

**OTTER TAIL COUNTY ORDINANCE  
RESTRICTING CONDUCT UPON PREMISES  
LICENSED FOR ALCOHOLIC BEVERAGES**

The County Board of Otter Tail County ordains:

**Section 1. Purpose and Authority.**

a. Purpose - It is the purpose of this ordinance to prohibit and restrict certain types of conduct and entertainment, as hereinafter described, upon premises licensed for the manufacture, sale, distribution and possession of alcoholic beverages, so as to provide for the public health, safety and general welfare of the people of Otter Tail County, and particularly for the protection and assistance of the owners, operators, employees and patrons of such licensed premises. The County Board hereby declares that the standards of conduct set forth herein are reflective of the prevailing community standards in Otter Tail County.

b. Authority - This ordinance is enacted by the authority granted to the State of Minnesota in the Twenty-first Amendment to the United States Constitution and provided to Otter Tail County, pursuant to Minnesota Statutes Chapter 340A (1994).

**Section 2. Definitions.**

The following definitions shall apply to words used in this ordinance:

a. "Adult Use" shall include adult cabarets, adult bookstores, adult conversation/rap parlors, adult health/sport clubs, adult massage centers, adult mini-motion picture theatres, adult motion picture theatres, adult steam room/bathhouse facilities and other premises, enterprises, businesses or places open to some or all members of the public at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public. No obscene work shall be allowed.

b. "Adult Cabaret" shall mean a licensed premises used for providing dancing or other live entertainment, if such licensed premises excludes minors by virtue of age, or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas." No obscene work shall be allowed.

c. "Adult Bookstore" shall mean a building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas." "Substantial or significant portion of items," for purposes of this ordinance shall mean more than fifteen (15) percent of usable floor area.

d. "Adult Conversation/Rap Parlor" shall mean a conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

e. "Adult Health/Sport Club" shall mean a health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

f. "Adult Massage Center" shall mean a massage center which restricts minors by reason of age, or which provides the service of "massage," if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

g. "Adult Mini-Motion Picture Theatre" shall mean a building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

h. "Adult Motion Picture Theatre" shall mean a building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

i. "Adult Steam Room/Bathhouse Facility" shall mean a building or a portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam

or hot air as a cleaning, relaxing or reducing agent, if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathroom facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

j. "Fondle or Caress" shall mean affectionate touching, rubbing or stroking with the intent to sexually arouse or excite.

k. "Licensed Premises" shall mean any premises for which a license has been issued to manufacture, sell, distribute or possess alcoholic beverages, pursuant to Minnesota Statutes Chapter 340A.

l. "Material" shall mean a book, magazine, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, videotape, script, image, instrument, statue, drawing or other article.

m. "Obscene" means that the work, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious value. In order to determine that a work is obscene, the trier of fact must find:

(1) That the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest in sex;

(2) That the work depicts patently offensive sexual conduct, as defined herein.

(3) That the work, taken as a whole, lacks serious value.

n. "Patently Offensive" shall mean so offensive on its face so as to affront current standards of decency.

o. "Patently Offensive Sexual Conduct" shall be deemed to include any of the following described sexual conduct if depicted or described in a patently offensive way:

(1) An act of sexual intercourse, normal or perverted, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal.

(2) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(3) Masturbation, excretory functions and lewd exhibitions of the genitals, including any explicit, closeup representation of a human genital organ or spread-eagle exposure of female genital organs.

(4) Physical contact or simulated physical contact with the clothed or unclothed pubic area or buttocks of a human person, or the breasts of the human female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(5) A device designed and marketed as useful primarily for stimulation of the human genital organs.

(6) Male or female genitals in a state of sexual stimulation or arousal.

(7) Covered male genitals in a highly discernible turgid state.

p. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

q. "Promote" shall mean to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

r. "Specified Anatomical Areas" shall mean anatomical areas consisting of:

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

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

s. "Specified Sexual Activities" shall mean activities consisting of:

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphis, zoerasty; or

(2) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or

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

(4) Fondling or touching of nude human genitals, pubic region, buttocks or female breasts; or

(5) Situations involving a person or persons, any or whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraints of any such persons; or

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

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

t. "Serious Value" shall mean serious literary, artistic, political or scientific value.

u. "Standards of Decency" shall mean community standards of decency.

v. "Work" means "material" or "performance."

### Section 3. Unlawful Obscenity.

It shall be unlawful for any person issued a license or permit pursuant to Chapter 340A (1994), or any other person upon licensed premises or in any way related to the operation of licensed premises, to violate any laws of the State of Minnesota prohibiting or regulating obscenity. See Minnesota Statutes Section 617.23 through 617.299 (1994) or their successors.

### Section 4. Unlawful Acts on Licensed Premises.

The following acts or conduct on licensed premises are unlawful and shall be punished as set forth herein:

a. To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breasts, directly or laterally below the top of the areola, or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

b. To employ or use the services of any hostess while such hostess is unclothed or in such attire, costume or clothing as described in subparagraph a. above.

c. To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

d. To permit any employee or person to wear or use any device or covering exposed to view which simulates the breast, genitals, anus, pubic hair or any portion thereof.

e. To permit any person to perform acts of or acts which simulate:

(1) With or upon another person, sexual intercourse, sodomy, oral copulation, flagellation or any sexual act which is prohibited by law.

(2) Masturbation or bestiality.

(3) With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breasts.

(4) The displaying of the pubic hair, anus, vulva, genitals or female breasts directly or laterally below the tip of the areola.

f. To permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

g. To permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.

h. To permit or fail to prevent patrons, employees or others while on licensed premises to view (by means of a glass partition or otherwise) attire, activity or conduct which is prohibited on licensed premises by this section.

i. To permit or fail to prevent patrons, employees, entertainers or others from carrying alcoholic beverages from licensed premises to adjoining premises for the purpose of viewing such others of and on adjoining premises in such attire or lack thereof, or engaged in activity or wearing devices or using inanimate objects prohibited on licensed premises by Subdivision 4 herein.

#### Section 5. Adult Cabarets.

a. Special Conditions for Use of Adult Cabarets.  
Adult cabarets are subject to the following special conditions:

(1) The adult cabaret shall be located at least two thousand six hundred forty (2,640) radial feet from any other adult use and from any municipality, measured in a straight line from the closest points of the property

lines of the buildings in which the adult uses are located.

(2) The adult cabaret shall be located at least one thousand three hundred and twenty (1,320) radial feet from any residentially zoned property in any municipality, measured in a straight line from the closest point of the property line of the building in which the adult cabaret is located to the closest residentially zoned property line.

(3) The adult cabaret shall be located at least one thousand three hundred and twenty (1,320) radial feet from any "protected use," defined as: A building in which a majority of floor space is used for residential purposes; a day care center, where such day care center is a principal use; a house of worship; a public library; a school (public, parochial or private elementary, junior high, or high school); a public regional park or parkway, public park, public recreation center or public specialized recreation facility; a fire station; a community residential facility; a mission or a hotel/motel. The distance shall be measured in a straight line from the closest point of the property line of the building in which is located an aforementioned protected use.

(4) Conditions (2) and (3) may be waived by Otter Tail County if the person applying for the waiver shall file with the County a consent petition which indicates approval of the proposed adult cabaret by ninety (90) percent of the property owners within One thousand three hundred twenty (1,320) radial feet of the lot on which the use would be located; the County in considering such a waiver, shall make the following findings: That the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed; that the proposed use will not enlarge or encourage the development of a "skidrow" area; that the establishment of an additional use of this type in the area will not be contrary to any program of neighborhood conservation or improvement, either residential or nonresidential; and that all applicable regulations of this section will be observed.

(5) No person shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in the adult cabaret which is prohibited by any ordinance of Otter Tail County, the laws of the State of Minnesota or the United States of America.

(6) The adult cabaret is considered to be one (1) use. No two (2) adult uses can be in the same building.

(7) The adult cabaret shall not be located within a building also used for residential purposes.

b. Unlawful Sexual Acts in Adult Cabarets. It shall be unlawful for:

(1) Any person in any adult cabaret to perform any act or to be clothed or unclothed in a manner that would be prohibited in Subdivision 4 of this ordinance.

(2) Any person in any adult cabaret to place his or her hands upon, or to touch with any part of his or her body, or to fondle in any manner, or to massage the genital area of any other person.

(3) Any person in any adult cabaret to expose his or her genital area or any portion thereof to any other person, or to expose the genital area or any portion thereof of any other person.

(4) Any person, while in the presence of any other person in any adult cabaret, to fail to conceal with a fully opaque covering the genital area of his or her body.

(5) Any licensee under M.S. Chapter 340A (1994), or any person owning, operating or managing any adult cabaret knowingly to cause, allow or permit in or about such establishment any agent, employee or any other person under his or her control or supervision to perform such acts prohibited in Section 5, subparagraphs (b)(1) through (b)(4) of this section or any obscene act.

(6) Any person to employ any person under the age of eighteen (18) to work in any adult cabaret.

(7) Any licensee under M.S. Chapter 340A (1994), or any person owning, operating or managing any adult cabaret to cause, allow or permit the adult cabaret to operate in violation of Section 5, subparagraphs (a)(1) through (a)(7) of this ordinance.

#### Section 6. Enforcement.

a. Misdemeanor. Any person who violates the provisions of the ordinance shall be guilty of a misdemeanor. The penalties shall not exceed those permitted for conviction of a misdemeanor as defined by law.

b. License revocation or suspension. Any violation of the provisions of this ordinance by a licensee, or upon any licensed premises, shall constitute cause to suspend or revoke the license or to impose a civil fine, as provided by Minnesota Statutes Section 340A.415 (1994), or its successor.

Section 7. Savings Clause.

If any part of this ordinance is declared invalid, the balance of the ordinance continues to remain in effect.

Dated: October 11, 1994

OTTER TAIL COUNTY

By Harley Windels  
Harley Windels, Chairman

ATTEST:

Larry Keelin  
Clerk

*City work*      *misc ✓*

Office of County Recorder  
County of Otter Tail

I hereby certify that the within instrument was filed  
for record in this office on the 25 day of  
Oct A D 1994 at 10:15 A M.,  
and was duly filed as Doc # 768654

Wendy L Metcalf  
County Recorder

----- Deputy

*Austin (Wayne)*