

Chapter 5.05
ADULT BUSINESSES

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5.05.010 Definitions.

For the purposes of this Chapter and unless the context plainly requires otherwise, the following definitions are adopted:

- A. "Adult Business" means any business:
 - 1. that has as a substantial or significant purpose the sale or rental of merchandise that is intended for use in connection with "Specified Sexual Activities," or that emphasizes matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"; or
 - 2. that has as one of its regular and substantial business purposes:
 - a. the providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display "Specified Anatomical Areas" or "Specified Sexual Activities"; or
 - b. the providing of services that are intended to provide sexual arousal or excitement or that allow observation of "Specified Sexual Activities" or "Specified Anatomical Areas" ancillary to other pursuits, or allow participation in "Specified Sexual Activities" ancillary to other pursuits.
 - 3. The definition of "Adult Business" also includes but is not limited to any and all of the following specific Adult Businesses, as defined herein:

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- a. Businesses that offer merchandise for exchange, rental or sale.
- 1) "Adult Media Outlet" means a business engaging in the exchange, rental or sale of "Adult Media" if such business is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of the business is devoted to the exchange, rental or sale of "Adult Media." For purposes of this subsection, it shall be presumed that a "substantial or significant" portion of a business is devoted to the exchange, rental or sale of "Adult Media" if any one or more of the following criteria is satisfied:
 - a) forty (40) percent or more of the exchanges, rentals or sales, measured in dollars over any consecutive ninety-day period, is derived from such items;
 - b) forty (40) percent or more of the number of transactions, measured over any consecutive ninety-day period, relate to such items;
 - c) forty (40) percent or more of the dollar value of all merchandise displayed at any time is attributable to such items;
 - d) forty (40) percent or more of all inventory consists of such items at any time;
 - e) forty (40) percent or more of the merchandise displayed for sale consists of such items at any time;
 - f) forty (40) percent or more of the floor area of the business (not including storerooms, stock areas, restrooms, basements or any portion of the business not open to the public) is devoted to such items at any time.

This presumption shall be rebuttable.

- 2) "Adult Newsrack" means any coin- or card-operated device that offers for sale by dispensing printed material which is distinguished or characterized by its emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."
- 3) "Adult Retail Establishment" means a business that displays or offers goods for sale, rental or exchange that meets any of the following tests:

- a) It displays or offers for sale, rental or exchange items from any two (2) of the following categories: "Sexually-Oriented Toys or Novelties"; clothing that graphically depicts any "Specified Anatomical Area"; or leather or other goods designed or marketed for use for sexual bondage or sadomasochistic practices; and the combination of such items constitutes:
- (1) ten (10) percent or more of the sales, rentals or exchanges, measured in dollars over any consecutive ninety-day period; or
 - (2) ten (10) percent or more of the sale, rental or exchange transactions, measured over any consecutive ninety-day period; or
 - (3) ten (10) percent or more of the dollar value of all merchandise displayed at any time; or
 - (4) ten (10) percent or more of all inventory at any time, measured by the number of items; or
 - (5) ten (10) percent or more of the merchandise displayed at any time, measured by the number of items; or
 - (6) ten (10) percent or more of the sales floor area of the business (not including storerooms, stock areas, restrooms, or any portion of the business not open to the public) at any time;
- b) Five (5) percent or more of the sales, rentals or exchanges, measured in dollars over any consecutive ninety-day period, is derived from "Sexually-Oriented Toys or Novelties";
- c) Five (5) percent or more of the number of sale, rental or exchange transactions, measured over any consecutive ninety-day period, relate to "Sexually-Oriented Toys or Novelties";
- d) Five (5) percent or more of the dollar value of all merchandise displayed at any time is attributable to "Sexually-Oriented Toys or Novelties";
- e) Five (5) percent or more of all inventory, measured by the number of items, consists of "Sexually-Oriented Toys or Novelties" at any time;

- f) Five (5) percent or more of all merchandise displayed, measured by the number of items, consists of "Sexually-Oriented Toys or Novelties" at any time;
 - g) Five (5) percent or more of the sales floor area of the business (not including storerooms, stock areas, restrooms, or any portion of the business not open to the public) is devoted to "Sexually-Oriented Toys or Novelties" at any time.
- b. Businesses that provide entertainment.
- 1) "Adult Entertainment Business" means any business to which the public, Patrons or members are invited or admitted, and where providing "Adult Entertainment" is a regular and substantial portion of its business.
 - 2) The definition of "Adult Entertainment Business" also includes, but is not limited to, any and all of the following specific Adult Entertainment Businesses, as defined herein:
 - a) "Adult Motion Picture Theater" means an establishment with a screen or projection areas, where a regular and substantial portion of its business is the exhibition to Patrons of films, videotapes or motion pictures which is intended to provide sexual stimulation or sexual gratification to the Patrons or which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."
 - b) "Adult Theater" means an establishment where a regular and substantial portion of its business is providing live performances that are distinguished by or characterized by an emphasis on the exposure, depiction or description of "Specified Anatomical Areas" or the conduct or simulation of "Specified Sexual Activities."
 - c) "Adult Entertainment Cabaret" means (1) an establishment where a regular and substantial portion of its business is providing live entertainment that (i) is intended to provide sexual stimulation or sexual gratification to the Entertainer or the Patrons, and (ii) is distinguished by or characterized by an emphasis on matter depicting, simulating, describing or relating to "Specified Anatomical Areas" or the conduct or simulation of "Specified Sexual Activities"; or (2) an establishment which regularly features entertainment of an erotic nature including exotic dancers, strippers, or similar Entertainers.

