only issue the permit/license to the applicant. The permit/license shall not be transferred or assigned to another person or entity. The city shall only issue each permit/license for the premises or location described in the application. No permit/license may be transferred to another location or place without approval by the City Council, and amendment of the Interim Use Permit by the Planning Commission. (Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010; Ord. 15-03, 3<sup>rd</sup> Series, passed 7-06-2015)

### **§ 114.24 RENEWAL.**

(A) Any license/permit issued under this subchapter shall be effective for a period

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of one year from the date of issuance, at which time it will expire unless prorated pursuant to this chapter. An application for the renewal of an existing license must be made not less than 90 days prior to the expiration day of the license and shall be made in such form as the city requires. The appropriate renewal fee shall be paid in full before the renewal application is accepted. If, in the judgment of the City Council, good and sufficient cause is shown for failure to submit a renewal application before the expiration of the existing license, the City Council may, if the other provisions of this subchapter are complied with, grant a renewal of the license.

(B) The City Council shall establish a renewal investigation fee, which shall be separate from any renewal fee. The fee shall cover the costs involved in verifying the renewal application and cover the expense of any investigation needed to assure continued compliance with this subchapter. This fee may be waived by the city when there has been no change in circumstances concerning the license.

(C) A licensee obtains no vested interest in a license issued under this subchapter and the city reserves the right to not renew the same. A license under this subchapter will not be renewed if the city determines that the licensee has failed to comply with the provisions of the ordinance and/or all applicable Minnesota Laws.

(Ord. 02-04, passed 3-4-2002)

### **§ 114.25 PERSONS INELIGIBLE FOR PERMIT AND/OR LICENSE.**

(A) The city shall not grant a permit/license to, nor may one be held by any person who:

(1) Is under 21 years of age;

(2) Is not a citizen of the United States or a resident alien;

(3) Is not the proprietor or owner of the establishment for which the permit/license is issued;

(4) Has not paid the permit/license and investigative fees required by this subchapter;

(5) Has been convicted of any sex crimes as defined in M.S. §§ 609.293 through 609.352, as they may be amended from time to time, inclusive, or as defined by any other ordinance or statute in conformity therewith;

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(6) Has been convicted of any obscenity crime as defined by M.S. §§ 617.23 through 617.299, as they may be amended from time to time, inclusive, or as defined by any other ordinance or statute in conformity therewith;

(7) If within the past five years, the applicant or his or her spouse or domestic partner, adult sibling or adult child has been convicted of any crime related to the permit/license applied for, or any felony, gross misdemeanor or misdemeanor relating to sex offenses, obscenity offenses, controlled substance offenses or adult uses described in this subchapter;

(8) Has been convicted of a crime involving the use or distribution of controlled substances or a dangerous weapon within the past five years; and

(9) Has not provided evidence sufficient to the city showing that at least five years have elapsed since release from confinement for a crime relating to any offense described in this subchapter without another conviction for any offense described in this subchapter, and compliance with all post release terms and conditions.

(B) That a conviction in being appealed, or is under appeal, shall have no effect on eligibility hereunder, so long as judgment of conviction has not been entered.  
(Ord. 02-04, passed 3-4-2002)

### **§ 114.26 PLACES INELIGIBLE FOR PERMIT AND/OR LICENSE.**

(A) No permit/license shall be granted for adult uses and sexually-oriented businesses on any premises where a permitted/licensee has been convicted of a violation of this subchapter, or where any permit/license hereunder has been revoked for cause until one year has elapsed after the conviction or revocation, or where a current zoning violation exists.

(B) Except uses lawfully existing at the time of this subchapter, no permit/license shall be granted for any adult uses or sexually-oriented business that does not meet all city ordinances requirements, and all provisions of state and federal law.  
(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010)  
Penalty, see § 114.99

### **§ 114.27 NON-CONFORMING USES.**

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An adult uses or sexually-oriented business existing on the effective date of the adoption of this subchapter may be continued subject to the following provisions:

(A) No pre-existing adult uses or sexually-oriented business or structure used in connection therewith, shall be expanded or enlarged, except in conformity with the provisions of this subchapter and the Zoning Ordinance.

