

ORDINANCE: NO. 25

AN ORDINANCE PROVIDING FOR THE LICENSING AND REGULATION OF ADULT ORIENTED BUSINESSES AND PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR ADULT ORIENTED BUSINESSES.

Adopted December 7, 2004. First Amendment April 10, 2007. Second Amendment, First Reading July 7, 2009 and Second Reading August 12, 2009.

WHEREAS, adult oriented businesses require special supervision from the public safety agencies of Meade County in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of Meade County; and

WHEREAS, the Meade County Commission finds that adult oriented businesses are frequently used for unlawful sexual activities; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concerns of Meade County that demands reasonable regulation of adult oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of adult oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is documented evidence that adult oriented businesses because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that adult oriented businesses, due to their nature, have seriously objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Meade County Commission desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the Meade County Commission has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this County; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult oriented businesses; and

WHEREAS, it is not the intent of the Meade County Commission to condone or legitimize the distribution of obscene material, and the County Commission recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in Meade County.

NOW, THEREFORE, BE IT ORDAINED by Meade County as follows:

I. DEFINITIONS.

- (1) 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 any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas:"
- (2) 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:
 - (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."

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."

- (3) 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.
- (4) ADULT MOTEL means a hotel, motel, or similar commercial establishment which:
 - (a) 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
 - (b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - (c) 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.

- (5) 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."
- (6) 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."
- (7) 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 the person is denominated an employee, independent contactor, and 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
- (8) 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.
- (9) 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.
- (10) ESTABLISHMENT means and includes any of the following:
- (a) the opening or commencement of any adult oriented business as a new business:
 - (b) the conversion of an existing business, "whether or not an adult oriented business to any adult oriented business;
 - (c) the additions of any adult oriented business to any other existing adult oriented business: or
 - (d) the relocation of any adult oriented business.
- (11) 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.
- (12) 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:
- (a) 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

- (b) where in order to participate in a class a student must enroll at least three days In advance of the class; and
 - (c) where no more than one nude or semi-nude model is on the premises at any one time, excepting parents and children.
- (13) NUDITY or a STATE OF NUDITY means the appearance of a human anus, genitals, or a female breast below a point immediately above the top of the areola or a state of dress that fails to opaquely cover a human anus, genitals, or a female breast below a point immediately above the top of the areola.
- (14) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- ...
- (15) REGULARLY FEATURES 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.
- (16) SEMI·NUDE or in a SEMI·NUDE CONDITION means a state of dress in which clothing covers no more that the genitals, pubic region and female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices.
- (17) 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.
- (18) SPECIFIED ANATOMICAL AREAS means:
- (a) the human male genitals m a discernibly turgid state, even if completely and opaquely covered: or
 - (b) 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.
- (19) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:
- (a) 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.
 - (b) 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_
- (20) SPECIFIED SEXUAL ACTIVITIES means any of the following:
- (a) the fondling or other erotic touching of another's human genitals, pubic region, buttocks, anus, or female breasts;
 - (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
 - (c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

- (21) SUBSTANTIAL ENLARGEMENT of an adult oriented business means the increase in floor area occupied by the business by more than twenty-five percent (25%), as the floor area exists on the date this ordinance takes effect.
- (22) TRANSFER OF OWNERSHIP OR CONTROL of an adult oriented business means and includes any of the following:
 - (a) the sale, lease, or sublease of the business;
 - (b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
 - (c) 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.

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) massage parlors;
- (8) escort agencies; and
- (9) nude model studios.

III. LICENSE REQUIRED.

- (A) It is unlawful for any person to own, manage, or operate an adult oriented business without a valid adult oriented business Owner's License issued by Meade County pursuant to this ordinance.
- (B) An application for a license must be made on a form provided by Meade county and shall include an approximately 2" x 2" photograph of the applicant's head and shoulders.
- (C) All applicants must be qualified according to the provisions of this ordinance. The application may request and the application shall provide such information (including fingerprints) as to enable Meade County to determine whether the applicant meets the qualifications established in this ordinance.
- (D) If the applicant for an adult oriented business Owners License is an applicant. other the If the applicant for an adult oriented business Owner's License is an individual, the person must sign the application for a license as such. If the applicant for an adult oriented business Owner's License is other than an individual, each Individual who has any financial interest in the business must sign the application for an Owner's License as such.

applicant.
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granted.

Each applicant must be qualified under the following Section
applicant shall be considered a licensee if a license is

- (E) Each applicant shall indicate the classification of adult oriented business they intend to operate.

IV ISSUANCE OF LICENSE.

- (A) Upon the filing of an application for an adult oriented business Owner's License, the applicant shall complete necessary documentation and application for a criminal background check. Upon return of the criminal background check and further investigation by Meade County as it may deem appropriate, a public hearing on the application shall be scheduled by the Meade County Board of County Commissioners.
- (B) The applicant for an adult oriented business Owner's License shall provide notice of the date, time and place of such hearing to the owners of all property within one (1) mile of the proposed location of the adult oriented business. At the time of the scheduled hearing, the applicant shall provide proof of such notification whether by acknowledgement by the owner or proof of sending of certified mail.
- (C) Meade County shall publish notice once in the official newspaper of the county, at least one week prior to such hearing, which notice shall state the time and place when and where such application will be considered by the Meade County Board of County Commissioners and shall state that any person interested in the approval or rejection of the application may appear and be heard.
- (D) At the time and place fixed for hearing, the Meade County Board of County Commissioners shall consider such application and all objections thereto, if any, prior to final decision on the application.
- (E) The Meade County Board of County Commissioners shall reject the application if any of the following is established as true by a preponderance of the evidence:
 - (1) The applicant has falsely answered a question or request for information on the application; or
 - (2) The applicant is under the age of eighteen (18) years; or
 - (3) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance; or
 - (4) The applicant has been convicted of a felony within the previous seven (7) years; or
 - (5) The applicant has had an adult oriented business Owner's License revoked by Meade County within twelve (12) months of the date of the current application. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section XXII.; or
 - (6) The applicant is required to register as a sex offender pursuant to SDCL Chapter 22-22.
- (F) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant. Each such renewal application shall contain the same information as required on the initial

application and shall be accompanied by a statement, under oath, of any material change since the initial application. A renewal application shall be considered on the same grounds as an initial application. The renewal of the license shall be subject to the payment of the fee as set forth in Section V.

- (G) Following the public hearing, the Meade County Board of County Commissioners shall either approve or deny the application. Denial or approval is solely within the discretion of the Meade County Board of County Commissioners.
- (H) 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.

V. FEES

- (A) Every initial application for an adult oriented business Owner's License shall be accompanied by a \$1,000.00 non-refundable application and investigation fee. For each individual listed on the application, beyond the first listing, there shall be an additional fee of \$100.00 for a criminal background check.
- (B) Every renewal application shall be accompanied by a \$200.00 non-refundable application and investigation fee. However, should there be any change in the individual applicants, for each such new individual there shall be an additional fee of \$100.00 for a criminal background check.
- (C) The first application filed following a suspension or revocation shall be considered an initial application for all purposes under this Ordinance.
- (D) All license applications and fees shall be submitted to the Meade County Auditor.

VI INSPECTION.

Adult Oriented businesses and adult oriented business employees shall permit officers or agents of Meade County 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'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 County to authorize reasonable inspections of the licensed premises pursuant to this chapter but not to authorize a harassing or excessive pattern of inspections.

VII 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 Sections III and IV. 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 Meade County denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If subsequent to denial, Meade County 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 has elapsed since the date denial became final.

VIII SUSPENSION.

The Meade County Sheriff's Office shall issue a letter of intent to suspend a license for a period not to exceed thirty (30) days if it determines that the holder of an Owner's License has:

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

Upon suspension of a license, the adult oriented business may not operate under this ordinance until approved by Meade County or the expiration of the suspension period. Any appeal of the suspension may be taken to the Meade County Board of County Commissioners, who shall hear and determine the appeal within seven days of filing the appeal.

Should the Meade County Board of County Commissioners uphold the suspension, the adult oriented business may appeal to the Circuit Court as provided in SDCL 7-8-27, et seq.

IX REVOCATION.

(A) The Meade County Sheriff's Office shall issue a letter of intent to revoke a license if a cause of suspension in Section VIII occurs and the license has been suspended within the preceding twelve (12) months. Revocation of the license under this subpart shall be effective fourteen (14) days after the letter of intent to revoke is sent.

(B) The Meade County Sheriff's Office may further 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; or
- (2) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises; or
- (3) a licensee has knowingly allowed prostitution on the premises; or
- (4) a licensee has knowingly operated the adult oriented business during a period of time when the licensee's license was suspended; or
- (5) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, sexual contact or other sex act to occur in or on the licensed premises; or
- (6) a licensee is delinquent in payments to Meade County, County, or State for any taxes or fees past due; or
- (7) a licensee has been convicted of specified criminal activity as defined in this ordinance; or
- (8) a licensee knowingly employed or employs a person ever convicted of a specified criminal activity.

In the cases enumerated in this subpart, such revocation shall be effective fourteen (14) days after the letter of intent to revoke is sent.

(C) When Meade County revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued an adult oriented business Owner's license for one (1) year from the date the revocation became effective. If subsequent to revocation, Meade County 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 review by the court.

X TRANSFER OF LICENSE,

A licensee may 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.

XI SEXUAL CONTACT,

No person shall touch, whether or not through clothing or other covering, the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party in exchange for any money or any other thing of value, nor shall any person solicit such sexual contact. A violation of this section which occurs on the premises of an adult oriented business shall be grounds to deny, suspend or revoke the adult oriented business Owner's License for the adult oriented business where the violation took place.

XII 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 or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

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

XIII REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who operates or causes to be operated an adult oriented business, other than an adult motel, which exhibits on the premises in a viewing room or less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts 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 or the premises to an accuracy of plus or minus six inches (6"). Meade County 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 Meade County.
- (4) It is the duty of the licensee of the premises to ensure that at least one 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 two 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 be sure that the view area specified in subsection (5) remains unobstructed by any door, curtains, partitions, walls, merchandise, display racks or other materials and at all time, 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 section (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 five (5.0) foot-candles as measured at the floor level.

- (9) It shall be the duty of the licensee to insure 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 other porous material shall be used within forty-eight (48") inches of the floor.
- (B) A person having a duty under Subsection (1) through (14) of Subsection (A) above commits a violation of this Ordinance if he knowingly fails to fulfill that duty.

XIV ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

- (A) An escort agency shall not employ any persons 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.

XV 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 while such room is being used for modeling; except that a sofa may be placed in a reception room open to the public.

XVI 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 semi-nudity or nudity or depicts specified sexual activities.

- (B) It shall be unlawful for any performer 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 performer. Gratuities may be provided by any patron or customer to designated, non-performing employees, or placed in containers used solely as a collection device to receive gratuities.
- (C) It shall be unlawful for an employee of an adult-oriented business 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 employee of the adult oriented business.
- (E) It shall be unlawful for any performer or customer of an adult oriented business to fail to maintain a distance of at least three (3) feet between the performer and any customer.

XVII PROHIBITION AGAINST CHILDREN IN AN ADULT ORIENTED BUSINESS.

A person is in violation of this Ordinance if the person allows a person under the age of 18 years on the premises of an adult oriented business or when, due to the layout of the adult oriented business, a person under the age of 18 years is allowed an unobstructed and unaided observation of activity regulated by this Ordinance.

XVIII LOCATION RESTRICTIONS

- (A) No adult oriented business shall be permitted to operate within one-fourth mile of a church, synagogue, mosque, temple or other building which is used primarily for religious worship and related religious activity.
- (B) No adult oriented business shall be permitted to operate within one-fourth mile of a public or private educational facility including any kindergarten, elementary school, intermediate school, middle school, junior high school, high school, special education school, vocational school, college or university; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school.
- (C) No adult oriented business shall be permitted to operate within one-fourth mile of a registered day care center, group family day care home, or family day care. Such facilities are defined by statute and required to be registered with the South Dakota Department of Social Services.
- (D) For purposes of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult oriented business is operated, or in the case of an adult oriented business wherein any regulated activity occurs outside of a building or structure from the nearest point of the property on which the adult oriented business is operated, to the nearest property line of the property described in Sections XIX (A), (B), or (C) above.

XIX SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY

Notwithstanding anything to the contrary, for the purpose of this Chapter an act by an employee that constitutes grounds for suspension or revocation shall be imputed to the adult oriented business license for purposes of finding a violation of this ordinance 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.

Notwithstanding anything to the contrary, this Ordinance shall apply to any business which knowingly allows, encourages or advertises activities, including nudity or semi-nudity, occurring within the boundaries of such business, whether or not the business derives any direct or indirect benefit from such activity.

XX 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 violations. Such violations shall be punishable by a maximum fine of \$200.00 and/or thirty (30) days imprisonment. Each day an adult oriented business so operates is a separate offense or violation.

XXII ADMINISTRATIVE APPEAL

Any person claiming to be aggrieved by the application of this ordinance shall present his or her claim to the Board of County Commissioners within (15) fifteen calendar days of the action constituting the alleged claim. The Board of County Commissioners shall hear the claim at the next regular Commission meeting provided there is a minimum of five days from the presentation of the claim to the next regular Commissioner meeting. The Board of County Commissioners shall render a decision on the claim within five (5) business days after the claim is heard. The decision of the County Commission shall be final, except that after receiving the decision of the County Commission, any person may appeal such decision of the Commission as allowed by law.

XXIII SEVERABILITY,

This ordinance and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of said chapter or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared those such sections and provisions would have been passed independently of such section or provision so known to be invalid.

XXIV CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Dated this _____ day of _____, 2009.

Chairman

ATTEST: Lisa Schieffer, Auditor

SEAL

First Reading, First Amendment: February 6th, 2007
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