- d) "Adult Entertainment Studio" (includes the terms "rap studio," "exotic dance studio," "sensitivity studio," "body painting studio," or "encounter studio") means an establishment whose premises are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, and where a regular and substantial portion of its business is providing entertainment which features materials or live performances characterized by an emphasis on or features materials relating to "Specified Sexual Activities" or the exhibition of "Specified Anatomical Areas."
- c. Businesses that provide services.
- 1) "Bath House" means an enterprise where a regular and substantial portion of its business is offering baths and/or showers with other Persons present who are "Nude" or displaying "Specified Anatomical Areas."
 - 2) "Adult Motel" means an enterprise where a regular and substantial portion of its business is offering public accommodations for the purpose of viewing closed-circuit television transmissions, films, movies, motion pictures, video cassettes, video tapes, slides or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" and which rents room accommodations for less than six hours at a time.
4. The definition of "Adult Business" does not include, and this Ordinance shall not apply to, a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances covered by the definition of "Adult Business" were permitted or allowed as part of such art exhibits or performances.
- B. "Adult Entertainment" means any exhibition, performance, display or dance of any type, including, but not limited to, talking, singing, reading, listening, posing, serving food or beverages, soliciting for the sale of food, beverages or entertainment, pantomiming, modeling, removal of clothing, or any service offered on a premises where such exhibition, performance, display or dance is intended to arouse or excite the sexual desires of the Entertainer, other Entertainers or Patrons, or if the entertainment is characterized by an emphasis on the exposure, depiction or description of "Specified Anatomical Areas" or the conduct or simulation of "Specified Sexual Activities."

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- C. "Adult Media" means books, magazines, periodicals, other printed matter, pictures, slides, records, audiotapes, videotapes, compact discs, DVDs, motion pictures, films, CD-ROMs or other devices used to record computer images, or other similar media which are distinguished or characterized by an emphasis on matters depicting, describing or relating to "Specified Anatomical Areas" or "Specified Sexual Activities."
- D. "Adult Media Viewing Booth" means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat Patrons and is used for viewing or reading "Adult Media." "Adult Media Viewing Booths" are sometimes also known as adult video viewing booths, peep shows, adult video arcades, panoramas and adult mini-motion picture theaters. For purposes of this definition, an "Adult Media Viewing Booth" shall refer to all such booths, cubicles, stalls or compartments containing less than one hundred fifty (150) square feet of gross floor area.
- E. "Contagious and Infectious Diseases" means those diseases which are designated in Kansas Department of Health and Environment Regulations, K.A.R. 28-1-2, as amended.
- F. "Employee" means any and all Persons, including Managers, Entertainers and independent contractors, who work in or at or render any services directly related to the operation of an "Adult Business."
- G. "Entertainer" means any Person who provides "Adult Entertainment" within an "Adult Entertainment Business," whether or not a fee is charged or accepted for entertainment.
- H. "Manager" means any Person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of any activity at any "Adult Business."
- I. "Minor" means any Person less than eighteen (18) years of age.
- J. "Nude" or "Nudity" means the appearance of a human bare buttock, anus, genitals, or female breast, or a state of dress that fails to completely and opaquely cover a human buttock, anus, genitals, or any part of the female breast or breasts that is situated below a point immediately above the top of the areola, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed.
- K. "Operate" means to own, conduct or maintain the affairs of an "Adult Business."
- L. "Operator" means any Person owning, operating, conducting or maintaining an "Adult Business."
- M. "Patron" means any Person who enters an "Adult Business" without regard to whether a purchase is made from the "Adult Business" or compensation is paid to the "Adult Business" or any Employee of the "Adult Business" for merchandise, entertainment or service; provided that the term "Patron" shall not include Persons who enter an "Adult Business" for the sole purpose of providing service or merchandise to the "Adult Business" and who do not remain in the "Adult Business" after the purpose has been accomplished including, but not limited to, Persons performing construction, repair or maintenance on the premises or delivering goods or merchandise to the "Adult Business" and any such similar activity.

- N. "Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated association, joint venture, governmental entity, or other entity or group of Persons, however organized.
- O. "Server" means any person who serves food or drink at an "Adult Entertainment Business."
- P. "Sexually-Oriented Toys or Novelties" means instruments, devices or paraphernalia which either depict representations of "Specified Anatomical Areas" or are designed or marketed for use in connection with "Specified Sexual Activities." In determining whether an item is "designed or marketed for use" in connection with "Specified Sexual Activities," the following guidelines may be considered:
1. Expert testimony as to the principle use of the item;
 2. Evidence concerning the total business of a Person or business establishment and the type of merchandise involved in the business;
 3. National and local advertising concerning the use of the item;
 4. Evidence of advertising concerning the nature of the business establishment;
 5. Instructions, graphics or other material contained on the item itself or on the packaging materials for the item;
 6. The physical or structural characteristics of the item;
 7. The manner in which the item is displayed, including its proximity to other regulated merchandise or signage relating to items in a display area.

Any Person may request an interpretive ruling from the Chief of Police, or his or her designee, as to whether a particular item is considered by the City to be "designed or marketed for use" in connection with "Specified Sexual Activities." An application for an interpretive ruling shall be made in writing on a form provided by the Chief of Police, and shall be accompanied by such other information as may reasonably be requested under the circumstances pertaining to the specific item about which a ruling is requested. The Chief of Police shall issue a written interpretive ruling within ten business days following submission of a completed application. The decision of the Chief of Police may be appealed to the Governing Body within fifteen days following the interpretive ruling by submitting a written notice of appeal to the City Clerk.

- Q. "Specified Anatomical Areas" means:
1. Any of the following, or any combination of the following, when less than completely and opaquely covered: any human genitals, pubic region, any buttock, or any portion of the female breast or breasts that is situated below a point immediately above the top of the areola, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed; or
 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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- R. "Specified Criminal Act" means any unlawful lewd or indecent conduct, specifically including, but without limitation, any of the lewd or indecent criminal acts as follows:
1. Any sex offense set forth in Chapter 21, Article 35, of the Kansas Statutes Annotated, or amendments thereto;
 2. Any crime set forth in the Kansas Uniform Controlled Substances Act, Chapter 65, Article 41, of the Kansas Statutes Annotated, or amendments thereto;
 3. Incest (K.S.A. 21-3602, or amendments thereto);
 4. Aggravated incest (K.S.A. 21-3603, or amendments thereto);
 5. Furnishing alcoholic liquor or cereal malt beverage to a Minor (K.S.A. 21-3610, or amendments thereto);
 6. Furnishing alcoholic beverages to a Minor for illicit purposes (K.S.A. 21-3610b, or amendments thereto);
 7. Promoting obscenity (K.S.A. 21-4301);
 8. Promoting obscenity to Minors (K.S.A. 21-4301a);
 9. Promotion to Minors of obscenity harmful to Minors (K.S.A. 21-4301c);
 10. Any Kansas municipal ordinance violation based upon any of the crimes set forth above in subparagraphs 1 through 9, inclusive;
 11. Any criminal violations from a State other than Kansas, or municipal ordinance violations from a State other than Kansas, corresponding to the crimes set forth above in subparagraphs 1 through 9, inclusive. If necessary, the City Attorney shall issue an interpretive ruling determining whether a crime from another State corresponds to the crimes set forth above in subparagraphs 1 through 9, inclusive.
- S. "Specified Sexual Activities" mean any of the following:
1. Sexual conduct including, but not limited to, actual or simulated acts of sexual intercourse, masturbation, oral copulation or sodomy;
 2. Fondling or other erotic touching of a Person's clothed or unclothed genitals, pubic region, buttock, anus or female breast;
 3. Sadomasochistic acts; or
 4. Human genitals in a state of sexual stimulation or arousal.
- (History: Ord. AEB-2416 §1, 2003; AEB-2027 §1, 97; AEB-1944 §1, 95; AEB-1935 §1, 95; AEB-1846 §1, 94; AEB-1837 §1, 93; AEB-1782A §1, 93; AEB-1782 §1, 93)

5.05.020 License required for Adult Business.

- A. It shall be unlawful for any Person to Operate or maintain an Adult Business in the City unless the owner, Operator or lessee thereof has obtained an Adult Business license from the City, or to Operate such business after such license has expired or been revoked or suspended by the City.

- B. It is unlawful for any Entertainer, Server, Employee, Manager, Operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed Adult Business.
- C. The failure to post an Adult Business license in the manner required herein shall be prima facie evidence that an Adult Business has not obtained such a license. In addition, it shall be prima facie evidence that any Entertainer, Employee, Manager or owner who performs any business, service or entertainment in an Adult Business in which an Adult Business license is not posted in the manner required herein had knowledge that such business is not licensed.
- D. Any business that engages in the exchange, rental, or sale of Adult Media if such business is not open to the public in general but only to one or more classes of the public, excluding any Minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas shall be deemed to have consented to periodic entry into and inspection of the business premises by appropriate City officials and inspection by those officials of only those business records necessary for the limited purpose of determining whether such business enterprise is in compliance with this Ordinance. This entry and inspection shall take place during hours when such business is open to the public, unless otherwise requested by the business, and shall not unreasonably interfere with the conduct of such business.

(History: Ord. AEB-2416 §2, 2003; AEB-1944 §2, 95; AEB-1935 §2, 95; AEB-1846 §2, 94; AEB-1837 §2, 93; AEB-1782 §1, 93)

5.05.030 License required for Managers, Servers and Entertainers.

It is unlawful for any Person to work as an Entertainer, Server or Manager at an Adult Business without first obtaining a license to do so from the City, or to work as an Entertainer, Server or Manager at an Adult Business after such Person's license to do so has expired or been revoked or suspended.

(History: Ord. AEB-2416 §3, 2003; AEB-1944 §3, 95; AEB-1935 §3, 95; AEB-1846 §3, 94; AEB-1837 §3, 93; AEB-1782 §1, 93)

5.05.040 License, classification and fees.

- A. The license year for all fees required herein shall be from each January 1 through December 31. The application for a license shall be accompanied by payment in full of the fee stated herein by certified or cashier's check or money order, and no application shall be considered complete until such fee is paid.
- B. All licenses shall be issued for a specific location and shall be nontransferable, and license fees shall be nonrefundable.
- C. The classification of licenses and fees for each shall be as follows:
 - 1. Adult Business license fee is \$250.00 per year;
 - 2. Manager's license fee is \$20.00 per year;

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3. Entertainer's license fee is \$20.00 per year;
4. Server's license fee is \$20.00 per year.

(History: Ord. AEB-2416 §4, 2003; AEB-1944 §4, 95; AEB-1935 §4, 95; AEB-1846 §4, 94; AEB-1837 §4, 93; AEB-1782 §1, 93)

5.05.045 License limited to one identifiable type of adult use.

All Adult Business licenses shall be issued only for the one Adult Business use listed on the application. Any change in the type of adult use shall invalidate the Adult Business license and require the licensee to obtain a new license for the change in use. A separate license is required for each adult use. The establishment or maintenance of more than one Adult Business in the same building, structure or portion thereof is prohibited.

(History: Ord. AEB-2416 §5, 2003; AEB-1944 §5, 95; AEB-1935 §5, 95; AEB-1846 §5, 94; AEB-1837 §5, 93)

5.05.050 License applications.

A. Adult Business License.

All Persons desiring to secure a license to Operate an Adult Business as required herein shall make a verified application with the City Clerk. All applications shall be submitted in the name of the Person who owns the Adult Business. The application shall be signed by the applicant. If the applicant is a corporation, the application shall be signed by its President. If the applicant is a partnership, the application shall be signed by a partner. If the applicant is a limited liability company, the application shall be signed by a member. In all other instances where the owner is not an individual, the application shall be signed by an authorized representative of the owner. The City Clerk may require proof of authorization before accepting an application. All applications shall be submitted on a form supplied by the City Clerk and shall require all of the following information:

1. The name, any aliases, mailing address for receipt of notices, home telephone number, occupation, date and place of birth and social security number of the applicant.
2. The tax identification number and registered agent if the owner is required to have a tax identification number or registered agent.
3. The name of the Adult Business, a description of the type of Adult Business to be performed on the licensed premises, and the name of the owner of the premises where the Adult Business will be located.
4. The names, social security numbers and dates of birth of all partners, if the applicant is a partnership or limited liability partnership; and if the applicant is a corporation or limited liability company, the same information for all stockholders or members who own more than a 25% interest in the company.

5. A statement from the applicant whether the applicant and each Person required to be identified in the application pursuant to subparagraph 4 above, in previously operating in this or another city, county or state, has had an Adult Business license of any type revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subjected to the suspension or revocation.
6. A statement from the applicant and each Person required to be identified in the application pursuant to subparagraph 4 above that each such Person has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor or municipal ordinance violation, or released from confinement for conviction of a misdemeanor or municipal ordinance violation, whichever event is later, within two (2) years immediately preceding the application, where such felony, misdemeanor or municipal ordinance violation constitutes a Specified Criminal Act.
7. On applications requesting a license to Operate a Bath House, the applicant shall provide for each Employee, a health certificate from a duly licensed Kansas or Missouri physician stating that within 90 days prior thereto, the applicant and all other Persons working on the premises have been examined and found free of any Contagious or Infectious Disease. This shall be a continuing requirement. For each Person who is employed, the above described health certificate shall be submitted to the City Clerk within forty-eight (48) hours of the time such Person begins employment
8. If the applicant is a corporation or limited liability company, a current certificate of registration issued by the Kansas Secretary of State.
9. A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this Ordinance regulating Adult Businesses.

Failure to provide the information and documentation required herein shall constitute an incomplete application and shall not be processed by the City. The City Clerk shall notify the applicant whether or not the application is complete within five (5) working days of the date the application is received by the City Clerk; in the event the City Clerk has determined that the application is incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete.

B. Manager, Server or Entertainer License.

All Persons desiring to secure a license to be a Manager, Server or Entertainer shall make a verified application with the City Clerk. All applications shall be submitted in the name of the Person proposing to be a Manager, Server or Entertainer. All applications shall be submitted on a form supplied by the City Clerk and shall require all of the following information:

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1. The applicant's name, any aliases, mailing address for receipt of notices, home telephone number, date and place of birth, social security number, and, in the case of Entertainers, any stage names or nicknames used in entertaining.
2. The name and address of each Adult Business where the applicant intends to work as a Manager, Server or Entertainer.
3. A statement from the applicant that the applicant has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor or ordinance violation, or released from confinement for conviction of a misdemeanor or ordinance violation, whichever event is later, within two (2) years immediately preceding the application, where such felony, misdemeanor or ordinance violation constitutes a Specified Criminal Act.
4. The applicant shall present to the City Clerk, who shall copy, documentation that the applicant has attained the age of 18 years at the time the application is submitted. Any of the following shall be accepted as documentation of age:
 - a. A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;
 - b. A state-issued identification card bearing the applicant's photograph and date of birth;
 - c. An official and valid passport issued by the United States of America;
 - d. An immigration card issued by the United States of America;
 - e. Any other form of picture identification issued by a governmental entity that is deemed reliable by the City Clerk; or
 - f. Any other form of identification deemed reliable by the City Clerk.

Failure to provide the information required herein shall constitute an incomplete application and shall not be processed by the City. The City Clerk shall notify the applicant whether or not the application is complete within five (5) working days of the date the application was received by the City Clerk; in the event the City Clerk has determined that the application is incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete.

C. Application processing.

Upon receipt of an application for an Adult Business, Manager, Server or Entertainer license, the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application. In addition, the City Clerk shall transmit a copy of the application to the Director of Planning and Development Services and the Fire Inspector. It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate

and whether the application meets the requirements herein for issuance of the license for which the application is made. The Chief of Police shall report the results of the investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. It shall be the duty of the Director of Planning and Development Services and the Fire Inspector to determine whether the structure where the Adult Business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, fire and property maintenance ordinances of the City. The Director of Planning and Development Services and the Fire Inspector shall report the results of their investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. Upon receipt of the reports from the Chief of Police, the Director of Planning and Development Services and the Fire Inspector, the City Clerk shall schedule the application for consideration by the Governing Body at the earliest meeting consistent with the notification requirements established by law; provided, however, that the license application for an Adult Business, Server, Manager or Entertainer license shall be scheduled for hearing and either approved or disapproved within thirty (30) days from the date the application is received by the City Clerk, irrespective of whether the City Clerk has received timely reports from the Chief of Police, the Director of Planning and Development Services and the Fire Inspector. The applicant shall be notified in writing of the date when the Governing Body will consider the application and shall be afforded an opportunity to be heard at that meeting.

(History: Ord. AEB-2416 §6, 2003; AEB-2246 §1, 2001; AEB-1944 §6, 95; AEB-1935 §6, 95; AEB-1846 §6, 94; AEB-1837 §6, 93; AEB-1782A §2, 93; AEB-1782 §1, 93)

5.05.060 Examination of Application, Issuance of License, Disapproval.

- A. The Governing Body shall examine an application for an Adult Business license, or a Manager, Server or Entertainer license, within thirty (30) days of the date such application was received by the City Clerk. After such examination, the Governing Body shall approve the issuance of a license only if the appropriate license fee has been paid, the applicant is qualified and all the applicable requirements set forth herein are met. No license shall be approved for any Person ineligible pursuant to the provisions herein. All incomplete applications shall be denied.
- B. The record of the Governing Body shall show the action taken on the application, and if the license is granted, the Governing Body shall direct the City Clerk to issue the proper license. The Adult Business license and all Manager, Server and Entertainer licenses shall state that it is not transferable to other Persons or entities and the calendar year for which it is issued.
- C. If an application for a license is disapproved, the applicant shall be immediately notified by registered or certified mail to the applicant's last known mailing address, and the letter of notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may seek judicial review in the Overland Park Municipal Court by filing a notice of appeal with the Clerk of the Municipal Court within

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thirty (30) days of the date of the letter of notification. A copy of the notice of appeal shall be immediately filed with the City Clerk. A memorandum of points and authorities in support of the appeal shall be served and filed concurrently with the appeal, and appellant shall immediately serve a copy of the appeal and the memorandum of points and authorities upon the City Attorney. Within fifteen (15) days of receipt of a copy of the notice of appeal, the City Clerk shall prepare and file the administrative record with the Clerk of the Municipal Court. Counsel for the City shall serve and file a memorandum of points and authorities in opposition to the appeal within fifteen (15) days after service of the appellant's appeal and memorandum of points and authorities. Appellant may serve and file a reply memorandum of points and authorities not later than three (3) days after service of the City's opposition memorandum. Within twenty-five (25) days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney, the Municipal Court shall conduct a hearing on the appeal. The Municipal Court shall rule on the appeal within thirty (30) days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney. If the Municipal Court has not decided the validity of the license denial within thirty (30) days after the appeal and accompanying memorandum or points and authorities is filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney, the City Clerk shall immediately issue a temporary license to the appellant. The temporary license shall remain in effect only until the Municipal Court has rendered its opinion concerning the validity of the license denial. In the event that the last day of any time period set forth above falls upon a Saturday, Sunday or a legal holiday (as defined by K.S.A. 60-206), the time period shall run until the end of the next day which is not a Saturday, Sunday or a legal holiday. Appeals of the decision of the Municipal Court may be taken as authorized and in the manner provided by Chapter 12, Article 46, of the Kansas Statutes Annotated, as amended.

(History: Ord. AEB-2416 §7, 2003; AEB-2414 §1, 2002; AEB-1944 §7, 95; AEB-1935 §7, 95; AEB-1846 §7, 94; AEB-1837 §7, 93; AEB-1782A §3, 93; AEB-1782 §1, 93)

5.05.070 License -Ineligibility and Disqualification.

No person is eligible nor shall a license be issued to:

- A. An applicant for an Adult Business license if one or more of the following conditions exist:

1. The premises for which an application for an Adult Business has been made is located within six hundred (600) feet of any school, church, licensed child care center, public park, or property zoned or used for residential purposes, which uses are located within the city limits. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the premises from which the Adult Business would be Operated to the nearest point on the property line of any school, church, licensed day care center, public park or property zoned or used for residential purposes located within the City;
 - a. provided the phrase "property zoned or used for residential purposes" shall not include any property zoned for residential use for which a special use permit has been granted for an indefinite period of time which permit allows a non-residential use;
 - b. provided further, the list of protected uses set forth herein shall exclude streets, alleys and highway rights-of-way;
 - c. provided further, any school, church or licensed day care center located within commercially zoned property pursuant to a special use permit shall not be included as a protected use.
2. The premises for which an application for an Adult Business has been made is located within five hundred (500) feet of any other business located within or without the City meeting the definition of Adult Business as set forth in this Ordinance, regardless of whether such other business has applied for or received a license to Operate an Adult Business at that location. Measurements shall be made in a straight line, without regard to intervening structures or objects from the premises from which the proposed Adult Business would be Operated to the nearest point on the property line of such other business meeting the definition of Adult Business as set forth in this Ordinance;
3. The applicant knowingly failed to supply all of the information requested on the application;
4. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;
5. The applicant's proposed business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the City, provided, that upon a showing that the premises meets said requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the Governing Body;
6. The applicant has been convicted, released from incarceration for conviction or diverted on any Specified Criminal Act during the time period set forth herein;
7. The applicant has had an Adult Business license or comparable license revoked or suspended in this or any other city during the past five (5) years; or

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8. If the applicant is applying for a license to Operate a Bath House or body painting studio and applicant has not produced a health certificate as required herein for all Persons working on the premises.
- B. An applicant for a Manager, Server or Entertainer license if one or more of the following conditions exist:
1. The applicant has been convicted, released from incarceration for conviction or diverted on any Specified Criminal Act during the time period set forth herein;
 2. The applicant knowingly failed to provide all of the information required on the application;
 3. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;
 4. The applicant has had a Manager, Server or Entertainer license revoked or suspended in this or any other city during the past five (5) years; or
 5. The applicant is applying for a license for a Manager, Server or Entertainer in a Bath House and has not produced a health certificate as required herein.

(History: Ord. AEB-2416 §8, 2003; AEB-2027 § 2, 97; AEB-1944 §8, 95; AEB-1935 §8, 95; AEB-1846 §8, 94; AEB-1837 §8, 93; AEB-1782 §1, 93)

5.05.080 Standards of conduct.

It shall be unlawful for any Adult Business, or any Manager, Server, Entertainer or Employee thereof, or any Patron of an Adult Business, while on or about the premises of the business, to knowingly fail to adhere to the following standards of conduct, as applicable:

A. Identification Cards.

Any Manager, Server or Entertainer issued a license under this Chapter shall, at all times when working in an Adult Business, have in their possession a valid identification card issued by the City, bearing the permit number, the Employee's physical description and a photograph of such Employee. Such identification cards shall be laminated to prevent alteration.

B. Age Restriction.

Minors shall not be permitted on the premises of any Adult Business.

C. Exterior Observation.

The premises of all Adult Businesses will be so constructed as to ensure that the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.

D. Exterior Display.

No Adult Business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or any material or Persons depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas, as defined herein, from any exterior source by display, decoration, sign, show window or other opening.

E. Nudity Prohibited.

No Manager, Employee, Server, Entertainer or Patron in an Adult Business other than a licensed Bath House shall be Nude.

F. Sale or Consumption of Alcohol Prohibited.

No alcoholic liquor or cereal malt beverages shall be sold or consumed on the premises of an Adult Business.

G. Specified Criminal Acts and Specified Sexual Activities Prohibited.

No Manager, Employee, Server, Entertainer or Patron of an Adult Business shall engage in any Specified Criminal Act or any Specified Sexual Activity on the premises of the business.

H. Certain Other Acts Prohibited.

1. No Manager, Employee, Server, Entertainer or Patron shall wear or use any device or covering exposed to view which simulates any Specified Anatomical Area or use artificial devices or inanimate objects to simulate or depict any Specified Sexual Activity while on the premises of an Adult Business.
2. All dancing or other live Adult Entertainment on the licensed premises shall only occur upon a stage at least two (2) feet above the immediate floor level and removed at least six (6) feet from the nearest Patron. The six-foot boundary from the outer edge of the stage shall be painted or otherwise clearly indicated on the floor so that Patrons will not cross the six-foot boundary. The absence of this demarcation will create a presumption that there have been violations of these standards of conduct during performances in unmarked areas. No Manager in charge of the Adult Business at the time shall knowingly permit any Patron to have any physical contact with an Entertainer or to cross the six-foot boundary while the Entertainer is engaged in a performance of Adult Entertainment. No Patron shall intentionally have any physical contact with an Entertainer or cross the six-foot boundary while the Entertainer is engaged in a performance of Adult Entertainment. No Entertainer shall engage in any performance of Adult Entertainment except upon the stage.

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3. No Employee, Server or Entertainer of an Adult Business while on the premises of the business shall knowingly touch, fondle or caress any Specified Anatomical Area of another Person, or knowingly permit another Person to touch, fondle or caress any Specified Anatomical Area of such Employee, Server or Entertainer, whether such Specified Anatomical Area is clothed, unclothed, covered or exposed. No Patron while on the premises of an Adult Business shall knowingly touch, fondle or caress any Specified Anatomical Area of an Employee, Server or Entertainer employed by the Adult Business, whether such Specified Anatomical Area is clothed, unclothed, covered or exposed.
4. No Entertainer shall solicit, demand or receive any payment or gratuity from any Patron for any act prohibited herein and while on the premises of an Adult Business and no Entertainer shall receive any payment or gratuity from any Patron for any entertainment except as follows:
 - a. While such Entertainer is on the stage a Patron may place such payment or gratuity into a container provided by the Adult Business for the receipt of gratuities to be located outside the six-foot boundary surrounding the stage; or
 - b. While such Entertainer is not on the stage but while on the premises of an Adult Business and is clothed so as to not expose to view any Specified Anatomical Area, a Patron may place such payment or gratuity into the Entertainer's hand.
5. No owner, Operator or Manager of an Adult Business shall:
 - a. knowingly permit alcoholic liquor or cereal malt beverages to be brought, sold or consumed upon the premises;
 - b. knowingly allow or permit any Employee of the business or any Patron to engage in any Specified Criminal Act or any Specified Sexual Activity on the premises;
 - c. knowingly allow or permit any Minor to be in or upon the premises of an Adult Business;
 - d. knowingly allow or permit a violation of this Ordinance or any other city ordinance provision or state law to occur on the premises.

I. Signs required.

All Adult Entertainment Businesses that provide live entertainment shall conspicuously display in the common area at the principal entrance to the premises, a sign, on which uppercase letters shall be at least two (2) inches high, and lowercase letters at least one inch high, which shall read as follows:

**THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED
AND LICENSED BY THE CITY OF OVERLAND PARK**

ENTERTAINERS ARE:

- ◆ Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress or touch the pubic region, buttocks, genitals or female breast of any employee, patron or other entertainer or to permit any employee, patron or other entertainer to fondle, caress or touch the pubic region, buttocks, genitals or female breast of said entertainer.
- ◆ Not permitted to be nude.
- ◆ Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:
 - While such entertainer is on the stage, by placing such payment or gratuity into a container located outside a six-foot boundary surrounding the stage; or
 - While such entertainer is not on the stage, by placing such payment or gratuity into the entertainer's hand.

CUSTOMERS ARE:

- ◆ Not permitted to be upon the stage at any time or to be within the six-foot marked boundary surrounding the stage while entertainers are performing.
- ◆ Not permitted to touch, caress or fondle the pubic region, genitals, buttocks or female breast of any employee, server or entertainer or engage in solicitation for prostitution.

J. Lighting required.

The premises of all Adult Businesses shall be equipped with overhead lighting in every place to which customers are permitted access, at an illumination of not less than one footcandle, as measured at the floor level, and such illumination must be maintained at all times that any customer or Patron is present in or on the premises.

K. Closed booths or rooms prohibited.

The interior premises of all Adult Businesses 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. The view required must be by direct line of sight from the Manager's station. Adult Media Viewing Booths are prohibited.

L. Ventilation and sanitation requirements.

The premises of all Adult Businesses shall be kept in a sanitary condition. Except as otherwise provided herein, separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition.

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M. Hours of operation.

No Adult Business may be open or in use between the hours of 2:00 a.m. and 9:00 a.m. on any day other than a Sunday. No Adult Business may be open between the hours of 2:00 a.m. and 12:00 noon on a Sunday.

N. Facilities necessary.

No Adult Business license to conduct a Bath House shall be issued unless an inspection by the Code Official, and/or Administrator, Environmental Health, or his/her authorized representative reveals that the premises on which the applicant intends to conduct such business complies with each of the following minimum requirements:

1. The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given or showers taken. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business' operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of Operators and Patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one Patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every Patron. No activity related to an Adult Business shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.
2. Plumbing facilities shall be provided as required by O.P.M.C., Chapter 16.130, as amended.
3. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

The Code Official, and/or Administrator, Environmental Health, shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the City Clerk. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. The appropriate City official may recommend the issuance of a license contingent upon the compliance with any requirements in this section.

(History: Ord. AEB-2416 §9, 2003; AEB-2246 §2, 2001; AEB-2027 §3, 97; AEB-1944 §9, 95; AEB-1935 §9, 95; AEB-1846 §9, 94; AEB-1837 §9, 93; AEB-1782A §4, 93; AEB-1782 §1, 93)

5.05.090 License - Posting or display.

- A. Every Person licensed as an Adult Business shall post such license in a conspicuous place and manner on the Adult Business premises.
- B. Every Person holding a Server, Manager or Entertainer license shall post his or her license in his or her work area on the Adult Business premises so it shall be readily available for inspection by City authorities responsible for enforcement of this Ordinance.

(History: Ord. AEB-2416 §10, 2003; AEB-1944 §10, 95; AEB-1935 §10, 95; AEB-1846 §10, 94; AEB-1837 §10, 93; AEB-1782A §5, 93; AEB-1782 §1, 93)

5.05.100 Manager on premises.

- A. A Manager shall be on duty at all Adult Businesses at all times the premises are open for business. The name of the Manager on duty shall be prominently posted during business hours.
- B. It shall be the responsibility of the Manager to verify that any Person who provides Adult Entertainment or works as a Server within the premises possesses a current and valid Entertainer or Server's license and that such licenses are prominently posted. It shall also be the responsibility of the Manager to ensure that Minors do not enter upon the premises of an Adult Business.

(History: Ord. AEB-2416 §11, 2003; AEB-1944 §11, 95; AEB-1935 §11, 95; AEB-1846 §11, 94; AEB-1837 §11, 93; AEB-1782A §6, 93; AEB-1782 §1, 93)

5.05.110 Inspectors and inspections.

All Adult Businesses shall permit representatives of the police department or any other City official acting in their official capacity to inspect the premises as necessary to ensure the business is complying with all applicable regulations and laws.

(History: Ord. AEB-2416 §12, 2003; AEB-1944 §12, 95; AEB-1935 §12, 95; AEB-1846 §12, 94; AEB-1837 §12, 93; AEB-1782 §1, 93)

5.05.120 Suspension, revocation, or nonrenewal -- license.

Suspension, revocation or nonrenewal of licenses may be justified whenever the City Clerk has information that:

- A. The owner or Operator of an Adult Business or a holder of a Manager, Server or Entertainer license has violated, or knowingly allowed or permitted the violation of, any of the provisions of this Ordinance; or
- B. There have been recurrent violations of provisions of this Ordinance that have occurred under such circumstances that the owner or Operator of an Adult Business knew or should have known that such violations were committed; or
- C. The Adult Business license or the Manager, Server or Entertainer license was knowingly obtained through false statements in the application for such license, or renewal thereof; or
- D. The Adult Business licensee or the Manager, Server or Entertainer licensee knowingly failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or
- E. The licensee has become disqualified from having a license by conviction of a Specified Criminal Act.

Upon receipt of any of the information set forth above, the City Clerk shall make this information known to the Governing Body, which, upon five (5) days written notice to the Person holding the license, shall conduct a public hearing to determine whether the license should be suspended or revoked. The Governing Body may pass a resolution setting forth the procedures for the conduct of such hearings. Based on the evidence produced at the hearing, the Governing Body may take any of the following actions:

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1. Direct the City Clerk to suspend the license for up to ninety (90) days; or
2. Direct the City Clerk to revoke the license for the remainder of the license year; or
3. Direct the City Clerk to place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of the Ordinance occur during the period of probation. If a violation does occur and after a hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year.

(History: Ord. AEB-2416 §13, 2003; AEB-1944 §13, 95; AEB-1935 §13, 95; AEB-1846 §13, 94; AEB-1837 §13, 93; AEB-1782A §7, 93; AEB-1782 §1, 93)

5.05.130 Renewal.

- A. A license may be renewed by making application to the City Clerk on application forms provided for that purpose. Licenses shall expire on December 31 of each calendar year, and renewal applications for such licenses shall be submitted between December 16 and December 31.
- B. Upon timely application and review as provided for a new license, a license issued under the provisions of this Ordinance shall be renewed by issuance of a new license in the manner provided herein for the initial issuance of the license.
- C. If the application for renewal of a license is not made during the time provided herein, the expiration of such license shall not be affected, and a new application shall be required.

(History: Ord. AEB-2416 §14, 2003; AEB-1944 §14, 95; AEB-1935 §14, 95; AEB-1846 §14, 94; AEB-1837 §14, 93; AEB-1782 §1, 93)

5.05.140 Judicial review - stay of enforcement of orders.

Following the entry of an order by the City Clerk suspending or revoking a license issued pursuant to this Ordinance, or disapproving the renewal application for a license, such licensee or applicant may seek judicial review in the Overland Park Municipal Court by filing a notice of appeal with the Clerk of the Municipal Court within thirty (30) days of the date of the letter of notification. A copy of the notice of appeal shall be immediately filed with the City Clerk. A memorandum of points and authorities in support of the appeal shall be served and filed concurrently with the appeal, and appellant shall immediately serve a copy of the appeal and the memorandum of points and authorities upon the City Attorney. The City Clerk shall stay enforcement of any such order pending the final disposition of the appeal by the Municipal Court. Within fifteen (15) days of receipt of a copy of the notice of appeal, the City Clerk shall prepare and file the administrative record with the Clerk of the Municipal Court. Counsel for the City shall serve and file a memorandum of points and authorities in opposition to the appeal within fifteen (15) days after service of the appellant's appeal and memorandum of points and authorities. Appellant may serve and file a reply memorandum of points and authorities not later than three (3) days after service of the City's opposition memorandum. Within twenty-five (25)

days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney, the Municipal Court shall conduct a hearing on the appeal. The Municipal Court shall rule on the appeal within thirty (30) days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney. In the event that the last day of any time period set forth above falls upon a Saturday, Sunday or a legal holiday (as defined by K.S.A. 60-206), the time period shall run until the end of the next day which is not a Saturday, Sunday or a legal holiday. Appeals of the decision of the Municipal Court may be taken to the Johnson County District Court as authorized and in the manner provided by Chapter 12, Article 46, of the Kansas Statutes Annotated, as amended. In the event of such an appeal to the District Court, the City Clerk need not stay enforcement of any order pending the final disposition of proceedings for judicial review unless ordered to do so by the District Court.

(History: Ord. AEB-2416 §15, 2003; AEB-2414 §2, 2002; AEB-1944 §15, 95; AEB-1935 §15, 95; AEB-1846 §15, 94; AEB-1837 §15, 93; AEB-1782 §1, 93)

5.05.150 Penalty.

It shall be unlawful for any Person to violate any of the provisions of this Ordinance. Upon conviction thereof, such Person shall be fined not less than \$1.00 nor more than \$500.00, or be punished by incarceration for up to six (6) months, or by both such fine and incarceration. Each day's violation of, or failure, refusal or neglect to comply with, any provision of this Ordinance shall constitute a separate and distinct offense.

(History: Ord. AEB-2416 §16, 2003; AEB-1944 §16, 95; AEB-1935 §16, 95; AEB-1846 §16, 94; AEB-1837 §15, 93; AEB-1782A §8, 93; AEB-1782 §1, 93)

5.05.160 Regulations.

The City Clerk shall have the power to promulgate regulations as may be necessary and feasible for the carrying out of the duties of his/her office and which are not inconsistent with the provisions of this ordinance.

(History: Ord. AEB-1944 §17, 95; AEB-1935 §17, 95; AEB-1846 §17, 94; AEB-1837 §17, 93; AEB-1782 §1, 93)

5.05.165 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution or civil enforcement for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. AEB-2027 §4, 97)

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5.05.170 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance.

(History: Ord. AEB-1944 §18, 95; AEB-1935 §18, 95; AEB-1846 §18, 94; AEB-1837 §18, 93)

5.05.180 Application to Existing Businesses.

- A. The provisions of this Ordinance shall apply to all Adult Businesses existing on the effective date of Ordinance No. AEB-1837 as well as to all Adult Businesses established after the effective date of Ordinance No. AEB-1837.
- B. Any Adult Business lawfully operating on December 15, 1993, that does not comply with section 5.05.070 A (1) and (2) herein shall be deemed a nonconforming business. The nonconforming business will be permitted to continue for a period not to exceed six (6) months, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming businesses shall not be increased, enlarged, extended or altered except that the business may be changed to a conforming business. If two (2) or more Adult Businesses are within 500 feet of one another and otherwise in a permissible location, the Adult Business which was first established and continually operating at a particular location is the conforming business and any later- established business is nonconforming.
- C. An Adult Business lawfully operating as a conforming business is not rendered nonconforming by the location, subsequent to the grant or renewal of the Adult Business license, of a school, church, licensed day care center, public park or property zoned or used for residential purposes located within the City limits and within six hundred (600) feet of the Adult Business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked.
- D. Any nonconforming business may apply to the Governing Body for an extension of time beyond that date provided herein within which to terminate the nonconforming business or make the business conforming. No such extension of time shall be granted for a period longer than one (1) year after the termination date otherwise set forth herein and shall be granted only upon a showing of extreme hardship.

(History: Ord. AEB-2416 §17, 2003; AEB-1944 §19, 95; AEB-1935 §19, 95; AEB-1846 §19, 94)

5.05.190 Retail Sales of Adult Media.

- A. Applicability.

This section shall apply to any bookstore, video store or other similar retail store in which Adult Media constitutes more than ten (10) percent but not more than forty (40) percent of the store's inventory at any time, or where Adult Media constitutes more than ten (10) percent but not more than forty (40) percent of the merchandise displayed for sale or

rental at any time, or where Adult Media occupies more than ten (10) percent but not more than forty (40) percent of the sales floor area of the business (not including store rooms, stock areas, restrooms, or any portion of the business not open to the public) at any time.

B. Prohibition of Public Display.

The owner or Manager of a store to which this section is applicable shall have the affirmative duty to prevent the display of Adult Media at or within the portions of the business open to Minors.

C. Display of Adult Media.

Adult Media in a store to which this section applies shall be kept in a separate room or section of the store, which room or section shall:

1. Not be open to any Minor;
2. Be physically and visually separate from the rest of the store by an opaque wall or durable material reaching at least eight (8) feet high or to the ceiling, whichever is less;
3. Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and
4. Have access controlled by electronic or other means to provide assurance that Minors will not accidentally enter such room or section.

(History: Ord. AEB-2416 §18, 2003)

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