
CITY OF SUMMERSET

ORDINANCE 5

LICENSES, PERMITS AND BUSINESS REGULATIONS

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ARTICLE I. IN GENERAL

Sec. 5-1. Temporary and special events licenses and permits for sale of food, etc., on city property.

Permits and licenses for vendors, peddlers, temporary merchants and temporary structures shall not be issued for use on city property, including parks, streets, sidewalks, alleys, boulevards or rights-of-way, except for designated city events or as otherwise permitted by this chapter.

Section 5-2. General Business License

Every person engaged, or hereafter engaged, in carrying on, maintaining, pursuing, conducting, or transacting in the City a trade, business, occupation, calling or pursuit shall obtain from the City the license herein specified and in the manner as provided in this ordinance. The foregoing notwithstanding, a business license is not required for providing childcare in a residence zone unless a conditional use permit is required.

Section 5-3. General Business License Application

City of Summerset business licenses are not difficult to obtain. Pick up an application at the City Finance Office or print out an application on the City webpage. City business licensing personnel will review the form's checklist with you, either in person or over the telephone, to determine what documentation you will need to submit prior to the issuance of your new license.

Section 5-4. General Business License Fee

The initial business license fee for new businesses operating within the City of Summerset is \$100.00. A subsequent fee of \$25.00 is due annually for all businesses in the City limits. Renewal of the annual license with fee is due on the 1st day of each year. Applications and payments made after January 1st are subject to a \$50.00 late fee.

(Section 5-4 Amended September 2, 2010 by Ordinance 5.01F effective October 2, 2010)

(Section 5-4 Amended March 3, 2011 Ordinance 5.01G effective March 30, 2011)

Section 5-5. General Business License Term

The fee listed is collected upon application and is effective until change of ownership of the business or discontinuance of the business.

(Section 5-5 Amended September 2, 2010 by Ordinance 5.01F effective October 2, 2010)

(Section 5-5 Amended March 3, 2011 Ordinance 5.01G effective March 30, 2011)

Section 5-6. Penalty

Failure to obtain said business license before opening, engaging in, carrying on or pursuing any business, trade, occupation, calling or pursuit can result in payment of citations and penalties.

(Article I Amended August 7, 2008 by Ordinance 5.01D effective September 6, 2014)

ARTICLE II. LICENSE PROCEDURE GENERALLY *

Sec. 5-31. Qualifications for applicants.

The general standards herein set out relative to the qualifications of every applicant for a City license shall be considered and applied by the City license officer. The applicant shall:

- (1) Be a citizen of the United States or a declarant therefore or a resident alien as authorized by federal law;
- (2) Not, either individually, or as a member of any party, group, or organization, at the time of any such application for a license or special permit, advocate or resort to any practices subversive of or designed for the overthrow, destruction or sabotage of the government of the United States in violation of federal law;

- (3) Be of good moral character and in making such determination the city license officer shall consider:
- a. All convictions, the reasons therefore and the actions of the applicant subsequent to his release;
 - b. The license history of the applicant; whether such person, in previously operating in this or another state under a license has had such license revoked or suspended, the reasons therefore, and the demeanor of the applicant subsequent to such action;
 - c. Such other facts relevant to the general personal history of the applicant as he shall find necessary to fair determination of the eligibility of the applicant.
- (4) Not be in default under the provisions of this chapter or indebted or obligated in any manner to the city except for current taxes.
- (5) Present a certificate of occupancy furnished by the building inspector to the effect that the proposed use of any premises is not a violation of city zoning regulations.

Sec. 5-32. Liability of violator.

- (a) The amount of any unpaid fee, the payment of which is required under this chapter, shall constitute a debt due the city.
- (b) The city attorney shall, at the direction of the license officer, institute civil suit in the name of the city to recover any such unpaid fee. **Secs. 5-33—5-75. Reserved.**

ARTICLE III. AMUSEMENTS†

†**State law references**—Authority to license, regulate, etc. exhibits and amusements, SDCL § 9-34-13; authority to license, prohibit, etc., dances or dance halls, SDCL § 9-34-15; public dance halls, SDCL § 42-4-1 et seq.

Sec. 5-76. Permission required for amusement rides.

No person shall conduct, operate, manage or sponsor any ferries wheels, merry-go-rounds or other amusement rides operated for hire or for the purpose of promoting or advertising any trade or business, without first having obtained a license and permission from the City of Summerset.

Sec. 5-77. Amusement ride fee.

Any person who shall conduct, operate, manage or sponsor any amusement ride defined in section 5-76 shall pay a license fee based upon the duration the applicant shall desire to engage in such business as follows:

- (1) Per day \$ 50.00
- (2) Per week 150.00
- (3) Per month 300.00

Sec. 5-78. Bond or liability insurance required for amusement rides.

No license shall be issued to any person under this article until such person shall comply with the applicable provisions contained in section 5-31 et seq. Such person shall file with the city finance officer a bond or certificate of liability insurance, in the amount of at least five hundred thousand dollars (\$500,000.00), indemnifying the public against damages sustained by reason of the operation of such rides. Such bond or certificate of insurance shall be subject to approval by the city attorney. This section shall apply to all rides described in section 5-76 whether or not a license is required by any other provisions of this chapter.

Sec. 5-79. Circuses, carnivals, and other such shows.

A circus, carnival or show or entertainment of a theatrical troupe given in any room, building, tent or any area other than a licensed public hall or theater must be sponsored by a local organization. The license fee shall be twenty-five dollars (\$25.00) per day.

State law reference—Authority, SDCL § 9-34-13.

Sec. 5-80. License and fee.

No person shall operate for profit any horse drawn carriage upon the streets, alleys and public ways of the city without a license and paying a license fee of twenty- five (\$25.00) dollars.

Sec. 5-81. Operation.

The licensee will provide short distance transportation by means of a one or two-horse team and carriage only upon routes approved by the City.

Sec. 5-82. Indemnification.

It is expressly understood and agreed by and between the licensee and the city that the licensee shall save, hold and keep harmless from all loss sustained by the city on account of any suit, judgment, execution, claim or demand whatsoever resulting from licensee's operation. The licensee shall notify the city within fifteen (15) days after it has been presented with any claim or demand, either by suit or otherwise made against the licensee. The city shall notify the licensee within fifteen (15) days after the presentation of any claim or demand either by suit or otherwise made against the city on account of licensee's operations.

Sec. 5-83. Insurance.

Licensee shall at all times during the term of the license obtain and maintain liability insurance whereby the city is named as an additional insured. Said insurance shall be in the minimum amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury or property damage. The licensee shall provide proof of insurance to the city prior to commencement of operations.

Sec. 5-84. Requirements of licensee.

The licensee shall comply with the following terms and conditions:

- (a) Licensee shall operate its carriage only from Memorial Day through Labor Day inclusive.
- (b) Licensee shall not stand or park its carriage for hire except at locations approved by the city.
- (c) Licensee shall use croup bags on its livestock and shall promptly pick up any solid waste not so contained.
- (d) Licensee shall operate its carriage only during daylight hours.
- (e) Display of any signage upon the carriage or team shall be upon the approval of the Planning and Zoning Administrator.
- (f) Licensee shall comply with all federal, state and local regulations otherwise governing the operation of horse powered conveyances upon public streets and highways.
- (g) Any carriage shall have adequate lights, reflectors and slow moving vehicle signage.

Sec. 5-85. Fireworks Display.

A permit is required from the City of Summerset and signed by the Chief of the fire department which has jurisdiction, for any fireworks display presented by a licensed pyrotechnic professional. Such display shall be for the benefit of the City of Summerset residents, within its proper governmental authority, unless such display area or site would be in violation of state or federal law.

Sec. 5-86. Insurance.

Licensee shall at all times during the term of the license obtain and maintain liability insurance whereby the city is named as an additional insured. Said insurance shall be in the minimum amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury or property damage. The licensee shall provide proof of insurance to the city prior to commencement of operations

Secs. 5-87—5-95. Reserved.

ARTICLE IV. ARBORIST*

Sec. 5-96. License and insurance.

It shall be unlawful for any person to engage in the business or occupation of pruning, spraying, treating, or removing trees within the city without the license issued by the city. Each applicant therefore shall furnish evidence of general liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate coverage.

Secs. 5-97—5-120. Reserved.

ARTICLE V. BUILDING CONTRACTORS†

Sec. 5-121. Definition.

For the purposes of this article, the term "contractor" shall be defined as any person, firm or corporation who is engaged in the act of **construction*, supervision of **construction*, or excavation on any property within the licensing jurisdiction of the City of Summerset. A licensed contractor shall be required on all **construction* other than that which is owned and occupied by permittee as his/her primary residence or is an existing commercial structure under his/her ownership.

**Construction:* For the purposes of this article, the term "construction" shall include, but is not limited to, cement or concrete contracting; masonry contracting; carpenter contracting; excavation contracting; all building trade contracting which includes within limitation to electrical, plumbing, roofing, painting, remodeling, siding, rough framing; all phases of new construction; alterations, additions, repairs and demolition of structures; street, sidewalk and pavement contracting and any items requiring a permit within the licensing jurisdictional limits of the City of Summerset.

Sec. 5-122. License required.

- (a) It shall be unlawful to engage in business in the City as a contractor without first having obtained a license. The following contractors are required to obtain licensing: General, Structural, Electrical, Plumbing, Mechanical, Excavation, Landscape, Fencing, Roofing, Concrete, Windows and Siding Installers, and Water and Sewer Installers. All said afore mentioned contractors shall provide proof of insurance as required in Section 5-128 of Ordinance 5.

(Section 5-122 Amended August 19, 2010 by Ordinance 5.01E September 18, 2010)

(b) License use restricted. No licensed contractor shall allow their name to be used by any other person directly or indirectly, either to obtain a building permit or to perform work outside their personal supervision. A license is not assignable and shall be valid only for the individual/company in whose name it is issued.

Sec. 5-123. Fees.

(a) The annual fee for said contractor's license shall be one hundred dollars (\$100.00). A contractor's license shall be renewed annually and expire the 31st day of December.

(b) Any person who has a valid contractor's license shall not be required to secure an additional license for other building trades with the exception of electricians and plumbers.

(Sec. 5-123 Repealed and Amended November 15, 2012 Ordinance 5.01H effective December 23, 2012)

Sec. 5-124. Reserved.

Sec. 5-125. Subcontractors.

Any person doing business as a subcontractor shall be construed as engaged in the business of construction for which a license is required by this article.

Sec. 5-126. Compliance with regulations.

It shall be the duty of all contractors to comply with all ordinances relating to the construction of buildings or other structures, to the construction of streets or sidewalk pavements, and all laws or ordinances pertaining to regulating the activities engaged in.

Sec. 5-127. Revocation of license.

Any contractor's license may be revoked by the City Commission for repeated violations of any ordinance relating to the construction of buildings, the use of streets, or the replacing of streets, sidewalks or parkways, or any other ordinance relating to the work performed by such contractor. Such revocation may be in addition to any fine imposed for violating this article.

Sec. 5-128. Insurance; bond.

(a) No permit shall be issued for the construction of a building or structure in the city, or for the repair or alteration of any building, structure, street or right-of-way, unless a certificate or other proof is filed showing that the contractor is licensed by the city and carries worker's compensation insurance with limits that comply with SD Workers Compensation Law. Contractor must also carry public liability insurance with single limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate. Contractor shall also provide state excise tax license number.

(b) Before any contractor doing any work for the city on any street or highway or on any building or premises owned by the city commences work, he shall file with the city zoning administrator a certificate or other proof showing that he carries workmen's compensation and public liability insurance as required by ordinance and the terms of his contract.

Secs. 5-129—5-145. Reserved.

ARTICLE VI. ELECTRICIAN OR PLUMBER*

State law reference—Electrician's permit and registration, SDCL Ch. 36-16.

Sec. 5-146. License required.

It shall be unlawful for any person to engage in business as an electrician or electrical contractor within the jurisdiction of the City of Summerset unless such person is licensed under state law. The electrician or plumber shall furnish to the City of Summerset satisfactory evidence of his/ her license with the State of South Dakota before a contractor's license can be issued.

State law references—Electrician's permit and registration, SDCL Ch. 36-16; National Standard's Plumbing Code, Sec. 36-25-17.

Secs. 5-147—5-170. Reserved.

ARTICLE VII. PAWNBROKERS*

***State law references**—Authority to license, tax, regulate pawnbrokers, SDCL § 9-34-8; pawnbrokers, SDCL § 37-16-1 et seq.

Sec. 5-171. Definition.

When used in this article, pawnbroker shall mean any person who:

- (1) Engages in the business of lending money on the deposit or pledge of personal property, other than those in action, securities or evidence of indebtedness.
- (2) Purchases personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price.

Sec. 5-172. License required, fee, term.

(a) It shall be unlawful for any person to engage in the business of pawnbroker without first obtaining a license from the finance officer. Any person applying for a pawnbroker license must before their application will be considered come to the City of Summerset proper police authority and furnish adequate identification. No license under this article shall be issued to any person who has been convicted of a felony. No license under this article shall be issued to any corporation of which one (1) or more officers or directors have been convicted of a felony.

(b) The annual license fee for pawnbrokers shall be fifty dollars (\$50.00) payable in advance by January 1 of each year.

Sec. 5-173. Suspension, revocation of license.

(a) A license issued to a licensee under this article, who shall have violated the provisions of this article may be suspended for a prescribed period not to exceed sixty (60) days, in the event of a failure on the part of the licensee to comply with the provisions of this article after ten (10) days written notice and a public hearing.

(b) A license issued to a licensee under this section, who shall violate the provisions of this section, may be revoked by the City Commission after ten (10) days' written notice and a public hearing.

Sec. 5-174. Records required.

(a) Every pawnbroker shall keep books or records of pawn tickets in a manner satisfactory to the City of Summerset proper police authority where he/she shall accurately and intelligibly enter, in ink, in the English language, at the time of purchasing or receiving any personal property, and after requiring and observing identification from the person seeking to pawn the property, record the following information:

- (1) The name of the person from whom the property is purchased or received, his place of residence, and his date of birth.
- (2) Any serial numbers, style model number, engraved initials or other identifying marks.
- (3) The date and the time of transaction.
- (4) The amount necessary for redemption.
- (5) The date when the article is to be redeemed.
- (6) Any mortgage or bill of sale taken, or receipt of pawn ticket given.
- (7) Date and name of person that purchased the article that was pawned.
- (8) The date of disposition or redemption from pawn of the article or any part or portion thereof. The disposition report shall be located in the same book and at the same place where the receiving records of the article are located.

(b) Any person who fails to keep such records or fails to make the required entries therein, or shall intentionally or knowingly make any false or unintelligible entry, or any entry which he has reason to believe is untrue, or who shall fail to make the inquiries necessary to enable him to make such entries or any of them, or who shall fail to produce his records when requested by a City of Summerset proper police authority during reasonable business hours, or who shall destroy or willfully permit such records to be destroyed or lost shall be guilty of a misdemeanor.

(c) The records required by this section shall be maintained for one (1) year after the date of purchase or receipt and shall be made available for inspection by the City of Summerset proper police authority during reasonable business hours.

Sec. 5-175. Reports to the City of Summerset Proper Police Authority.

(a) It shall be the duty of the City of Summerset proper police authority to periodically contact the licensed premises under this article to inspect or obtain copies of records required to be kept, setting forth a description of the person by whom they were left in pledge or sold.

(b) The City of Summerset shall have the power and authority to require such reports to be made in a manner and form, subject to its approval.

(c) When such item is out of pawn and sold to a different person:

- (1) The name of the person from whom the property was purchased and his residence, his date of birth and his social security number.
- (2) Date and time of transaction.
- (3) A detailed description of the item which will come off of the pawn ticket.

Sec. 5-176. Holding period.

Any pawnbroker may effect the purchase of secondhand personal property for resale purposes under the term of this article by acquiring any pawn ticket of his own issued by transfer. Any person licensed as a pawnbroker, who shall purchase any new or secondhand goods of any individual not engaged in trade, shall keep the same for inspection for ten (10) days from the time of the transfer, except on written release from the City of Summerset proper police authority, the mentioned property shall be held during this period on the

licensed premises or some other secure location within the city and shall not be disposed of or altered from the form which it was received during this period.

Secs. 5-177—5-195. Reserved.

ARTICLE VIII. PEDDLERS*

State law references—Peddlers generally, SDCL Ch. 37-13; authority to license, tax, regulate peddlers, hawkers, etc., SDCL §§ 9-34-7, 9-34-8.

Sec. 5-196. Definition.

The word "peddler" as used in this article shall mean any person, whether a resident of this city or not, traveling from place to place, from house to house, or from street to street, by foot or by any vehicle for the purpose of selling goods, wares, merchandise or services, other than agricultural products produced or processed in this state; and shall include the terms "solicitor," "transient or itinerant merchant or vendor," or "transient or itinerant photographer."

State law reference—Definition of peddler, etc., SDCL § 37-13-1.

Sec. 5-197. Exceptions.

The provisions of this article shall not apply to solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity in the city.

State law reference—Additional exceptions, SDCL § 37-13-2.

Sec.5-198. Entrance to premises restricted.

It shall be unlawful for any peddler to enter upon a private premises when the same are posed with a sign stating "No Peddlers Allowed," "No Solicitors Allowed," or the like.

Sec. 5-199. Refusing to leave.

Any peddler who enters upon premises owned or leased by another and willfully refuses to leave the premises having been notified by the owner or possessor of the premises, or his agent to leave the same, shall be deemed guilty of a misdemeanor.

Sec. 5-200. Misrepresentation.

It shall be unlawful for any peddler to make false or fraudulent statements concerning the quality or nature of goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Sec. 5-201. Hours of operation.

It shall be unlawful for any peddler to engage in the business of peddling between the hours of one-half hour before sunset and 9:00 a.m. the following morning, or at any time on Sundays, except by specific appointment with an invitation from the prospective customer.

State law references—Authority to license, tax, regulate hawkers, peddlers, pawnbrokers, transient merchants, SDCL §§ 9-34-7, 9-34-8; peddlers and solicitors, SDCL § 37-13-1 et seq.

Sec. 5-202. Permit required.

It shall be unlawful for any person to engage in business as a peddler within the city without first obtaining a permit and paying the fee in section 5-204 et seq.

Sec. 5-203. Information required.

The applicant for a permit under this article shall state:

- (1) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery;
- (2) The period of time the applicant wishes to engage in business within the city;
- (3) The local and permanent address of applicant;
- (4) The local and permanent address and the name of the person, if any, that the applicant represents;
- (5) The kind of goods, wares, merchandise or services the applicant wishes to engage in such business within the city;
- (6) The last five (5) cities or towns wherein the applicant has worked before coming to this city;
- (7) Such other relevant information as the city may require for the investigation of the applicant.

Sec. 5-204. Permit fee.

Any person engaged in the business of peddling as defined in section 5-196, shall pay a permit fee based upon the duration he shall desire to engage in business within the city, as follows:

- (1) Per day \$ 25.00
- (2) Per week 75.00
- (3) Per month 200.00

Sec. 5-205. Driver's license.

At the time of filing his application, the applicant for a permit required by this article shall present his driver's license or other picture identification.

Sec. 5-206. False information.

It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this article.

Sec. 5-207. Photographs.

At the time of making application for a permit required by this article, the applicant shall submit to photographing by the proper authority.

Sec. 5-208. Issuance.

No permit shall be issued by the City of Summerset under the provisions of this article until the applicant shall have complied with all the provisions and requirements of this chapter.

Sec. 5-209. Issuance restricted.

No peddler's permit shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling within the city shall be required to have a permit whether acting for himself or as an agent or representative of another.

Sec. 5-210. Contents of permit.

Each permit issued under the provisions of this article shall be signed by the City of Summerset, shall be dated as of the date of its issuance, and shall state the duration or term of such permit on the face thereof. Any permit not dated and signed as herein provided, or which was issued in violation of this section, shall be void.

Sec. 5-211. Display.

Every peddler having a permit issued under the provisions of this article and doing business within the city shall display his permit upon the request of any person; and failure so to do shall be deemed a misdemeanor.

Sec. 5-212. Duration.

Every permit issued under the provisions of this article shall be valid for the period of time stated therein, but in no event shall any such permit be issued for a period of time in excess of twelve (12) months.

Sec. 5-213. Revocation.

Any permit issued under the provisions of this article may be revoked for the violation by the permittees of any provision of this Code, state law or city ordinance. Upon such revocation such permit shall immediately be surrendered to the City of Summerset and failure to do so shall be a misdemeanor.

Sec. 5-214. Sales from vehicles prohibited; exceptions.

No person shall sell or offer for sale any goods or merchandise from a cart, wagon, automobile, truck or other vehicle in the streets, sidewalks or thoroughfares of the City. This section does not apply to the delivery of farm and garden products where the order for the same has been placed in advance, nor does it apply to drayage or the delivery of goods sold in the regular course of an established business. Nothing in this paragraph shall prohibit the city from entering into a contract for the sale of ice cream and sundries for immediate consumption on the terms and conditions agreed to by the City Commission.

Sec. 5-215. Sales in city parks prohibited; exception.

It shall be unlawful for any peddler or other person to sell or offer to sell to any person within a municipal park of the City any goods, wares, merchandise, books, pictures, novelties, souvenirs or trinkets or any other article of commerce or trade, including goods of his own production or manufacture, except for designated City events as authorized in section 5-214.

Secs. 5-216—5-230. Reserved.

**ARTICLE IX
LICENSING OF TRANSIENT PROFESSIONAL PEOPLE AND MERCHANTS**

Section 5-231 Definitions

A) For the purpose of this Section, a "VENDOR" is any person, firm, corporation, partnership or association not having an operating place of business within the City who, in conjunction with an event of more than three (3) or

four (4) consecutive days, engages in temporary or transient business in the City selling goods, wares, merchandise or services, or a permanent business person, firm or corporation which is located within the City limits who, for more than three (3) or four (4) consecutive days, is selling such goods, wares, merchandise or services, away from his/her or its usual operating place of business and who, for the purpose of carrying on such business, hires, leases, or occupies any room, building, structure, or space for the exhibition or sale of such goods, wares, merchandise, or services. The person, firm or corporation so engaged shall not be relieved from the provisions of this Section by reason of association with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer.

B) YEAR: A twelve (12) month period.

C) BUSINESS: The activity of buying & selling.

D) OPERATION: In action, functioning.

E) EVENT: An organized occurrence or happening where the City provides extraordinary services, including but not limited to law enforcement or traffic control.

Section 5-232 Vendor License Required

Any firm, person, or corporation which intends to operate a temporary business within the corporate limits of the City of Summerset in conjunction with an event of more than three (3) or four (4) consecutive days shall be required to purchase a vendor license for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods. The person so engaged shall not be relieved from the provisions of this Section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business.

The vendor license must be posted in each individual stand during operation.

The City retains the right to revoke or extend a license on a case by case basis.

Exemptions:

A) Sales where the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of charitable, non-profit status as declared by the IRS (i.e. 501(c) (3) documentation) must be presented during application.

Section 5-233 Application

To obtain a license, a vendor shall file, in the office of the City Finance Officer, a verified application stating his or her name, and residence,

description and identification of the place in which he or she proposes to do business, dates of operation, name, address and phone number of property owner where business will take place and, the description of the goods he or she intends to handle.

South Dakota State sales tax number shall be presented at time of application.

South Dakota State Department of Health license, when applicable, shall be presented at the time of application.

Section 5-234 Fee, Issuance, and Duration of License to include Refunds

A temporary business shall pay a vendor license fee of Five Hundred Dollars (\$500.00) for each twelve (12) consecutive day period, or portion there of, in any calendar year. On filing the application and payment of the fee described in this section, the Finance Officer shall issue a license to the applicant to do business at a place described in the application and for the time for which the license fee has been paid.

The City of Summerset is hereby authorized to refund up to 50% of a vendor License fee, provided that notice is given to the City Finance Office ten (10) days prior to the beginning of the event or requested use period.

Section 5-235 TEMPORARY STRUCTURE PERMIT REQUIRED

Definitions:

Flame Retardant or Flame Resistant Tarps: For the purpose of this Ordinance, flame retardant or flame resistant tarps shall have a physical marking or tag attached to the tarp which shows that the tarp has been tested and declared flame resistant and/or flame retardant. Tarps not bearing this physical insignia shall not be accepted.

Permanent Structure: Established for 365 days a year and complying with the uniform building code for the occupancy, which is utilizing the structure.

Permanent Barrier: A wall or fence which has been constructed as a permanent attachment to property and is a minimum 5'0" in height and has openings which are no longer than 4" in either direction.

Permanent Business: A place of business which is in physical operation and open to the public at one stationary location for a period of not less than 300 days a year and has a permanent State Sales Tax License for said location.

Seasonal Business: A place of business which is in physical operation and open to the public at one location for a period not exceeding 300 days but more than 30 days and has a permanent State Sales Tax License for said location.

Temporary Business: A place of business which is in physical operation and open to the public at one or more location for a period not exceeding 30 days. (A merchant's license will be required for this classification of business.)

Temporary Structure: For the purpose of this ordinance, a temporary structure shall be known as: any vending stand, reviewing stand, canopy, tent, awning, fence, or other miscellaneous structure which is intended for use on a temporary basis.

1. Temporary structures, such as vending stands, reviewing stands, canopies, tents, awnings, fences and miscellaneous structures may be erected in areas

zoned Highway Service and General Commercial, provided that a special temporary structure permit is obtained for each stand. Said permit shall be issued by the Building Official of his/her designee for a period to not exceed (30) days per location. This thirty (30) day time frame shall include set up and tear down time.

a. For the purpose of this section, **“location”** shall be the site on which the temporary structure is first constructed or placed. A temporary structure may not be disassembled and reconstructed or moved to a different location on the same property or parcel of land, or an adjacent parcel of land, after an initial permit is issued for the structure.

2. The structural frame of all temporary structures shall be made of steel, aluminum, PVC or wood. If constructed of wood, the smallest wood member shall not be less than 2” by 4” in width.

a. Wood used for the interior and exterior skins of a temporary structure may be as follows: ½” plywood, ½” chipboard, or particleboard.

b. Wood, as defined above, may also be used for shelving temporary structure.

c. Tarps, which are utilized on temporary structures, which are occupied by temporary merchants, shall be flame retardant or flame resistant as defined in this ordinance. All tarps not complying with this ordinance shall be removed.

3. All temporary structures shall be removed upon expiration of the time limit stated on the permit.

4. If the structure is not removed by the expiration date stated on the permit, the City shall remove the structure without further notice to the owner and shall charge the cost of the removal to the property owner. At the time the permit is issued, the Building Official or his designee shall provide the owner with a copy of this ordinance. The owner or occupant of the stand shall sign the permit, which will serve as an acceptance of service, which will constitute sufficient notice that the structure is not to be placed for more than 30 days. The City may bring action in magistrate or circuit court for the recovery of costs incurred for the removal of said structure or structures.

5. Temporary structures or appendages thereof shall not be placed closer than 5’0” to any public road or alley.

6. The permit hereinbefore described may be suspended or revoked if at any time the structure or its occupants are in violation of the Ordinances of the City of Summerset or the laws of the State of South Dakota.

7. Temporary structures may not be used for housing permanent or seasonal businesses.

8. A fine for each day of violation may be imposed as permitted for a Class II misdemeanor with a maximum fine of \$200.00 and a maximum jail sentence of thirty (30) days in jail or both such fine and imprisonment.

Section 5-236 UNLAWFUL TO OBSTRUCT STREETS, SIDEWALKS, ETC.

A. It shall be unlawful for any person, firm or corporation to encumber or obstruct any sidewalk, street, public way, public alley, or public ground in the City of Summerset.

B. It shall be unlawful for any person, firm or corporation to leave standing or store any vehicle, structure or object in any public right of way, street, sidewalk, or on public ground which obstructs the use of the same for travel and passage.

C. It shall be unlawful for any person, firm or corporation to permit merchandise to be kept, stored or displayed, whether for sale or exchange, upon any public right of way, street, sidewalk or public ground unless otherwise authorized by the Summerset City Council.

Section 5-237 PROHIBITED SIGNS

The following signs are prohibited within the limits of the City, and any person who erects a prohibited sign may be found guilty of a class two misdemeanor and be subject to a fine of two hundred dollars (\$200.00) and/or incarceration in the county jail for a maximum of thirty days.

A. Signs attached or applied to trees, utility poles, vending machines, boxes, benches and other unapproved supporting structures;

B. Signs encroaching on a public-right-away or extending beyond a property line except as allowed by this Ordinance;

C. Illuminated signs containing flashing, intermitting or moving light that interfere with the public's enjoyment of property, the traveled way of streets or obscure traffic signs or devices.

D. Signs that constitute pedestrian or vehicular traffic hazards or which could be confused with any governmental regulatory, directional or warning sign;

E. Signs attached to any public property, including but not limited to the following: power poles, street light poles, traffic signs, fire hydrants or any public building.

F. Signs that interfere with traffic signs or signals;

G. Signs that have vulgar pictures or wording;

H. Signs that cause a visibility problem or interfere with traffic in any way.

(Article IX Repealed and Amended June 2008 by Ordinance 5.01C effective August 16, 2008)

ARTICLE X. SOLID WASTE COLLECTORS AND HAULERS*

*Cross references—Solid waste, Ch. 13; utilities, Ch. 18.

Sec. 5-251. Issuance of license; fee.

No person shall use the streets or alleys of the city for the collection or removal of any garbage for hire, without first having obtained a license to perform such services from the City Commission under this article and having paid a license fee of two hundred fifty dollars (\$250.00) per year. Each license issued under this article shall be renewed on or before December 31st of each year.

Sec. 5-252. General vehicle requirements.

(a) Licensed collectors of garbage shall provide themselves with suitable vehicles so as to prevent the escape of the contents thereof.

(b) It is prohibited for any licensed garbage collector to collect or haul wet garbage or material subject to rot, decay or putrefaction, or material or liquids emitting strong or noxious odors, in any type vehicles except in an all metal, packer type-vehicle which has been approved by the city's health officer or supervisor of sanitation.

(c) It is prohibited for any licensed commercial garbage hauler to operate a garbage collection vehicle except in conformity with this article and any other applicable ordinances.

Sec. 5-253. Painting and identification of vehicles.

Garbage hauling vehicles used by haulers licensed under this article shall be painted as determined by the public works administrator and shall have displayed thereon sufficient identification that distinguish them as commercial garbage collectors.

Sec. 5-254. Washing and sanitizing vehicles.

All vehicles used for the collection and hauling of garbage by licensed garbage collectors shall be washed and sanitized and records of the same shall be available to the public works administrator.

Sec. 5-255. Requirements for premises where vehicles are parked or serviced.

The premises on which commercial garbage vehicles licensed under this article are parked or serviced shall be kept free of rubble, trash, debris, or garbage.

Sec. 5-256. Revocation of license.

The City Commission may revoke, suspend, refuse to issue or transfer any license under this article to any licensee or applicant who fails to comply with the requirements of this article or engages in unfair business practices. The City Commission shall give fifteen (15) days' written notice prior to hearing.

Section 5-257. Contract authorized.

The municipality shall have the power to collect and dispose of and regulate the manner of handling garbage and other waste material, and to fix and collect charges for such services, and to contract with one or more persons or legal entities for the collection and hauling of garbage and other waste material within and from the municipality. In addition to or in lieu of licensing persons, firms, or corporations to collect and haul garbage, pursuant to Sec. 5-251, upon the adoption by the City of Summerset Board of Commissioners of a resolution in proper form, the Commission may enter into a contract for the collecting and hauling of garbage. Whether any such contract is exclusive, the terms of such contract, and whether the contract

pertains to the collection of garbage from residential dwellings, commercial locations, or a combination of both, shall be determined by resolution.

Section 5-258. Rates by Resolution; Collection.

If the municipality enters into a contract for the collection and hauling of garbage or other solid waste material, rates shall be established and billed as set forth by resolution. The City Finance officer shall collect all delinquent fees in any manner or procedure authorized by South Dakota law.

(Section 5-257 and 5-258 Amended January 15, 2015 Ordinance 5.01I effective February 11, 2015)

ARTICLE XI. LICENSING OWNERS OF COMMERCIAL ZONED PRIVATE PROPERTY WHO ALLOW VENDORS ON THEIR PROPERTY*

Sec. 5-270. Licensing required.

All owners of commercially zoned private property who allow vendors to sell goods on their property shall be required to first obtain a license. The fee for a commercially zoned private property owner license shall be one hundred dollars (\$100.00) annually. Each license issued under this article shall be renewed on or before December 31st of each year.

Sec. 5-271. Definitions.

[The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Private owner license means a permit issued by the City of Summerset for commercial property owners inside the corporate limits. Each license issued under this article shall be renewed on or before December 31st of each year.

Vendor means a person, firm, corporation, partnership, or association or agent thereof, who sells retail goods outside the confines of a permanent structure on another's commercially zoned private property, including vendors located on any convention center parking lot.

Vendor License means a permit issued by the Community Development Specialist for vendors operating on licensed commercially zoned private property, including vendors located on any convention center parking lot

Sec. 5-274. Revocation of license.

