

**ORDINANCE NO. 4053****AN ORDINANCE TO AMEND THE REGULATION OF ADULT ORIENTED BUSINESSES BY AMENDING SECTION 5.70.010, 5.70.030, AND 5.70.050 OF THE RAPID CITY MUNICIPAL CODE.**

WHEREAS, the City of Rapid City has previously adopted an ordinance regulating adult oriented businesses; and

WHEREAS the City of Rapid City deems it in the best interest of the City to amend the previously adopted ordinance in order to amend the regulations pertaining to exhibition of certain films, video cassettes, live entertainment, or other video reproductions;

NOW, THEREFORE, BE IT ORDAINED by the City of Rapid City that Section 5.70.010 of the Rapid City Municipal Code be and hereby is amended to read as follows:

**5.70.010 Definitions.**

“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.”

“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.”

“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.

“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 hours; or

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

“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.”

“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.”

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

“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.

“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.

“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.

“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.

“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.

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

“Person” means an individual, proprietorship, partnership, corporation, association or other legal entity.

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

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

“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.

“Specified anatomical areas” means:

A. The human male genitals in 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.

“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~~ involving 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 or possession of a controlled substance; or aggravated assault.

B. For which:

1. Less than two 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;

2. Less than five 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

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

C. 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.

“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 subsections A and B of this section.

“Substantial enlargement” of an adult oriented business means the increase in floor areas occupied by the business by more than twenty-five percent, as the floor areas exist on the date this ordinance takes effect.

“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.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 5.70.030 of the Rapid City Municipal Code be and hereby is amended to read as follows:

**5.70.030 License required.**

A. It is unlawful:

1. ~~f~~For any person to own, manage or operate an adult oriented business without a valid adult oriented business license issued by Rapid City 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 Rapid City.

C. All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable Rapid City 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.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 5.70.050 of the Rapid City Municipal Code be and hereby is amended to read as follows:

**5.70.050 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 two hundred dollars 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 Rapid City an annual non-refundable license fee of one hundred dollars within thirty 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 non-refundable license fee.

€D. All license applications and fees shall be submitted to Rapid City finance officer of Rapid City.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

First Reading:  
Second Reading:  
Published:  
Effective: