

Chapter 4

AMUSEMENTS AND ENTERTAINMENTS*

* **State Law References:** Crimes relating to public exhibitions and entertainment, MCL 750.463 et seq., MSA 21.718 et seq.

Art. I. In General, §§ 4-1--4-15

Art. II. Poolrooms and Card Rooms (Reserved), §§ 4-16--4-50

Art. III. Roller Skating Rinks (Reserved), §§ 4-51--4-80

Art. IV. Theaters, Shows and Exhibitions (Reserved), §§ 4-81--4-115

Art. V. Public Dances (Reserved), §§ 4-116--4-150

Art. VI. Mechanical and Electronic Amusement Devices (Reserved), §§ 4-151--4-190

Art. VII. Adult Entertainment Establishments Licensing, §§ 4-191--4-202

ARTICLE I.

IN GENERAL

Secs. 4-1--4-15. Reserved.

ARTICLE II.

POOLROOMS AND CARD ROOMS (RESERVED)*

* **Editors Note:** Ord. No. 544, § 1, adopted September 5, 1995, repealed §§ 4-16--4-33 in their entirety. Former §§ 4-16--4-33 pertained to poolrooms and card rooms, and derived from the Code of 1977, §§ 7.221--7.223.

Secs. 4-16--4-50. Reserved.

ARTICLE III.

ROLLER SKATING RINKS (RESERVED)*

* **Editors Note:** Ord. No. 545, § 1, adopted September 5, 1995, repealed §§ 4-66, 4-67. Former §§ 4-66 and 4-67 pertained to roller skating rink licenses, and derived from the Code of 1977, § 7.241.

Secs. 4-51--4-80. Reserved.

ARTICLE IV.

**THEATERS, SHOWS AND
EXHIBITIONS (RESERVED)***

* **Editors Note:** Ord. No. 546, § 1, adopted September 5, 1995, repealed §§ 4-96--4-98. Former §§ 4-96--4-98 pertained to licenses for theaters, shows, and exhibitions, and derived from the Code of 1977, §§ 7.201--7.203.

Secs. 4-81--4-115. Reserved.

ARTICLE V.

PUBLIC DANCES (RESERVED)*

* **Editors Note:** Ord. No. 547, § 1, adopted September 5, 1995, repealed §§ 4-116--4-133, Former §§ 4-116--4-133 pertained to public dances and derived from the Code of 1977, §§ 7.231--7.233, and 7.235.

Secs. 4-116--4-150. Reserved.

ARTICLE VI.

**MECHANICAL AND
ELECTRONIC AMUSEMENT DEVICES (Reserved)***

* **Editors Note:** Ord. No. 558, § 1, adopted September 16, 1996, repealed former Art. VI, §§ 4-151--4-155 and 4-171--4-179, in its entirety. Former Art. VI derived from Ord. No. 404, adopted March 14, 1983.

State Law References: Offenses concerning coin-operated devices, MCL 752.811, MSA 28.643(101).

Secs. 4-151--4-190. Reserved.

ARTICLE VII.

ADULT ENTERTAINMENT ESTABLISHMENTS LICENSING*

* **Editors Note:** Ord. No. 573, § 1, adopted November 2, 1998, amended the Code by amending Art. VII in its entirety to read as herein set out; therefore, the editor has treated said ordinance as repealing former Art. VII, §§ 4-191--4-194 and 4-206--4-212, and adding a new Art. VII, §§ 4-191--4-201. Former Art. VII pertained to similar subject matter, and carried no history note.

Cross References: Licensing generally, Ch. 16.

Sec. 4-191. Definitions.

For the purpose of this article, the following words and phrases shall mean:

Adult bookstore. An establishment that has a substantial portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following: a) books, magazines, periodicals or other printed matter, or photographs, films, movies, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas, or b) instruments, devices or paraphernalia designated for use as part of, or in connection with, specified sexual activities.

Adult cabaret. Any place which features one or more topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, wait staff or other persons any of whom reveal or show specific anatomical areas of their bodies or who engage in, perform or simulate specified sexual activities.

Adult motion picture theater. An establishment, where, for any form of consideration, films, motion pictures, videos, slides, or other photographic reproductions are shown and in which a substantial portion of the total presentation is devoted to the showing of material characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities.

Specified anatomical areas. Specified anatomical areas means and includes any one (1) or more of the following: a) Less than completely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or b) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified sexual activities. Specified sexual activities means and includes any one (1) or more of the following: a) The fondling or erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; b) Human sex acts, normal or perverted, actual or simulated, including but not limited to intercourse, oral copulation, and sodomy; c) Human masturbation, actual or simulated; d) Human excretory functions as part of, or as related to, any of the activities described above; and e) Physical violence, bondage, mutilation, or rape, actual or simulated, as part of or as related to, any of the activities described above.

Substantial portion. Substantial portion means a use or activity accounting for more than twenty (20) percent of any one or more of the following: Stock-in-trade, display space, usable floor area, or viewing time, movie display time, or entertainment time measured per month.
(Ord. No. 573, § 1, 11-2-98)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 4-192. License.

(a) From and after the effective date of the ordinance from which this article derived, no adult bookstore, adult motion picture theater or adult cabaret hereinafter referred to as adult entertainment establishments, shall be operated or maintained in the city without first obtaining a license to operate issued by the city.

(b) A license may be issued only for one (1) adult entertainment establishment located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one (1) adult entertainment establishment must have a license for each.

(c) No license or interest in a license may be transferred to any person, partnership, or corporation.

(d) Exclusions. All private schools and public schools located within the city are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum or when instructing students at Baker College as part of its curriculum.
(Ord. No. 573, § 1, 11-2-98)

Sec. 4-193. Application for license.

(a) Any person, partnership, joint venture, limited liability company or corporation desiring to secure a license shall make application to the city clerk. The application shall be dated by the city clerk. A copy of the application shall be distributed promptly by the city clerk to the city police department and to the applicant.

(b) The application for a license shall be a form provided by the city clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers and directors of a corporate applicant and all stockholders owning more than five (5) percent of the stock in a corporate applicant, any members and managers of a joint venture or limited liability company, or any other person who is interested directly in the ownership or operations of the business, shall furnish the following information under oath:

- (1) Name and address, including all aliases.
- (2) Date of birth.
- (3) Social Security number.
- (4) Michigan vehicle operator's license number.
- (5) Written proof that the individual is at least eighteen (18) years of age.
- (6) All residential addresses of the applicant for the past three (3) years.
- (7) The applicant's height, weight, color of eyes and hair.
- (8) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of application.
- (9) Whether the applicant previously operated in this or any other county, city, or state under an adult entertainment establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
- (10) All criminal statute, whether federal or state, or city ordinance violation convictions, forfeiture of bond or pleadings of nolo contendere on all criminal charges, except minor traffic violations.
- (11) Fingerprints and (2) portrait photographs at least two (2) inches by two (2) inches of the

applicant.

- (12) The address of the adult entertainment establishment to be operated by the applicant.
- (13) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all shareholders owning more than five (5) percent of the stock in said corporation and all officers and directors of the corporation.
- (14) If the applicant is a limited liability company, the application shall specify the name of the company, the date and state of formation of the company, the name and address of the resident agent and the names and addresses of all members owning more than five (5) percent interest in the company and all managers.

(c) Within thirty-five (35) days of receiving an application for a license the city clerk shall notify the applicant whether application is granted or denied.

(d) Whenever an application is denied, the city clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within thirty (30) days thereafter before the council, as hereinafter provided.

(e) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this article shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the city clerk.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-194. Standards for issuance of license.

(a) To receive a license to operate an adult entertainment establishment, an applicant must meet the following standards:

- (1) If the applicant is an individual:
 - a. The applicant shall be at least eighteen (18) years of age.
 - b. The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within ten (10) years immediately preceding the date of the application.
 - c. The applicant shall not have been found to have previously violated this article or a substantially similar ordinance within one (1) year immediately preceding the date of the application.

(2) If the applicant is a corporation:

- a. All officers, directors and stockholders required to be named under section 4-193(b) shall be at least eighteen (18) years of age.
- b. No officer, director or stockholder required to be named under section 4-193(b) shall have been convicted or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within ten (10) years immediately preceding the date of the application.
- c. No officer, director or stockholder required to be named under section 4-193(b) shall not have been found to have previously violated this article or a substantially similar ordinance within one (1) year immediately preceding the date of the application.

(3) If the applicant is a partnership, joint venture, limited liability company or any other type of organization where two (2) or more persons have a financial interest:

- a. All persons having a financial interest in the partnership, joint venture, limited liability company or other type organization shall be at least eighteen (18) years of age.
- b. No person having a financial interest in the partnership, joint venture, limited liability company or other type organization shall have been convicted or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within ten (10) years immediately preceding the date of the application.
- c. No person having a financial interest in the partnership, joint venture, limited liability company or other type organization shall not have been found to have previously violated this article or a substantially similar ordinance within one (1) year immediately preceding the date of the application.

(b) No license shall be issued unless the city police department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the city clerk no later than twenty-eight (28) days after the date of the application. An inspection shall include:

- (1) An inspection of the premises to determine whether the operations conducted by the applicant and the general condition of the premises, both interior and exterior, are in compliance with all applicable city and state statutes and regulations;
- (2) An inspection of the premises to determine that the applicant is in compliance with any existing licenses, its approved site plan and plan of operation.
- (3) An inspection of the city's records to determine whether all taxes and other monies due the city are timely paid; and

- (4) An inspection of police files or other sources of information to determine whether any activity in connection with the licensed premises is in violation of the law, disturbs the public peace and tranquility or contributes to the disruption of the normal activities of those in the neighborhood of the licensed premises.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-195. Fees.

A license fee of two hundred fifty dollars (\$250.00) shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-196. Display of license or permit.

The license shall be displayed in a conspicuous public place in the adult entertainment establishment.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-197. Renewal of license or permit.

(a) Every license issued pursuant to this article will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the city clerk. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the city clerk. A copy of the application for renewal shall be distributed promptly by the city clerk to the city police department and to the business operator. The application for renewal shall be upon a form provided by the city clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(b) A license renewal fee of two hundred fifty dollars (\$250.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars (\$100.00) shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(c) If the city police department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the city clerk.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-198. Revocation or suspension of license.

- (a) The city can revoke or suspend a license or permit for any of the following reasons:
- (1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
 - (2) The operator or any employee of the operator has violated any provision of this article or any other ordinance of the city or any rule or regulation adopted by the city council pursuant to this

article; provided however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

- (3) The operator becomes ineligible to obtain any required license or permit or the operator is convicted of, or pleads nolo contendere to, any felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature.
- (4) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult entertainment establishment, unless the establishment is properly licensed.
- (5) Maintenance of a nuisance upon or in connection with the licensed premises, including but not limited to any of the following:
 - a. Existing violations of building, electrical, mechanical, plumbing, zoning, health, fire or other applicable regulatory codes;
 - b. A pattern of patron conduct in the neighborhood of the licensed premises which is in violation of the law and/or disturbs the peace, order, and tranquility of the neighborhood;
 - c. Failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining premises;
 - d. Entertainment on the licensed premises without a permit and/or entertainment which disturbs the peace, order and tranquility in the neighborhood of the licensed premises;
 - e. Any advertising, promotion or activity in connection with the licensed premises which by its nature causes, creates or contributes to disorder, disobedience to rules, ordinances or laws, or contributes to the disruption of normal activity of those in the neighborhood of the licensed premises;
- (6) The failure to permit the inspection of the licensed premises by the city's agents or employees in connection with the enforcement of city code;
- (7) The failure to comply with the terms of its liquor license or any conditions imposed by the city council or the liquor control commission at the time of issuance or transfer of the licenses;
- (8) The failure to comply with all standards and plans established and approved by the city council at the time of original approval or transfer of the license.
- (9) The failure to timely pay its taxes or other monies due the city.
- (b) The council, before revoking or suspending any license or permit shall give the operator at least ten (10) days written notice of the charges against him, and the opportunity for a public hearing before the city council, as hereinafter provided.

- (1) Before the city council revokes or suspends a license issued herein the city council shall cause written notice to be sent by certified mail to the licensee or applicant affected, at the address stated in the license or application informing such person of the right to a hearing upon request.
- (2) If the licensee does not request a hearing within fourteen (14) days of the date the notice was sent, the license may be forthwith revoked or suspended. If the licensee requests a hearing before the city council regarding said proposed revocation or suspension, said hearing shall be held within twenty-one (21) days after the date of the written request.
- (3) Both the city and the licensee shall be afforded a reasonable opportunity to present evidence on the issue at the hearing. Action taken by the city council shall be final and any fees hereunder shall not be refunded to the applicant or licensee.

(c) Any license issued by the city may be immediately suspended by the city manager or duly appointed city official if it is determined that the licensee has violated or someone at or upon the licensed location has violated a city ordinance or state law and that continued operation under the license is contrary to the public health, safety, and welfare. A licensee shall have the right to a hearing before the city council on any license suspension by the city manager and notice thereof shall be given in accordance with paragraphs 4-198(b)(1) and (2).

(d) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(e) Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult entertainment establishment for six (6) months from the date of revocation of the license.
(Ord. No. 573, § 1, 11-2-98)

Sec. 4-199. Physical layout of adult entertainment establishment.

Any adult entertainment establishment having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment shall be located on the first floor of the building and must comply with the following requirements.

- (1) *Access.* Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult entertainment establishment, and shall be unobstructed by any door, lock or other control-type devices.
- (2) *Construction.* Every booth, room or cubicle shall meet the following construction requirements:
 - a. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a wall.
 - b. Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

- c. All walls shall be solid and without openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured and easily cleanable.
- d. The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
- e. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten (10) foot candles at all times, as measured from the floor.

- (3) *Occupants.* Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-200. Responsibilities of the operator.

(a) The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, date of birth, sex, height, weight, color of hair and eyes, phone numbers, social security numbers, date of employment and termination, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(b) Daily hours of operation of any adult entertainment establishment shall be limited to the period of time from 8.00 a.m. to 2:00 a.m.

(c) The operator shall make the register of employees available immediately for inspection by police upon demand of a member of the city police department at all reasonable times.

(d) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any areas where they can be viewed from a public sidewalk adjacent to the establishment.

(e) No employee or patron under 18 years of age shall be allowed on the premises of an adult entertainment establishment.

(f) The operator shall maintain the premises in a clean and sanitary manner at all times and in compliance with all applicable codes.

(g) Every act or omission by an employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(h) Any act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator for purposes of determining whether the operator's license

shall be revoked, suspended or renewed.

(i) No employee of an adult entertainment establishment shall allow any minor to loiter around or to frequent an adult entertainment establishment or to allow any minor to view adult entertainment as defined herein.

(j) The operator shall maintain at least ten (10) foot candles of light to the public portions of the establishment, including aisle, at all times measured from the floor. However, if a lesser level of illumination in the aisle shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisle, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisle, as measured from the floor.

(k) The operator shall insure compliance of the establishment and its patrons with the provisions of this article.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-201. Penalty.

(a) Any person convicted under this chapter shall be subject to a maximum penalty of ninety (90) days in jail, or an equal amount of time of community service, or any combination thereof not exceeding ninety (90) days, plus five hundred dollar (\$500.00) fine, plus actual costs of prosecution, plus mandatory restitution to victims.

(b) Continuing violations. In addition to the penalty provided in division (a) of this section, any condition caused or permitted to exist in violation of the provisions of this code, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.

(Ord. No. 573, § 1, 11-2-98)

Sec. 4-202. Reserved.

Editors Note: As directed by the city, § 4-202 has been removed. Former § 4-202 pertained to expiration and derived from Ord. No. 573, adopted Nov. 2, 1998; and Ord. No. 620, adopted Nov. 18, 2002.