The license may be revoked by the City Commission for reasonable cause.

Sec. 5-278. Temporary food service structures.

All temporary food service structures shall have asphalt, concrete, wood or a similar material for flooring and shall display inspection certificate from the Meade County Environmental Health Department.

Sec. 5-279. Location of temporary merchants.

Temporary shall only be located on private property zoned C-1, C-2, and CC. Temporary merchant's licenses shall not be issued on public property, except for designated community events. If a designated community event held exclusively on public property, temporary merchant fees may be waived for merchants participating in community events. Any designated or undesignated event that proposes to restrict, in any manner, public access to public property shall not be approved and temporary merchants permits shall not be issued.

Exception: Upon approval of the City Commission, vehicular access to public streets may be restricted to accommodate the needs of a designated community event.

Sec. 5-281. Setbacks.

All temporary structures that follow existing zoning ordinances regarding setbacks in C-1, C-2, and CC zoning and such setback area may be used for off-street parking.

Sec. 5-282. Issuing authority.

All permits for temporary structures shall be issued by the City Commission.

Sec. 5-283. Site and sign plan.

The City of Summerset may require the applicant to file a site and/or sign plan drawn to scale showing the location and size of all structures and signs upon the lot, including the location of off-street parking.

Sec. 5-284. Compliance with codes.

Temporary structures need not apply with the Uniform Building Code, Uniform Fire Code, electrical or plumbing codes as adopted by the City Commission.

ARTICLE XII. ADULT ORIENTED BUSINESSES

Sec. 5-300. Definitions.

(a) *Adult arcade* means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five and fewer persons per machine at anyone time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) *Adult bookstore, adult novelty store or adult video store* means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore, adult novelty store, or adult video store". Such other business

purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore, adult novelty store, or adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." A principal business purpose is defined as a substantial or significant portion of its stock or trade for sale or rental, and characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(c) *Adult cabaret* means a nightclub, bar, juice bar, restaurant, bottle club or similar commercial establishment whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

(d) *Adult motel* means a hotel, motel or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(e) *Adult motion picture theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

(f) *Adult theater* means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by an emphasis on the exposure of "specified anatomical areas" or by "specified sexual activities."

(g) *Employee* means a person who performs any service on the premises of an adult oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(h) *Escort* means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(i) *Escort agency* means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

(j) *Establishment* means and includes any of the following:

(1) The opening or commencement of any adult oriented business as a new business;

(2) The conversion of an existing business, whether or not an adult oriented business, to any adult oriented business;

(3) The additions of any adult oriented business to any other existing adult oriented business; or

(4) The relocation of any adult oriented business.

(k) *Licensee* means a person in whose name a license to operate an adult oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

(l) *Semi-nude model studio* means any place where a person who appears semi-nude, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of South Dakota or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

(2) Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(3) Where no more than one nude or semi-nude model is on the premises at any one time.

(m) *Nudity or a state of nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the covered male genitals in a discernibly turgid state.

(n) *Person* means an individual, proprietorship, partnership, corporation, association or other legal entity.

(o) *Regularly featured or regularly shown* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

(p) *Semi-nude or in a semi-nude condition* means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed in whole or in part.

(q) *Adult oriented business* means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or nude model studio.

(r) *Specified anatomical areas* means:

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(s) *Specified criminal activity* means any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; unlawful gambling; or distribution of a controlled substance;

(2) For which:

a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(t) *Specified sexual activities* means any of the following:

(1) The fondling or other erotic touching of another's human genitals, pubic region, buttocks, anus or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or

(3) Excretory functions as part of or in connection with any of the activities set forth in paragraphs (a) and (b) above.

(u) *Substantial enlargement* of an adult oriented business means the increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this chapter takes effect.

(v) *Transfer of ownership or control* of an adult oriented business means and includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec. 5-301. Classification.

Adult oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores, adult novelty stores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies; and

(8) Nude model studios.

Sec. 5-302. License required.

(a) It is unlawful:

(1) For any person to own, manage or operate an adult oriented business without a valid adult oriented business license issued by the city pursuant to this article.

(2) For any person to obtain employment as an escort, or operate as an escort, without having secured an adult oriented business escort license.

(3) For any person who owns, manages, or operates an adult oriented business to employ an escort to work for the adult oriented business who is not licensed as an adult oriented business escort.

(b) An application for a license must be made on a form provided by the city.

(c) All applicants must be qualified according to the provisions of this article. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this article.

(d) If a person/who wishes to operate an adult oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate an adult oriented business is other than an individual, each individual who has any financial interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

Sec. 5-303. Issuance of license.

(a) Upon the filing of said application for an adult oriented business employee license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (1) The applicant has falsely answered a question or request for information on the application form;
- (2) The applicant is under the age of twenty-one (21) years;
- (3) The applicant has been convicted of a "specified criminal activity" as defined in this article;
- (4) The adult oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation or prohibited by a particular provision of this article; or
- (5) The applicant has had an adult oriented business employee license revoked by the city within two (2) years of the date of the current application. If the adult oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in section 5-308.

(b) An application shall be considered complete when it contains the information required in subsections (a)(1)—(5) of this section.

(c) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this article or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in section 5-304.

(d) Within thirty (30) days after receipt of a completed adult oriented business application, the city shall approve the issuance of a license to the applicant or shall issue a letter of intent to deny a license to the applicant. The city shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (1) An applicant is under twenty-one (21) years of age.
 - (2) An applicant is overdue in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon him/her in relation to any adult oriented business.
 - (3) An applicant has been denied a license by the city to operate an adult oriented business within the preceding twelve (12) months or whose license to operate an adult oriented business has been revoked within the preceding twelve (12) months.
 - (4) An applicant has been convicted of a specified criminal activity defined in this article.
 - (5) The license fee required by this article has not been paid.
 - (6) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.
- (e) All business licenses shall be posted in a conspicuous place at or near the entrance to the adult oriented business so that they may be easily read at any time.

Sec. 5-304. Fees.

(a) Every application for an adult oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollars (\$500.00) non-refundable application and investigation fee.

(b) In addition to the application and investigation fee required above, every adult oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee of three hundred dollars (\$300.00) within thirty (30) days of license issuance or renewal.

(c) Every application for an adult oriented business escort license (whether for a new license or renewal of an existing license) shall be accompanied by a twenty-five dollar (\$25.00) non-refundable license fee.

(d) All employees of an adult oriented business shall pay an annual non-refundable license fee of fifty dollars (\$50.00).

(e) All license applications and fees shall be submitted to the city finance officer.

Sec. 5-305. Inspection.

Adult oriented businesses and adult oriented business employees shall permit officers or agents of the city to inspect, from time to time on an occasional basis, the portions of the adult oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the adult oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

Sec. 5-306. Expiration of license.

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 5-303. Application for renewal shall be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

(b) When the city denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

Sec. 5-307. Suspension.

(a) The city shall issue a letter of intent to suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article;
- (2) Refused to allow an inspection of the adult oriented business premises as authorized by this article.

(b) Suspension of the license shall be effective fourteen (14) days after the letter of intent to suspend is sent.

Sec. 5-308. Revocation.

(a) The city shall issue a letter of intent to revoke a license if a cause of suspension in section 5-307 occurs and the license has been suspended within the preceding twelve (12) months. Revocation of the license shall be effective fourteen (14) days after the letter of intent to revoke is sent

(b) The city shall issue a letter of intent to revoke a license if it determines that:

- (1) A licensee gave false or misleading information in the material submitted during the application process;
- (2) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises;
- (3) A licensee has knowingly allowed prostitution on the premises;
- (4) A licensee knowingly operated the adult oriented business during a period of time when the licensee's license was suspended;
- (5) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensed premises; or
- (6) A licensee is delinquent in payment to the city, county, or state for any taxes or fees past due.
- (7) A licensee has been convicted of specified criminal activity as defined in this article.

(c) When the city revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued an adult oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(d) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

Sec. 5-309. Transfer of license.

A licensee shall not transfer his/her license to another, nor shall a licensee operate an adult oriented business under the authority of a license at any place other than the address designated in the application.

Sec. 5-310. Additional regulations for adult motels.

(a) Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(b) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an adult oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Sec. 5-311. Regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in adult arcades, adult bookstores, adult novelty stores or adult video stores.

(a) A person who operates or causes to be operated an adult arcade, adult bookstore, adult novelty store or adult video store which exhibits on the premises a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for an adult oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally

prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.

(4) It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station or able to see electronic monitoring stations.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station or by electronic monitoring.

(6) It shall be the duty of the licensee to ensure that the view area specified in subsection (a)(5) of this section remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) of this section.

(7) No viewing room may be occupied by more than one (1) person at any time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot-candles as measured at the floor level.

(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.

(b) A person having a duty under subsections (a)(1) through (a)(14) of this section commits a misdemeanor if he knowingly fails to fulfill that duty.

Sec. 5-312. Additional regulations for escort agencies.

(a) An escort agency shall not employ any person under the age of twenty-one (21) years.

(b) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of twenty-one (21).

Sec. 5-313. Additional regulations for nude model studios.

- (a) A nude model studio shall not employ any person under the age of twenty-one (21) years.
- (b) A person under the age of twenty-one (21) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under twenty-one (21) years was in a restroom not open to public view or visible to any other person.
- (c) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (d) A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Sec. 5-314. Additional regulations concerning public nudity.

- (a) It shall be unlawful for a person who knowingly and intentionally, in an adult oriented business, appears in a state of nudity or depicts specified sexual activities.
- (b) It shall be unlawful for any employee, while semi-nude in an adult oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in an adult oriented business. Gratuities may be provided by any patron or customer to designated employees who are not semi-nude or to any designated containers used solely as a collection device to receive gratuities.
- (c) It shall be unlawful for an employee, while semi-nude, to intentionally touch, fondle or caress a customer or the clothing of a customer.
- (d) It shall be unlawful for a patron or customer of an adult oriented business to knowingly and intentionally touch any semi-nude employee or the stage of the adult oriented business.

Sec. 5-315. Prohibition against children in an adult oriented business.

A person commits a misdemeanor if the person allows a person under the age of twenty-one (21) years on the premises of an adult oriented business.

Sec. 5-316. Hours of operation.

No adult oriented business, except for an adult motel, may remain open at any time between the hours of 2:00 a.m. and 8:00 a.m. on each day of the week.

Sec. 5-317. Scienter required to prove violation or business licensee liability.

Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation shall be imputed to the adult oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the operation of the business premises, knowingly allowed such act to occur on the premises.

Sec. 5-318. Injunction.

A person who operates or causes to be operated an adult oriented business without a valid license is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a maximum fine of two hundred dollars (\$200.00) and/or thirty (30) days imprisonment. Each day an adult oriented business so operates is a separate offense or violation.

Dated this _____ day of _____, 2007.

ATTEST:

CITY OF SUMMERSET

Rebecca J. Phillips
Finance Officer

Brad Shelly
Mayor

(SEAL)

Vote: Butler: Aye
Shelly: Aye
Wagner: Aye

First Reading: June 7, 2007
Second Reading: Sept 7, 2007
Publication: