

# CITY OF SUMMERSET

## ORDINANCE 25

### ADULT ORIENTED BUSINESSES

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### **25.1. Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. **ADULT ARCADE.** 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 5 and fewer persons per machine at any 1 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. 1. **ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE.** A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any 1 or more of the following:

a. 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

b. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

2. 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.

3. 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.** 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.** 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 10 hours; or

3. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

E. **ADULT MOTION PICTURE THEATER.** 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.** 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.** 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 the 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.** 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.** 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.** 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.** 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;

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

3. Where no more than 1 nude or semi-nude model is on the premises at any 1 time.

M. **NUDITY** or a **STATE OF NUDITY**. 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**. An individual, proprietorship, partnership, corporation, association or other legal entity.

O. **REGULARLY FEATURED** or **REGULARLY SHOWN**. 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**. 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**. 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**.

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**. 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 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 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 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 2 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 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.** 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 subsections A. and B. of this section.

U. **SUBSTANTIAL ENLARGEMENT.** 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.

## **25.2. Classification.**

Adult oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies; and
- H. Nude model studios.

## **25.3. 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 City of Summerset pursuant to this chapter;

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 City of Summerset.

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

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.

#### **25.4. Issuance of license.**

A. Upon the filing of the application for an adult oriented business employee license, City of Summerset shall issue a temporary license to the 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 30 days from the date the completed application is filed. After the investigation, City of Summerset shall issue a license, unless it is determined by a preponderance of the evidence that 1 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 18 years;

3. The applicant has been convicted of a specified criminal activity as defined in this chapter;



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 chapter; or

5. The applicant has had an adult oriented business employee license revoked by City of Summerset within 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 § 25.7.

6. An application shall be considered complete when it contains the information required in subsections A.1. through A.5. of this section.

B. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by City of Summerset that the applicant has not been convicted of any specified criminal activity as defined in this ordinance 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 § 25.7.

C. Within 30 days after receipt of a completed adult oriented business application, City of Summerset shall approve the issuance of a license to the applicant or shall issue a letter of intent to deny a license to the applicant. City of Summerset shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that 1 or more of the following findings is true:

1. An applicant is under 18 years of age;

2. An applicant is overdue in payment to City of Summerset of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to any adult oriented business;

3. An applicant has been denied a license by City of Summerset to operate an adult oriented business within the preceding 12 months or whose license to operate an adult oriented business has been revoked within the preceding 12 months;

4. An applicant has been convicted of a specified criminal activity defined in this chapter;

5. The license fee required by this chapter has not been paid; and

6. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

D. 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.

### **25.5. 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 \$200 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 City of Summerset an annual non-refundable license fee of \$100 within 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 \$25 nonrefundable license fee.

D. All license applications and fees shall be submitted to City of Summerset Finance Officer.

### **25.6. Inspection.**

Adult oriented businesses and adult oriented business employees shall permit officers or agents of City of Summerset 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 chapter, during those times when the adult oriented business is occupied by patrons or is open for business. A licensee knows 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 chapter, but not to authorize a harassing or excessive pattern of inspections.

### **25.7. Expiration of license.**

A. Each license shall expire 1 year from the date of issuance and may be renewed only by making application as provided in § 5.70.040. Application for renewal shall be made at least 90 days before the expiration date, and when made less than 90 days before the expiration date, the expiration of the license will not be affected.

B. When City of Summerset denies renewal of a license, the applicant shall not be issued a license for 1 year from the date of denial. If, subsequent to denial, City of Summerset 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 90 days have elapsed since the date denial became final.

### **25.8. Suspension.**

A. City of Summerset shall issue a letter of intent to suspend a license for a period not to exceed 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 chapter; and
2. Refused to allow an inspection of the adult oriented business premises as authorized by this chapter.

B. Suspension of the license shall be effective 14 days after the letter of intent to suspend is sent.

### **25.9. Revocation.**

A. City of Summerset shall issue a letter of intent to revoke a license if a cause of suspension in § 25.8. occurs, and the license has been suspended within the preceding 12 months. Revocation of the license shall be effective 14 days after the letter of intent to revoke is sent.

B. City of Summerset 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;
6. A licensee is delinquent in payment to City of Summerset, county or state for any taxes or fees past due; and
7. A licensee has been convicted of specified criminal activity as defined in this chapter.

C. When City of Summerset revokes a license, the revocation shall continue for 1 year, and the licensee shall not be issued an adult oriented business license for 1 year from the date the revocation became effective. If, subsequent to revocation, City of Summerset finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 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 the administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

#### **25.10. Transfer of license.**

A licensee shall not transfer his or 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.

### **25.11. 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 2 or more times in a period of time that is less than 10 hours creates a reputable presumption that the establishment is an adult motel as that term is defined in this chapter.

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 or she rents or sub rents a sleeping room to a person and, within 10 hours from the time the room is rented, he or she rents or sub rents the same sleeping room again.

C. For purposes of subsection B. of this section, the terms **RENT** or **SUBRENT** mean the act of permitting a room to be occupied for any form of consideration.

### **25.12. 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 1 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 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 6 inches. City of Summerset 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 City of Summerset.
4. It is the duty of the licensee of the premises to ensure that at least 1 licensed 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 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 1 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 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 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 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 or she knowingly fails to fulfill that duty.

#### **25.13. Additional regulations for escort agencies.**

A. An escort agency shall not employ any person under the age of 18 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 18 years.

#### **25.14. Additional regulations for nude model studios.**

A. A nude model studio shall not employ any person under the age of 18 years.

B. A person under the age of 18 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 18 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 opens to the public.

#### **25.15. 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 the 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.

#### **25.16. Prohibition against children in an adult oriented business.**

A person commits a misdemeanor if the person allows a person under the age of 18 years on the premises of an adult oriented business.

#### **25.17. 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.

**25.18. Scierter required to prove violation or business licensee liability.**

Notwithstanding anything to the contrary, for the purposes of this chapter, 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 the act to occur on the premises.

**25.19. 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. The violations shall be punishable by a maximum fine of \$200 and/or 30-days imprisonment. Each day an adult oriented business so operates is a separate offense or violation.

Dated this 7<sup>th</sup> day of August, 2008.

ATTEST:

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Rebecca J. Phillips

Finance Officer

\_\_\_\_\_

Brad Shelly

Mayor

Vote: Butler: AYE

Shelly: AYE

Wagner: AYE

First Reading: 7/17/08

Second Reading: 8/07/08

Publication: