

ARTICLE IV. - SEXUALLY ORIENTED USES

549.320. - Purpose.

It is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, thereby having a harmful effect upon the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are included in this article.

549.330. - Regulated uses.

All sexually oriented uses shall be subject to the regulations of this article and shall not be subject to Minn. Statute Section 617.242. (2000-Or-088, § 1, 9-15-00; 2002-Or-030, § 1, 4-5-02; 2006-Or-122, § 1, 10-20-06)

549.340. - Definitions.

As used in this article, the following words and phrases shall mean:

Adult entertainment center. An enclosed building or a part of an enclosed building, wherein an admission is charged for entrance into the facility, or for food, alcoholic beverages or other beverages intended for consumption within the facility, wherein may be observed, or which contains one (1) or more coin-operated mechanisms which when activated permit a customer to view, one (1) or more live persons unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, or any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva or genitals.

Adults-only bookstore or video store. An establishment having as a substantial or significant portion of its stock in trade for sale, rental or display, books, magazines, periodicals, films, videos, digital video disks, slides, or other media, which are distinguished or characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism, or an establishment with a segment or section devoted to the sale, rental or display of such material which comprises fifteen (15) percent or more of the total sale, rental or display area of such establishment, or five hundred (500) square feet, whichever is less. An adults-only bookstore or video store also shall include an establishment that offers films, videos, digital video disks, slides or similar media for viewing on premises.

Adults-only motion picture theater. An enclosed building used regularly and routinely for presenting programs or material distinguished or characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism, for observation by patrons therein.

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

Rap parlor. An establishment or place primarily in the business of providing nonprofessional conversation or similar services for adults.

Sadomasochism. The derivation of sexual pleasure from the infliction of pain or from the condition of being fettered, bound or otherwise physically restrained.

Sauna. An establishment or place primarily in the business of providing steam bath and massage services.

Sexual conduct. Acts of masturbation, sexual intercourse or fondling or other erotic physical contact with a person's genitals, pubic area, buttocks, anus or, if such person be a female, her breast.

Sexual excitement. The condition of human male or female genitals when in a state of sexual stimulation or arousal.

Sexually oriented use. An adult entertainment center, adults-only bookstore or video store, adults-only motion picture theater, massage parlor, rap parlor, sauna, or any other use that is distinguished or characterized by an emphasis on matters or conduct depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism.

(2000-Or-088, § 2, 9-15-00; 2002-Or-030, § 2, 4-5-2002; 2013-Or-237, § 2, 12-13-2013)

549.350. - Location restrictions.

(a) *Zoning district requirements.* Sexually oriented uses shall be permitted only in the B4, B4S and B4C Districts, subject to the provisions of this article, except as otherwise provided in this section. However, no sexually oriented use shall be permitted on any property with its main public entrance on Nicollet Avenue, on any property located north/northwest of the centerline of the Burlington Northern Railway right-of-way, nor on any property located east/southeast of the centerline of Fifth Avenue South. In addition, a rap parlor or sauna may be allowed as a conditional use in the C4 General Commercial District, subject to the provisions of this article and Chapter 525, Administration and Enforcement.

(b) *Distance requirements.* No sexually oriented use shall be allowed within one thousand (1,000) feet of a residence district or office residence district, or within five hundred (500) feet of a religious institution place of assembly, a child care center established prior to November 1, 1986, a public library, a public educational facility that serves persons age seventeen (17) or younger, or a school, grades K—12. Distances shall be measured in a straight line from the lot line of properties in a residence or office residence district and from the main public entrances of uses.

(c) *Spacing of sexually oriented uses.* Only one (1) sexually oriented use shall be allowed per block face. (2000-Or-087, § 1, 9-15-00; 2000-Or-088, § 3, 9-15-00; 2002-Or-030, § 3, 4-5-02; 2006-Or-123, § 4, 10-20-2006; 2013-Or-237, § 3, 12-13-2013)

549.360. - Existing uses; amortization.

(a) *In general.* Uses existing on the effective date of this zoning ordinance that do not conform to the December 1, 1988 compliance deadline of the 1963 zoning code governing the zoning district requirements of sexually oriented uses shall remain unlawful. All other uses that do not conform to the zoning district requirements of section 549.350(a) shall become unlawful one (1) year from the date such use becomes nonconforming, except as otherwise provided in this section. Lawfully nonconforming uses that do not conform to the distance requirements of section 549.350(b) or the spacing requirements of section 549.350(c) shall be permitted to operate as a nonconforming use in accordance with the provisions of Chapter 531, Nonconforming Uses and Structures.

(b) *Adults-only bookstores or video stores.* Adults-only bookstores or video stores existing on September 23,

2000, and not otherwise governed by an earlier amortization requirement, shall be permitted to operate as a nonconforming use in accordance with the provisions of Chapter 531, Nonconforming Uses and Structures, provided that uses that do not conform to the zoning district requirements of section 549.350(a) shall become unlawful on and after October 1, 2001.

- (c) *Adult entertainment centers.* Adult entertainment centers existing on April 13, 2002, and not otherwise governed by an earlier amortization requirement, shall be permitted to operate as a nonconforming use in accordance with the provisions of Chapter 531, Nonconforming Uses and Structures, provided that uses that do not conform to the zoning district requirements of section 549.350(a) shall become unlawful on and after May 1, 2003.
- (d) *Extension of time.* The city council may extend the date upon which a nonconforming use becomes unlawful under this section where it is established that the amortization period is unreasonable as applied to a particular use.
 - (1) *Procedure for requesting extension of time.* Any person with a legal or equitable interest in the use to be amortized may seek an extension by making a written request to the zoning administrator together with all supporting information, such as purchase agreements, leases, property appraisals, evidence of costs of improvements to the property, or business records and tax returns that the applicant would like to be considered. The burden of proving that an amortization period is unreasonable is on the applicant.
 - (2) *Determination.* In determining whether such date should be extended, the city council may consider information relating to the useful life of the nonconforming use and any other factors or information relevant to determination of the reasonableness of the amortization period. Information relevant to the useful life of the nonconforming use may include: the cost of the property and any improvements, the tax depreciation status of the property or use, the condition of the structures on the property, the potential for alternative use of the property, and the potential and cost to relocate the use or otherwise bring the use into compliance with the zoning district requirements.

(2000-Or-088, § 4, 9-15-00; 2002-Or-030, § 4, 4-5-02)

549.370. - Sign requirements.

All sexually oriented uses shall comply with the following sign requirements, notwithstanding any other provision of this ordinance:

- (1) All signs shall be flat wall signs or window signs.
- (2) Signs may be illuminated, except that flashing signs, including signs containing changing written messages, and signs with moving or swinging parts or elements shall be prohibited.
- (3) The amount of allowable sign area shall be one (1) square foot of sign area per foot of lot frontage on a street. Window signs shall be included in the calculation of total allowed sign area.
- (4) Window sign area shall be limited by the amount of total allowable sign area for the use, except that no merchandise 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 outside the building.

(2002-Or-030, § 5, 4-5-02)