(B) A pre-existing, non-conforming adult uses or sexually-oriented business shall not be required to apply for and receive an adult use permit/license from the city, so long as it remains open for business and is not closed for business for any period of 30 consecutive days or more, but the business or use shall provide the city with the information required by this subchapter from year to year, as of January one of each year. In the event that the business is closed for 30 consecutive days or more, then prior to operation of the business thereafter, application must be made for all permit/license required by this subchapter and by the Zoning Ordinance, all permits or licenses must be obtained and all provisions of this subchapter and the Zoning Ordinance must be satisfied prior to the business reopening.

(Ord. 02-04, passed 3-4-2002)

### **§ 114.28 CONDITIONS OF PERMIT AND/OR LICENSE GENERALLY.**

(A) The city may grant a permit/license pursuant to this subchapter and may impose conditions upon the permit/license pursuant to § 153.124, including requiring conformity to all other provisions of this subchapter and of any applicable city, county, state and federal law. Any permit/license granted pursuant to this subchapter shall be, in addition, subject to the following conditions:

(1) All licensed premises shall have the permit/license posted in a conspicuous place;

(2) No minor shall be allowed in or on the premises of an adult uses or sexually-oriented business;

(3) Any designated inspection officer or law enforcement officer of the city shall have the right to enter, inspect and search the premises of a permitted/licensee during business hours;

(4) Each permittee/licensee shall be responsible for the conduct of his, her or its place of business and shall maintain business and operating conditions consistent

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with this subchapter and with all other laws of the city, County of Crow Wing and State of Minnesota;

(5) No adult goods, materials or services shall be offered, sold, transferred, conveyed, given, displayed or bartered to any minor; and

(6) The licensee/permittee shall provide licensed security from one-half hour before opening to one hour following closing, at a ratio of one security personnel to an average of 25 patrons and/or guests per hour on the premises. The security person shall be on premises at all times and shall be in addition to Clerks and other personnel of the licensee/permittee.

(B) An Interim Use Permit, obtained pursuant to the terms of this subchapter or pursuant to the terms of the Zoning Ordinance, and a permit/license granted pursuant to the terms of this subchapter, cannot be assigned, gifted or otherwise transferred to any other person or entity.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010; Ord. 15-04, 3<sup>rd</sup> Series, passed 7-06-2015)

Penalty, see § 114.99

### **§ 114.29 MORATORIUM ON ADULT USES.**

#### ***Cross-reference:***

*For provisions on moratorium on adult uses, see § 153.014*

### ***PERFORMANCE STANDARDS***

### **§ 114.45 ADULT USE PRINCIPAL.**

The City Council may issue adult use principle and sexually-oriented business permits/licenses to a business located in the Urban Reserve zoning district, subject to an Interim Use Permit to be obtained by the applicant making application pursuant to this subchapter and by making application pursuant to the Zoning Ordinance, and upon the following conditions:

(A) No adult uses principal or sexually-oriented business shall be located closer than 1,500 feet from any other adult uses principal or sexually-oriented business in the city. Measurements shall be made in a straight line, without regard to city or county

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boundaries, intervening structures or objects, from the nearest point of the actual business premises (including buildings, parking areas and free-standing signs) of the adult uses principal or sexually-oriented business to the nearest point of the actual business premises of any other adult uses principal or sexually-oriented business.

(B) No adult uses principal or sexually-oriented business shall be located closer than 1,500 feet from any residential lot line, residential Zoning District or P.U.D., Public Waters as defined by Minnesota Statutes, or dedicated public open space; or within 2,800 feet of a church, synagogue, mosque or other place of worship, school, public park, licensed family day care home, playground, public library or licensed child care or day care center in any city or county. Measurements shall be made in a straight line, without regard to city or county boundaries, intervening structures or objects, from the nearest point of the actual business premises (including buildings, parking areas and free-standing signs) of the adult uses 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 day care home, playground, licensed group family day care home, public library or licensed childcare or day care center, residential zoning district, or P.U.D.

(C) All adult uses or sexually-oriented businesses must meet all of the requirements of this entire subchapter. All adult uses principal or sexually oriented businesses must also meet parking, landscaping, lighting, signage and all other requirements of the Zoning Ordinance for Commercial Uses.

(D) The city prohibits any building owner or operator from having more than one of the following uses, tenants or activities in the same building structure:

- (1) Adult body painting studio;
- (2) Adult book store;
- (3) Adult cabaret;
- (4) Adult car wash;
- (5) Adult companionship establishment;
- (6) Adult entertainment facility;

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- (7) Adult modeling studio;
- (8) Adult hotel or motel;
- (9) Adult sauna and/or steam room and/or bath house;
- (10) Adult motion picture theater;
- (11) Adult mini-motion picture theater;
- (12) Adult massage parlor;
- (13) Adult health and/or sports club;
- (14) Adult novelty business; and

(15) Any business or establishment in which there is an emphasis on the presentation, display, depiction or description of specified sexual activities or specified anatomical areas that the public can see.

(F) An adult uses principal and sexually-oriented business shall not sell or dispense non-intoxicating or intoxicating liquors, nor shall it be closer than 1,320 feet from any business which sells or dispenses intoxicating liquors.

(G) No adult uses principal or sexually-oriented businesses entertainment shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult uses establishment that is prohibited by any ordinance of the City of Breezy Point, the laws of the State of Minnesota or the United States of America. Nothing in this subchapter shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes or ordinances.

(H) No adult uses principal or sexually-oriented business shall be conducted in any manner that permits the perception or observation from any property not approved as an adult use of any materials, depicting, describing or relating 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.

(I) All adult uses principal and sexually-oriented businesses shall prominently

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display a sign at the entrance, located within two feet of the door opening device of the adult use establishment or section of the establishment devoted to adult books or materials which states: "This business sells or displays material containing adult themes. Persons under 18 years of age shall not enter".

(J) Adult uses principal or sexually-oriented businesses shall not be open between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 1:00 a.m. and 12:00 p.m. (noon) on Sunday.

(K) Adult Entertainment Establishments, as defined in Minnesota Statutes 617.242 shall be subject to any and all applicable additional requirements of Minnesota Statutes 617.242, as amended from time to time, if more strict than this section.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, Passed 3-1-2010; Ord. 15-04, 3<sup>rd</sup> Series, passed 7-06-2015)

Penalty, see § 114.99

### **§ 114.46 ADULT USE ACCESSORY.**

The City Council may issue adult use accessory business permits/licenses to a business or establishment located only in the Urban Reserve zoning district, subject to an Interim Use Permit to be obtained by the applicant making application pursuant to this subchapter and by making application pursuant to the Zoning Ordinance, and upon the following conditions.

(A) The adult uses accessory shall comprise no more than 20% of the floor area, or up to 500 square feet, whichever is smaller, of the establishment, space, structure or building in which it is located, and shall not include any activity except for the sale and/or rental or merchandise.

(B) Display areas for adult movies or video tape rentals or other products shall be restricted from general view and shall be located within a separate room, for which the access is in clear view and in the control of the person responsible for the operation. A two (2) square foot sign shall be placed along the entrance to the room which states: "Admittance allowed only to those 18 years of age or older."

(C) Magazines and publications or other similar products classified or qualified as adult uses shall not be accessible to minors and shall be covered with a wrapper or other means to prevent display of any material other than the publication title.

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(D) Adult uses accessories shall be prohibited from both internal and external advertising and signing of adult materials and products.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010; Ord. 15-04, 3<sup>rd</sup> Series, passed 7-06-2015)

Penalty, see § 114.99

### ***MISCELLANEOUS PROVISIONS***

#### **§ 114.60 REVOCATION, SUSPENSION OR NON-RENEWAL OF PERMIT AND/OR LICENSE.**

(A) The City Council, after not less than ten-days' published notice of public hearing, may revoke or suspend a permit/license upon recommendation of the Planning and Zoning Administrator or Breezy Point Police Department if the permittee/licensee, managers, employees, agents or others reasonably under the control and direction of the permittee/licensee have violated any material portion of this subchapter, the Zoning Ordinance, the permit/license, the laws of the State of Minnesota, County of Crow Wing, United States of America or of the city, or have engaged in any of the following conduct:

(1) Fraud, deception or misrepresentation about securing the permit/license;

(2) Habitual drunkenness or intemperance in use of drugs defined in M.S. § 618.01, as it may be amended from time to time, barbiturates, hallucinogenic drugs, amphetamines, Benzedrine, Dexedrine or other sedatives, depressants, stimulants or tranquilizers;

(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;

(4) Failure to follow any requirements of the ordinances of the City of Breezy Point about sanitary and safety conditions, zoning requirements or ordinances, the violation of which involves moral turpitude, or failure to follow the requirements of this subchapter, including conditions of any interim use permit; and

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(5) Conviction of an offense involving moral turpitude.

(B) All costs incurred by the city with respect to the proceedings shall be paid by the permit/license holder.

(C) The City Zoning Administrator or the Breezy Point Police Department may issue a cease and desist order if there is probable cause of a material violation of this subchapter, the business's interim use permit, the Zoning Ordinance or upon the presentation of probable cause of conditions or activities present upon the licensed premises that present an imminent threat and danger to the public health, safety or welfare and are inconsistent with and contrary to the licensed and permitted activities allowed by the permit/license.

(D) The permit/license holder may appeal a cease and desist order to the City Council. The City Council shall consider the appeal at a public hearing within 21 days from the date of receipt of the written notice of appeal by the City Clerk-Treasurer. At the conclusion of the hearing, the City Council shall determine whether:

(1) The cease and desist order should be affirmed and, in doing so, the City Council may revoke or suspend the license/permit; or

(2) The cease and desist order should be discharged and the permit/license be returned to the holder thereof.

(E) Upon notice and hearing to the permittee/licensee, the City Council may impose additional conditions for the continued use of the permit/license in the event that the City Council does not revoke the permit/license.

(Ord. 02-04, passed 3-4-2002; Ord. 10-005, 3<sup>rd</sup> Series, passed 3-1-2010)

### **§ 114.61 SIGN RESTRICTIONS.**

(A) In addition to the provisions of the Zoning Ordinance, the following sign regulations shall apply to all adult uses or sexually-oriented businesses in the City of Breezy Point.

(B) These regulations are to protect children from exposure to sexually-oriented or otherwise shocking signs and materials, and to preserve the value of property near

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adult use or sexually-oriented businesses.

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

(2) The city's sign regulations for the zoning business where the business is located shall regulate the size and number of signs allowed for an adult uses or sexually-oriented business.

(3) 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 uses or sexually-oriented business is located.

(4) No signs shall be placed in any window. A two-foot square sign may be placed on the door to state hours of operation and admittance to adults only.

(5) Lighting restrictions of § 153.061.  
(Ord. 02-04, passed 3-4-2002) Penalty, see § 114.99

### **§ 114.62 LOCATION AND REGULATION OF SEXUALLY-ORIENTED BUSINESSES; ADOPTED BY REFERENCE.**

The City of Breezy Point's location and regulations of sexually-oriented businesses are hereby adopted by reference and incorporated herein as if set out in full.  
(Ord. 02-05, passed 2-4-2002)

### **§ 114.99 PENALTY.**

Any person violating any provision of this chapter shall be subject to § 10.99.