

TITLE 4 - LICENSES

[TRADE REGULATION AND LICENSES SDCL 9-34]

Chapter 4.01 - General Provisions

Chapter 4.02 - Peddlers

Chapter 4.03 - Sexually Oriented Businesses and Employees

CHAPTER 4.01 - GENERAL PROVISIONS

4.0101 License, Unlawful Without. It shall be unlawful for any person, persons, firm or corporation to engage in any activity for which a license is required without first having obtained a license as hereinafter provided. The City Council may at any time expand the general provisions of this Chapter by requiring any person, persons, firm or corporation engaging in any trade, business or occupation within the City of Lennox which is not specified by this ordinance to obtain a license, as deemed necessary. (9-34-1)

4.0102 Applications for License. Any person, persons, firm or corporation requesting a license as herein provided, shall make written application to the Finance Office. The application shall state the name and address of the applicant, purpose of the activity, the length of time for which said license is requested, and the location at which said license will be used.

Except as otherwise provided, fees for all licenses shall be fixed by the City Council and filed with the Finance Office, and all license fees shall be paid in full at the time of application in such manner as approved by said City Council.

4.0103 License Expiration. Any annual license granted under the provisions of this Chapter shall expire on the 31st day of December following the granting thereof, except as otherwise provided, and shall not be granted for any sum less than the annual rate, and there shall be no rebate on an early termination of the activity for which said license was issued.

4.0104 Revocation. The City Council shall have the authority at any time to suspend or revoke any license granted under the provision of this Chapter whenever the City Council shall be satisfied upon written complaint that the activity for which the license was issued, has been made or conducted in an improper or illegal manner, and in case of such revocation, the City Council may refund to the holder of such license such proportionate amount of money paid therefore as the Council shall deem just.

4.0105 Issuance of License. Except as otherwise provided all licenses shall be issued by the Finance Office after the applicant shall have complied with all requirements for issuance of such license. Unless otherwise provided, all licenses shall be signed by the Finance Officer and shall have affixed thereto the official seal of the City of Lennox.

4.0106 Record of Licenses. The Finance Officer shall keep a record of all licenses issued by the City stating when, to whom, for what purpose, for what length of time, for what location the license was issued, and the amount of money paid for said license.

4.0107 Approval of Bonds. Any bond, liability insurance, or deposit required shall be subject to the approval of the City Council. If the City Council deems the security inadequate, new or additional security may be required; the license may be suspended pending the furnishing of such new or additional security, and if not furnished, the license may be revoked.

CHAPTER 4.02 - PEDDLERS

4.0201 Definitions. For the purpose of this Chapter, the following terms are hereby defined:

- A. "Peddler" - Any person or business, whether a resident of this City or not, traveling from place to place, from house to house, or from street to street for the purpose of selling or soliciting for sale of goods, wares, merchandise, or services, including food and beverages, and shall also mean and include any person transacting a temporary business within the city.
- B. "Temporary business" - The sale of goods, wares, merchandise, or services, including food and beverages, sold by a person, business, or other entity for fewer than 90 days within any period of 12 consecutive months, or from a car, truck, or other motor vehicle, trailer, or any structure other than a permanent building.

4.0202 Application for License. Any peddler wanting to do business in the City shall complete and file an application with the Finance Officer or his designee containing the following:

1. Whether the applicant, upon a 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 the applicant.
4. The local and permanent addresses and the name of the entity, if any, that the applicant represents.
5. The kind of goods, wares, merchandise, or services the applicant wishes to peddle within the City.
6. The last five cities or towns wherein the applicant has worked before coming to this City.
7. Proof of a valid, effective sales tax license.
8. The applicant's date of birth and social security account number or other identifying number.
9. An application fee of \$50.

(Amended: Ordinance No. 525, 07-09-12)

4.0203 Exceptions. The provisions of this Chapter shall not apply to the following:

1. Solicitations, sales or distributions made by charitable, educational, political, or religious organizations.
2. Traveling salespersons doing business exclusively with retail merchants, manufacturers, jobbers or public officials.
3. Members of professions licensed by the state which have continuing education requirements.
4. Persons selling or delivering personal property to regular customers on established routes.
5. Persons selling jams, jellies, vegetables, fruits or flowers grown or produced by them and not purchased by them for resale.
6. Bonafide garage, rummage, yard or moving sales which do not occur at the same location more than four (4) times per year, for more than four (4) days each time.

4.0204 Unlawful conduct. The following conduct shall be deemed unlawful:

1. For any peddler to remain upon premises after having been told by the owner or possessor of the premises to leave.
2. For any peddler to make false or fraudulent statements concerning the quality or nature of his goods, products, or services.
3. To enter upon any premises posted with a sign stating “No Peddlers Allowed” or “No Soliciting”.
4. To engage in business of peddling between the hours of 8 p.m. and 9 a.m. the following morning, or anytime on Sunday, except by specific appointment or invitation from the prospective customer.
5. For any peddler to engage in business within the City without first obtaining a license to do so.
6. For any peddler to fail to display his license upon the request of any person.

4.0205 Revocation. Any license issued under the provisions of this Chapter may be revoked for the violation by the licensee of any provision of this ordinance or state law. Upon such revocation, such license shall immediately be surrendered.

CHAPTER 4.03 - SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES

4.0301 Rationale and Findings.

- (a) Rationale. It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or

reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

4.0302 Definitions. For purposes of this Chapter, the words and phrases defined in the Sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas".

"Adult Bookstore 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: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas."

A "principal purpose" means that the commercial establishment:

- (a) has a substantial portion of its displayed merchandise which consists of said items, or
- (b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
- (c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
- (d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or
- (e) maintains a substantial section of its interior business space for the sale or rental of said items.

"Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features:

- (a) persons who appear nude or semi-nude; or
- (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

- (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas."

"Adult Motel" means a motel, hotel, or similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motions pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; 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.

"Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five (5) persons for any form of consideration.

"Art Museum" and/or "Art Gallery" means any structure where paintings, sculptures, pottery, lithograph and anything of artistic expression is shown, excluding live models in a state of nudity or semi nudity.

"City Finance Officer" means City of Lennox Finance Officer.

"City Council" means the Council of the City of Lennox, South Dakota.

"Characterized" means to describe the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

"City" means City of Lennox, South Dakota

"Employ, Employee, and Employment" describe and pertain to any person who performs any service on the premises of a sexually 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. Employee does not include a person exclusively on the Premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"Establish or Establishment" shall mean and include any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

"Hearing Body" shall be the City Council of the City of Lennox, South Dakota.

"Influential Interest" means any of the following: (1) the actual power, directly or indirectly, to control the operation, management or policies of a business or entity, (2) ownership of a financial interest of thirty-five percent (35%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, etc.) or directorship in a legal entity which operates the sexually oriented business.

"Day-Care Center" means a facility or home, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision of children from more than one unrelated family, on a regular basis for part of a day, without transfer of legal custody or guardianship, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

"Licensee" shall mean a person, whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person whose name the sexually oriented business employee license has been issued.

"Nudity" or "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 female breast with less than a fully opaque covering of any part of the nipple and areola.

"Operate" or "Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business.

"Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

"Person" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to 4.0404 of this ordinance.

"Regularly" means and refers to the consistent and repeated doing of the act so described.

"Semi-Nude Model Studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a 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.

"Sexual Device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representation of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

"Sexual Devise Shop" means a commercial establishment that regularly features sexual devises. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age. "Sexual Encounter Center" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in a form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

"Sexually Oriented Business" means an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," "a semi-nude model studio," "sexual devise shops" or a "sexual encounter center."

"Specified Anatomical Areas" means and includes:

- (a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Criminal Activity" means any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (a) a sex crime as defined in S.D. Codified Laws § 22-22-30 (1) - (14);

- (b) prostitution or promotion of prostitution, as defined in S.D. Codified Laws § 22-23-1 and § 22-23-2;
- (c) an obscenity or public indecency offense as defined in S.D. Codified Laws Chapter 22-24;
- (d) a controlled substance offense as defined in S.D. Codified Laws § 22-42-2;
- (e) attempt, conspiracy, or solicitation to commit any of the foregoing offenses; or
- (f) any offense in another jurisdiction that, had the predicate act(s) been committed in South Dakota, would have constituted any of the foregoing offenses.

"Specified Sexual Activity" means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

"Substantial" means at least thirty-five percent (35%) of the item(s) so modified.

"Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential 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.

"Viewing Room" shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

4.0303 Classification. The classifications for sexually oriented businesses shall be as follows:

- (a) Adult bookstores or adult video stores;
- (b) Adult cabarets;
- (c) Adult motels;
- (d) Adult motion picture theaters;
- (e) Semi-nude model studios;
- (f) Sexual device shops;

(g) Sexual encounter centers.

4.0304 License required.

- (a) It shall be unlawful for any person to operate a sexually oriented business in the City without a valid sexually oriented business license.
- (b) It shall be unlawful for any person to be an "employee," as defined in this Chapter, of a sexually oriented business in the City without a valid sexually oriented business employee license.
- (c) An applicant for a sexually oriented business license or sexually oriented business employee license shall file in person at the office of the Finance Officer a completed application made on a form provided by the City Finance Officer. The application shall be signed as required by Subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in 4.0306:
 - (1) The applicant's full true name and any other names used by the applicants in the preceding five (5) years.
 - (2) Current business address or another mailing address of the applicant.
 - (3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
 - (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
 - (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
 - (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
 - (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a Court of Law to be a nuisance; or
 - (ii) been subject to a Court Order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this Subsection shall be supplemented in writing by certified mail, return receipt requested, to the City Finance Officer's Office within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business will be located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space to be occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with 4.0314 and 4.0318 of this Chapter shall submit a diagram indicating that the interior configuration meets the requirements of those Sections.
- (e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under 4.0305 and each applicant shall be considered a licensee if a license is granted.
- (f) The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the City's Finance Officer on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by Court Order.

4.0305 Issuance of license.

- (a) Upon the filing of a completed application under 4.0304 for a sexually oriented business license, the Finance Officer shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Finance Officer shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Finance Officer shall issue a license unless:
 - (1) An applicant is less than eighteen (18) years of age.
 - (2) An applicant has failed to provide information as required by 4.0304 for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Chapter has not been paid.
 - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with locational requirements of this ordinance or any other part of the Ordinances of the City, or the Ordinances of Lincoln County, South Dakota, or the statutes of the State of South Dakota.
 - (5) Any sexually oriented business in which the applicant has had an ownership interest, has, in the previous five (5) years (and at a time during which the applicant had the ownership interest):
 - (i) been declared by a Court of Law to be a nuisance; or
 - (ii) been subject to an Order of closure or padlocking.

- (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.
- (b) Upon the filing of a completed application under 4.0304 (c) for a sexually oriented business employee license, the Finance Officer shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Finance Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Finance Officer shall approve the issuance of a license unless:
 - (1) The applicant is less than eighteen (18) years of age.
 - (2) The applicant has failed to provide information as required by 4.0304 for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this Chapter has not been paid.
 - (4) Any sexually oriented business in which the applicant has had an influential interest, has in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a Court of Law to be a nuisance; or
 - (ii) been subject to an Order of closure or padlocking.
 - (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Ordinance.
 - (c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is when working or performing.

4.0306 Fees.

- (a) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: One Hundred dollars (\$100.00) for the initial fee for a sexually oriented business license and Fifty dollars (\$50.00) for annual renewal; Fifty dollars (\$50.00) for the initial sexually oriented business employee license and Twenty-Five dollars (\$25.00) for annual renewal.

4.0307 Inspection.

- (a) Sexually oriented businesses and sexually oriented business employees shall permit any duly acting law enforcement officer, including but not limited to the City police officers, Lincoln County Sheriff or deputies, to inspect, from time to time on an occasional basis,

the portions of the sexually 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 sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspection of the licensed premises pursuant to this Chapter, but not to authorize a harassing or excessive pattern of inspections.

- (b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

4.0308 Expiration of license.

- (a) Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making applications and payment of a fee as provided in 4.0304 and 4.0306.
- (b) Application for renewal should be made pursuant to the procedures set forth in 4.0304 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.

4.0309 Suspension.

- (a) The City shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this Chapter or has knowingly allowed an employee to violate this Chapter.
- (b) The City shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this Chapter.

4.0310 Revocation.

- (a) The City shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this Chapter or has knowingly allowed an employee to violate this Chapter and the licensee's license has been suspended within the previous twelve (12) month period.
- (b) The City shall issue a written intent to revoke a sexually oriented business license and/or a sexually oriented business employee license, as applicable, if:
 - (1) The licensee has knowingly given false information in the application for the sexually oriented business license.
 - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substance on the premises;
 - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;
 - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

- (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the Notice and Hearing procedure described in 4.0411, the City Council revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for two (2) years from the date revocation becomes effective.

4.0311 Hearing; denial, revocation, and suspension; appeal.

- (a) When the Finance Officer issues a written notice of intent to deny, suspend, or revoke a license, the Finance Officer shall immediately send such Notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or license (Respondent) by personal delivery or certified mail. The Notice shall be directed to the most current business address or other mailing address on file with the Finance Officer for the Respondent. The Notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the Notice is issued, on which the City Council shall conduct a Hearing on the Finance Officer's intent to deny, suspend, or revoke the license.

At the Hearing, the Respondent shall have the opportunity to present all of Respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Finance Officer's witnesses. The Finance Officer shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The Hearing shall take no longer than two (2) days, unless extended at the request of the Respondent to meet the requirements of due process and proper administration of justice. The City Council shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the Respondent within five (5) days after the Hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the Respondent of the right to appeal such decision to a Court of competent jurisdiction. If the City Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the City Council shall, contemporaneously with the issuance of the decision, order the Finance Officer to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the Respondent is not yet licensed, the Finance Officer shall contemporaneously therewith issue the license to the applicant.

- (b) If any court action challenging the City Council's decision is initiated, the City Council shall prepare and transmit to the Court a transcript of the Hearing within ten (10) days after receiving written Notice of the filing of the Court action. The City Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the Court, and shall facilitate prompt judicial review of the proceedings.

The following shall apply to any sexually oriented business that is in operation as of the effective date of this Ordinance: Upon the filing of any Court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall immediately issue the Respondent a Provisional License. The Provisional License shall allow the Respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the Court's entry of a Judgment on the Respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement.

4.0312 Transfer of license. A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

4.0313 Hours of operation. No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

4.0314 Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. 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 shall be oriented to the north or to some designated street or object and shall 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 Finance Officer 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) It shall be the duty of the operator, and of any employees present on the premises, 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 Paragraph 1 on this Subsection.

(3) The interior 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. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
 - (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - (i) That the occupancy of viewing rooms is limited to one person.
 - (ii) That sexual activity on the premises is prohibited.
 - (iii) That the making of openings between viewing rooms is prohibited.
 - (iv) That violators will be required to leave the premises.
 - (v) That violations of Subparagraphs (b), (c) and (d) of this paragraph are unlawful.
 - (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.
 - (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of the floor area. If the premises has two (2) or more operator'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 operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in an operator's station at all times that any patron is in the area monitored by direct line of sight from that operator's station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

4.0315 Loitering, exterior lighting, visibility, and monitoring requirements.

- (a) It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

- (b) It shall be unlawful for the person having a duty under this section to knowingly fail to fulfill that duty.
- (c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot (s) for the establishment from being visible from a public right of way.

4.0316 Penalties and enforcement.

- (a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be guilty of a Class 2 Misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- (b) The City's attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this Ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunctions, shall be brought in the name of the City, provided, however, that nothing in this Section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws or ordinances in force in the City or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

4.0317 Applicability of Ordinance to existing businesses. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a De Facto Temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this Ordinance. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this Chapter.

4.0318 Prohibited activities. It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

- (a) It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
- (b) It shall be a violation of this Ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer on a stage at least eighteen (18) inches from the floor in a room of at least eight hundred (800) square feet.
- (c) It shall be a violation of this Ordinance for any employee, who generally appears in a state of nudity in a sexually oriented business, to knowingly or intentionally touch or fondle a customer or the clothing of a customer on the premises of a sexually oriented business.
- (d) It shall be a violation of this Ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

- (e) It shall be a violation of this ordinance to allow a person under the age of eighteen (18) years on the premises of an adult oriented business.

A sign in a form to be prescribed by the Finance Officer and summarizing the provisions of Paragraphs (a), (b), (c),(d), and (e) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

4.0319 Scienter required to prove violations or business licensee liability. This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee 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 or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability was imputed was powerless to prevent the act.

4.0320 Failure of the City to meet deadline not to risk applicant/licensee right. In the event that a City official is required to take an act or do a thing pursuant to this Ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City official under this Ordinance, and not completed in the time prescribed, includes approval of conditions) necessary for approval by the City of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operation or employment the day after the deadline for the City's action has passed.

4.0321 Location of sexually oriented businesses.

- (a) The following shall apply only to sexually oriented businesses not established prior to the effective date of this Ordinance:

It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the City, unless said sexually oriented business is at least:

- (1) 750 feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of South Dakota to sell alcohol at the premises; and
 - (2) 750 feet from any parcel occupied by a house of worship, day care center, public or private elementary or secondary school, public park, or any residence.
- (b) For the purpose of this Section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with a sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use (s) identified in Subsection (a) (1) - (a) (2) above.

(c) If the sexually oriented business use, lot, or occupancy that existed prior to enactment of this ordinance is discontinued for more than one (1) year for any reason, the City Council may adopt, after Notice by registered or certified mail to the property owners, an amortization schedule to bring about the gradual elimination of the nonconforming use, lot, or occupancy.

4.0322 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 provisions 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 that such Sections and provisions would have been passed independently of such Section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

4.0323 Conflicting code provisions repealed. Additionally, any provision (s) in the City's Municipal Ordinances specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.