

## Coldwater, MI Code of Ordinances

## TITLE TWO - Business Regulation

**CHAPTER 804**  
**Adult Entertainment Businesses**

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***CROSS REFERENCES***

Nuisance abatement; damages and expenses - see CHTR. Sec. 9.9; M.C.L.A. Sec. 600.2940

City Clerk/Assessor - see ADM. Ch. 234

"Adult regulated uses" defined - see P.&Z. 1260.06

Zoning Board of Appeals - see P.&Z. Ch. 1264

Special land uses - see P.&Z. Ch. 1295

Adult uses - see P.&Z. 1299.20

### **804.01 DEFINITION.**

As used in this chapter, "adult entertainment business" means a business that is an "adult regulated use" as defined in Section 1260.06.

(Ord. 644. Passed 11-12-01.)

### **804.02 LICENSE REQUIRED.**

No person shall engage in or carry out an adult entertainment business without first obtaining a license to operate such business from the City Clerk's office.

(Ord. 644. Passed 11-12-01; Ord. 700. Passed 1-23-06.)

### **804.03 RESPONSIBILITY OF OWNERS AND POSSESSORS OF REAL ESTATE.**

No person shall knowingly allow or permit any building or land owned or possessed by the person to be used for an adult entertainment business, unless a copy of a license to operate such a business has been provided to such owner or possessor.

(Ord. 644. Passed 11-12-01.)

### **804.04 PROCEDURE FOR ISSUANCE OF LICENSE.**

(a) "Applicant" means:

(1) An individual or individuals.

(2) For a corporation, each officer and director of the corporation, each stockholder owning more than 10 % of the stock of the corporation, and the resident agent.

(3) For a limited liability company, each manager and member of the company.

(4) For a partnership, each partner, general and limited.

(b) Filing Fee. Every applicant for a license to maintain, operate or conduct an adult entertainment business shall file an application therefor under oath with the City Clerk upon a form provided by the City Clerk and shall pay a nonrefundable annual license fee in an amount determined by the City Council by resolution, as amended from time to time.

(c) Inspection of Premises. Copies of the application shall, within five business days, be referred by the City Clerk to the Building Commissioner of the City and appropriate City departments, including, but not

limited to, Neighborhood Services, Fire and Police. The departments shall inspect the premises proposed to be operated as an adult entertainment business within 30 days and shall make written verification to the City Clerk concerning compliance with the codes of the City.

(d) Contents. Each application shall contain the following information:

(1) A definition of service to be provided.

(2) The location, mailing address and all telephone numbers where the business is to be conducted.

(3) The name and residence address of the applicant.

(4) The two addresses immediately prior to the present address of the applicant.

(5) Proof that the applicant is at least 18 years of age.

(6) The applicant's height, weight, color of eyes and hair, and sex; copy of picture identification, such as a driver's license, and social security card; one portrait photograph of the applicant at least two inches by two inches and a complete set of the applicant's fingerprints, which shall be taken by the Police Department.

(7) Business, occupation or employment of the applicant for the three years immediately preceding the date of application.

(8) The adult entertainment or similar business license history of the applicant; whether such person, in previously operating in this or another city or state, has had a business license revoked or suspended, the reason therefor, and business activity or occupation subsequent to such action of suspension or revocation.

(9) All criminal convictions, other than misdemeanor traffic violations, including the dates of convictions, nature of the crimes and place convicted.

(10) The name and address of each individual who is or will be employed in the establishment.

(11) A description of any other business to be operated on the same premises or on an adjoining premises owned or controlled by the applicant.

(12) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.

(13) Such other identification and information necessary to discover the truth of the matters specified in this section as required to be set forth in the application.

(14) The names, current addresses and written statements of at least three bona fide permanent residents of the United States that the applicant is of good moral character and touching upon applicant's honesty, fairness and respect for the laws of the State of Michigan and the United States. If the applicant is able, the statement must first be furnished from residents of the City, then the County, then the State and lastly from the rest of the United States. These references must be persons other than relatives and business associates.

(e) In the event that the application first presented to the City Clerk is not complete, the City Clerk shall provide written notice by first class mail within five business days of such determination detailing the items

required to complete the application. Upon completion of the above provided form and the furnishing of all information required by this section, the City Clerk shall accept the application for the necessary investigations. The holder of an adult entertainment business license shall notify the City Clerk of each change in any data required by this section within 10 days after such change occurs.

(f) Liability Insurance. The application shall be accompanied by the following:

(1) Evidence that the applicant has obtained public liability insurance with limits of not less than \$500,000/\$1,000,000 and property damage insurance with a limit of not less than \$500,000 from a company or companies approved by the Commissioner of Insurance of the State of Michigan, which insurance shall insure the applicant, or his or her employees and agents, against liability for death or injury to persons or damage to property which may result from the conduct of a business licensed under this chapter, which policy or policies shall remain in full force and effect for the specified amounts during the term of the license. The evidence of insurance shall include an endorsement to the effect that the insurance company shall notify the City Clerk, in writing, at least 10 days before the expiration or cancellation of such policy or policies.

(2) A corporate surety bond in the amount of \$100,000 in a form to be approved by the City Attorney, conditioned upon the applicant's faithful compliance with all of the terms and provisions of this chapter, and all applicable provisions of other municipal ordinances, State and federal laws, regulations and rules.

(g) Facilities Required. No license to conduct an adult entertainment business shall be issued unless an inspection by the City and/or State, as required, reveals that the business complies with all State and local laws, codes, ordinances, rules and regulations. Nothing contained in this chapter shall be construed to eliminate other requirements of statutes or ordinances concerning the maintenance of the premises, nor to preclude authorized inspection thereof, whenever such inspection is deemed necessary by the Police Department, the Fire Department, the Department of Neighborhood Services or any other City or State department or agency.

(Ord. 644. Passed 11-12-01; Ord. 700. Passed 1-23-06.)

#### **804.05 GROUNDS FOR DENIAL OF LICENSE.**

Within 90 days after receipt of a complete application, the City Clerk shall issue a license for an adult entertainment business after determination by the City Council that requirements for such license described above have been satisfied, unless it finds:

(a) No special use permit has been issued under Chapter 1260.20.

(b) The correct license fee has not been tendered to the City and, in the case of a check or bank draft, honored with payment upon presentation.

(c) The operation, as proposed by the applicant, if licensed, would not comply with all applicable laws, codes, ordinances, rules and regulations, including but not limited to the City's building, zoning and health regulations.

(d) Criminal History.

(1) The applicant, or the manager or other person principally in charge of the business, has been convicted of any of the following offenses or convicted of an offense outside the State that would have constituted any of the following offenses if committed within the State:

- A. An offense involving the use of force and violence upon the person of another that is a felony.
- B. An offense involving sexual misconduct.
- C. An offense involving controlled substances and/or dangerous weapons that is a felony.

(2) The City may issue a license to a person convicted of any of the crimes described in this division if it finds that such conviction occurred at least five years prior to the date of the application, and the applicant has had no subsequent felony convictions of any nature and no subsequent misdemeanor convictions of crimes mentioned in this section.

(e) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith.

(f) The applicant has had an adult entertainment business or other similar permit or license denied, revoked or suspended by the City or any other State or local agency within the five years prior to the date of the application.

(g) The applicant, if an individual, or the manager or other person principally in charge of the operation of the business is not over the age of 18 years.

(Ord. 644. Passed 11-12-01; Ord. 700. Passed 1-23-06.)

#### **804.06 REQUIREMENTS FOR OPERATION.**

After issuance of the license, the licensee shall meet the following requirements:

(a) The insurance and bond required by the application process as described above shall continue in full force and effect until expiration or termination of the license.

(b) The licensee shall permit City, County and State officials to enter upon the licensed premises at all reasonable times to determine compliance with the requirements of this chapter and other applicable City ordinances, County ordinances and State statutes.

(c) The licensee shall not knowingly permit violations of any City ordinance; County ordinance or State statute by any of his or her patrons.

(d) The licensee shall provide off-street parking facilities sufficient to accommodate all persons to be admitted to his or her place of business based on the maximum capacity specified in the application.

(e) The licensee shall provide sufficient fences or barriers or shall so patrol the boundaries of his or her business premises as to efficiently prevent his or her patrons from directly trespassing on neighboring premises.

(f) The licensee shall so conduct his or her business that it shall not give rise to a nuisance by reason of noise, vibration, smoke, odor or dust.

- (g) The licensee shall limit his or her business activities to the hours specified in his or her license, and further shall not be open for business during the hours of midnight through 9:00 a.m. under any circumstances.
- (h) The licensee shall post a copy of this chapter and a copy of his or her license in his or her place of business in a location where they can be read easily by his or her patrons.
- (i) The licensee shall give written notice to the City Clerk's Office of the names and addresses of any and all persons who are or will be employees, independent contractors, or other workers at the licensed establishment prior to the person's beginning work. For the purposes of this chapter, the term "worker" shall include without limitation a person who performs any work or act for the benefit of licensee or its customers at the licensed establishment whether or not the person is financially compensated by licensee.
- (j) All employees, independent contractors, or other workers at a licensee's establishment, including but not limited to anyone dancing, performing or otherwise entertaining customers of a licensee, shall at all times wear, at a minimum, a G-string or other form of panty or underwear that completely and opaquely covers the genitals and pubic area.
- (k) The physical premises at the licensee's establishment shall at all times meet the following requirements:
- (1) All booths must be completely in the line of sight and otherwise visible to the manager.
  - (2) Booths shall not have doors or curtains, or any other devices or materials capable of hiding the interior booth area from view.
  - (3) Each booth shall have its own operational lighting in some form which shall remain on at all times, and which shall generate enough light that all occupants of the booth are visible to the manager at all times.
  - (4) The entire length of the walls of a booth shall not have any holes or openings.
  - (5) No booth, table, or other seating shall be located within ten feet of any stage or other platform, whether temporary or permanent, where any dancing, performing, or other entertaining is taking place.
- (l) Employees, independent contractors, or other workers working at a licensee's establishment shall not have any physical contact with the licensee's customers, regardless of who initiates such contact. This prohibition is intended to prohibit without limitation "lap dances," "couch dances," and any other form of fondling, rubbing, caressing, or touching between the licensee's customers and workers. The licensee shall be responsible for enforcement of this provision, shall be considered responsible for any violation of this provision, and shall have and enforce policies and procedures to prevent violations of this provision from occurring. This provision shall not apply to a duly authorized bouncer or similar rules enforcement personnel having necessary physical contact with a customer of a licensee for the purpose of physically removing the customer from the premises or detaining the customer for law enforcement officials.
- (Ord. 644. Passed 11-12-01; Ord. 700. Passed 1-23-06.)

#### **804.07 EXPIRATION AND RENEWAL OF LICENSE.**

Each license granted under the provisions of this chapter shall expire one year from the date of issuance.

Any application to renew a license previously issued under this chapter shall be accompanied by a renewal fee of \$150.00 to defray the cost of administering this chapter during the renewal phase of licensing.

(Ord. 644. Passed 11-12-01.)

#### **804.08 LICENSE NOT TRANSFERABLE.**

A license issued under this chapter is not transferable to any other firm or person.

(Ord. 644. Passed 11-12-01.)

#### **804.09 SUSPENSION AND REVOCATION OF LICENSE.**

A license required by this chapter may be suspended or the renewal thereof refused by the City for misrepresentation of any material fact in the application for such license. Any license may be suspended or revoked by the City for good cause. The term "good cause" means any act or omission or the permitting of a condition to exist with respect to the licensee in question that is contrary to the safety or welfare of the public, unlawful or fraudulent in nature, a violation of any provision or provisions of this chapter under which the license was granted, is beyond the scope of the license issued, or a fact, circumstance or condition that, had it existed or been known to the City at the time the license was granted, would have been sufficient grounds for the refusal thereof. Revocation of a license may take place only after a hearing before the City Council upon not less than seven days' written notice to the licensee at the address stated in the application of the licensee stating the time and place of such hearing and the reasons for revocation. A hearing officer may be designated by Council by resolution and shall not be a City employee. The hearing officer may make findings and recommendations and submit the same to Council. In the event of suspension or revocation, the applicant shall be entitled to review of the decision as provided in Section 804.12. The City shall stay any action on any suspension or revocation decision until a final judicial resolution of the matter.

(Ord. 644. Passed 11-12-01.)

#### **804.10 REAPPLICATION.**

No application for a license which has been denied wholly or in part shall be resubmitted for a period of one year from the date of the denial, except on grounds of new evidence not previously available or proof of changed conditions.

(Ord. 644. Passed 11-12-01.)

#### **804.11 VIOLATIONS DECLARED NUISANCES.**

Any violation of any provision of this chapter is hereby declared to be a nuisance per se and enjoined by appropriate legal action.

(Ord. 644. Passed 11-12-01.)

## **804.12 APPEAL FROM ADVERSE DECISIONS.**

(a) In the event that an application is denied, the applicant shall be entitled to prompt review by the Zoning Board of Appeals as a means to exhaust local remedies and to be consistent with the intent of *Paragon Properties Co. v. Novi*, 206 Mich. App. 74; 520 N.W.2d 344 (1994). The applicant shall file an appeal with the City Clerk within five business days of the denial of the license application by the City Council. The review shall, upon the applicant's request, be conducted at a special Zoning Board of Appeals meeting convened for such purposes within 15 days of receipt of such a request. The Zoning Board of Appeals shall review the record of proceedings conducted before the City Council and determine whether the Council's decision was based upon competent material and substantial evidence and otherwise review the determination to ensure that it complies with all requirements of both the Michigan and United States Constitutions.

(b) If the Zoning Board of Appeals affirms the denial of the license application, then the applicant shall be entitled to prompt judicial review by submitting a written request to the City Clerk. Such written request must be received by the City Clerk within 30 business days of the date of the decision of the Zoning Board of Appeals. The City shall, within five business days of receipt of such written request, do the following:

(1) File a petition to the Circuit Court for the County of Branch seeking a judicial determination with respect to the validity of such denial, and in conjunction therewith, apply for a preliminary and permanent injunction restraining the applicant from operating the adult entertainment business in violation of this chapter.

(2) Request that the application for issuance of a preliminary injunction be set for a show-cause hearing within five business days or as soon as thereafter possible. In the event that the applicant appears at or before the time of such show-cause hearing, waives the notice otherwise provided by Michigan Court Rule and requests that at the time set for such hearing the court proceed to hear the case under applicable rules of civil procedure for the issuance of a permanent injunction on its merits, the City shall be required to waive its application for preliminary injunction and shall join such request. In the event that the applicant does not waive notice and/or does not request an early hearing on the City's application for permanent injunction, it shall nevertheless be the duty of the City to seek the earliest possible hearing date under Michigan law and the Michigan Court Rules.

(3) The filing of written notice of intent to contest the City's denial of an adult entertainment license shall not in any way affect the validity of such denial, but such denial shall be deemed invalid and the license automatically approved if, within 15 days of the filing of the petition, a show-cause hearing has not been scheduled.

(Ord. 644. Passed 11-12-01; Ord. 700. Passed 1-23-06.)

## **804.99 PENALTY.**

Any person who violates a provision of this chapter is guilty of a misdemeanor punishable by a fine of not more than \$500 and/or confinement of not more than 90 days in the County jail.

(Ord. 644. Passed 11-12-01.)