

ORDINANCE NO. 3856

AN ORDINANCE PROVIDING FOR THE LICENSING AND REGULATION OF ADULT ORIENTED BUSINESSES AND EMPLOYEES, AND PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR ADULT ORIENTED BUSINESSES, BY ADDING CHAPTER 5.70 TO TITLE 5 OF THE RAPID CITY MUNICIPAL CODE .

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

WHEREAS, the Rapid City Council finds that adult oriented businesses are frequently used for unlawful sexual activities; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of Rapid City 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 serious 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 Rapid City Council 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 Rapid City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this City; 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 Rapid City Council to condone or legitimize the distribution of obscene material, and the Council 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 Rapid City.

NOW, THEREFORE, BE IT ORDAINED by the City of Rapid City that Title 5 of the Rapid City Municipal Code is hereby amended to include a new chapter 5.70 as follows:

5.70.010 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 person who appear semi-nude, which regularly features:
 - ~~(a) persons who appear in a state of nudity or semi-nude; or~~
 - ~~(b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or~~

~~(e) films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”~~

- (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 subrent 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 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 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 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.
- (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; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult oriented business.
- (12) **SEMI-NUDE MODEL STUDIO** means any place where a person who appears semi-nude, ~~in a state of nudity~~, 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.
- (13) 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, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- (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.

~~(15)~~(16) 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.

~~(16) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:~~

~~(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or~~

~~(b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.~~

(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, ~~or sexual encounter center.~~

(18) 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.

(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; ~~or any similar offenses to those described above under the criminal or penal code of other states or countries;~~

- (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 24-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.
- (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 areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist 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.

Section 5.70.020 CLASSIFICATION.

Adult oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores, adult novelty stores, or adult video stores;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

Section 5.70.030 LICENSE REQUIRED.

(A) It is unlawful:

- (1) For any person to own, manage, or operate an adult oriented business without a valid adult oriented business license issued by Rapid City pursuant to this ordinance.
- (2) For any person who owns, manages or operates an adult oriented business to employ a person to work for the adult oriented business who is not licensed as an adult oriented business employee by Rapid City pursuant to this ordinance.
- (3) For any person to obtain employment with an adult oriented business without having secured an adult oriented business employee license pursuant to this ordinance.

(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 ordinance.

- (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 a 20 percent or greater 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.

Section 5.70.040 ISSUANCE OF LICENSE.

- (A) Upon the filing of said application for an adult oriented business employee license, Rapid City shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, Rapid City shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
- (1) The applicant has ~~failed to provide information reasonable necessary for issuance of the license or has~~ falsely answered a question or request for information on the application form;
 - (2) The applicant is under the age of eighteen (18) years;
 - (3) The applicant has been convicted of a “specified criminal activity” as defined in this ordinance;
 - (4) The adult oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or
 - (5) The applicant has had an adult oriented business employee license revoked by Rapid City within two (2) years of the date of the current application. If the adult oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 10.

An application shall be considered complete when it contains the information required in Paragraphs 1 through 5 above.

- (B) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by Rapid City that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 6.

- (C) Within 30 days after receipt of a completed adult oriented business application, Rapid City shall approve the issuance of a license to the applicant or shall issue a letter of intent to deny a license to the applicant. ~~or deny the issuance of a license to an applicant.~~ Rapid City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
- (1) An applicant is under eighteen (18) years of age.
 - (2) An applicant is overdue in payment to Rapid City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any adult oriented business.
 - ~~(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.~~
 - ~~(4)~~(3) An applicant has been denied a license by Rapid City to operate an adult oriented business within the preceding twelve (12) months or whose license to operate an adult oriented business has been revoked within the preceding twelve (12) months.
 - ~~(5)~~(4) An applicant has been convicted of a specified criminal activity defined in this ordinance.
 - ~~(6) The premises to be used for the adult oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.~~
 - ~~(7)~~(5) The license fee required by this ordinance has not been paid.
 - ~~(8)~~(6) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- (D) All business licenses shall be posted in a conspicuous place at or near the entrance to the adult oriented business so that they may be easily read at any time. All employee licenses shall be kept on the employee's person or at a nearby location while the employee is working.

Section 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 \$ 200.00 non-refundable application and investigation fee.
- (B) In addition to the application and investigation fee required above, every adult oriented business that is granted a license (new or renewal) shall pay to Rapid City an annual non-refundable license fee of \$ 100.00 within thirty (30) days of license issuance or renewal.

- (C) Every application for an adult oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$ 25.00 non-refundable application, investigation, and license fee.
- (D) All license applications and fees shall be submitted to Rapid City finance officer of Rapid City.

Section 5.70.060 INSPECTION.

~~(A) An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, or other City departments or agencies to inspect the premises of an adult oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.~~

~~(B) A person who operates an adult oriented business or his agent or employee commits a Class 2 misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.~~

Adult oriented businesses and adult oriented business employees shall permit officers or agents of Rapid City to inspect, from time to time on an occasional basis, the portions of the adult oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this 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 City to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

Section 5.70.070 EXPIRATION OF LICENSE.

- (A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 4. Application for renewal shall be made at least ~~ninety~~ninety (90) days before the expiration date, and when made less than ~~ninety~~ninety (90) days before the expiration date, the expiration of the license will not be affected.
- (B) When Rapid City 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, Rapid City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

Section 5.70.080 SUSPENSION.

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

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

Section 5.70.090 REVOCATION.

(A) Rapid City shall issue a letter of intent to revoke a license if a cause of suspension in Section 5.70.0808 occurs and the license has been suspended within the preceding twelve (12) months.

(B) Rapid City shall issue a letter of intent to revoke a license if it determines that:

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

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

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

Section 5.70.100 TRANSFER OF LICENSE.

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

Section 5.70.110 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

- (A) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments 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 subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.
- (C) For purposes of subsection (B) of this section, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

Section 5.70.120 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 of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - (1) Upon application for an adult oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager’s station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer’s or architect’s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6”) inches. Rapid City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 - (2) The application shall be sworn to be true and correct by the applicant.

- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of Rapid City.
- (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 at all times that any patron is present inside the premises.
- (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.
- (6) It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (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 ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48") inches of the floor.

- (B) A person having a duty under Subsection (1) through (14) of Subsection (A) above commits a misdemeanor if he knowingly fails to fulfill that duty.

Section 5.70.130 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

- (A) An escort agency shall not employ any person under the age of 18 years.
- (B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

Section 5.70.140 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

- (A) A nude model studio shall not employ any person under the age of 18 years.
- (B) A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.
- (C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Section 5.70.150 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.

- (A) It shall be a misdemeanor for a person who knowingly and intentionally, in an adult oriented business, appears in a state of nudity or depicts specified sexual activities.
- (B) It shall be a misdemeanor for a person who knowingly or intentionally in an adult oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ~~ten six (106)~~ feet from any patron or customer and on a stage at least two feet from the floor or separated by a barrier extended a minimum of four (4) feet from the stage level.
- (C) It shall be a misdemeanor for any employee, while semi-nude in an adult oriented business, to knowingly or intentionally receive ~~so~~ any pay or gratuity from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in an adult oriented business. Gratuities may be provided by any patron or customer to designated employees who are not semi-nude, or to any designated containers used solely as a collection device to receive gratuities.
- (D) It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

Section 5.70.160 PROHIBITION AGAINST CHILDREN IN AN ADULT ORIENTED BUSINESS.

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

Section 5.70.170 HOURS OF OPERATION.

No adult oriented business, except for an adult motel, may remain open at any time between the hours of two o'clock (2:00) A.M. and eight o'clock (8:00) A.M. on each day of the week.

~~Section 5.70.180 EXEMPTIONS.~~

~~(A) It is a defense to prosecution under Section 17 that a person appearing in a state of nudity did so in a modeling class operated:~~

~~(1) by a proprietary school, licensed by the State of South Dakota; a college, junior college, or university supported entirely or partly by taxation;~~

~~(2) by 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~~

~~(3) in a structure:~~

~~(a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and~~

~~(b) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and~~

~~(c)(a) where no more than one nude model is on the premises at any one time.~~

Section 5.70.180 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY

Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or revocation 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 allowed such act to occur on the premises.

Section 5.70.190 INJUNCTION.

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

Section 5.70.200 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.~~If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.~~

Section 5.70.210 CONFLICTING ORDINANCES REPEALED.

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

Section 5.70.220 EFFECTIVE DATE.

This ordinance shall be enforced from and after _____.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: