

## **CHAPTER 8-6 ADULT USE - DEFINITIONS**

### **8-6-1**

#### **CLASSIFICATIONS AND GENERAL PROVISIONS**

Adult Uses as defined in this Ordinance shall be subject to the following general provisions and classifications:

- A. Activities classified as obscene under Chapter 22 of South Dakota Codified Laws are not permitted and are strictly prohibited.
- B. An Adult Use which does not qualify as an accessory use shall be classified as an Adult Use-Principal.
- C. Adult Uses Generally. Adult Uses include adult bookstores, adult motion picture theaters, adult motion picture sales/rentals, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship establishments, adult rap/conversation parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, establishments, businesses or places open to some or all members of the public, at or in which there is an emphasis on the presentation, display, depiction or description of "specified anatomical areas" which are capable of being seen by members of the public. Activities classified as obscene as defined by South Dakota Title 22, as may be amended, are not included.

Activities featuring the following specified anatomical areas, sexual activities or business activities shall be considered Adult Uses:

- 1. Specified Anatomical Areas means:
  - a. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breasts(s) below a point immediately above the top of the areola; and
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 2. Specified Sexual Activities means:
  - a. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
  - b. Clearly depicted human genitals in the state of sexual stimulation, arousal or turgescence; or
  - c. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; or

- d. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast; or
  - e. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons; or
  - f. Erotic or lewd touching, fondling or other sexually-oriented conduct with an animal by a human being; or
  - g. Human excretion, urination, menstruation, vaginal or anal irrigation.
3. Specified Adult Use Business Activities. Activities featuring specified anatomical areas, sexual activities or business activities shall be considered Adult Uses. This includes but is not limited to the following:
- a. Adult Use - Body Painting Studio. An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas".
  - b. Adult Use - Bookstore. A building or portion of a building uses for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building 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 such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas".
  - c. Adult Use - Cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical area".
  - d. Adult Use - Companion Establishment. A companion establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
  - e. Adult Use - Conversation/Rap Parlor. A conversation/rap parlor which excludes minors by reason of age, or which

provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

- f. Adult Use - Health/Sport Club. A health/sport club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
- g. Adult Use - Hotel or Motel. Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".
- h. Adult Use-Massage Parlor, Health Club. A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
- I. Adult Use-Mini-Motion Picture Theater. A building or portion of a building with a capacity for less than 50 persons used for presenting photographic or video material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- j. Adult Use-Modeling Studio. An establishment whose major business is the provision, to customers, to figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
- k. Adult Use-Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas".
- l. Adult Use-Motion Picture Theater. A building or portion of a building with a capacity of 50 or more persons used for presenting material in such building or portion of a building as a prevailing practice excludes minors by virtue of age if such material is distinguished or characterized by an emphasis on

"specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

- m. Adult Use-Noveltty Business. A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.
  - n. Adult Use-Sauna. A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
  - o. Adult Use-Steam Room/Bathroom Facility. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathroom facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
- D. Adult Use - Principal. The offering of goods and/or services which are classified as adult use, as the sole activity, or any activity or activities individually or in combination, that comprise 10% or more of the floor area of the establishment in which it is located, or more than 150 sq. ft of area, or provides 20% or more of the gross receipts of the entire on site business operation.
- E. Adult Use - Accessory. The offering of goods and/or services which are classified as adult uses on a limited scale and which are incidental to the primary activity and goods and/or services offered by the establishment, and, individually or in combination, that comprise less than 10% of the floor area of the establishment in which it is located, but in no case more than 150 square feet . of floor area, or provide less than 20% of the gross receipts of the entire on site business operation. Adult Uses - Accessory do not involve or include any activity except the sale or rental of merchandise.
- F. Adult Use - Exempt. The offering of goods which are classified as adult uses on a diminutive scale and which are extremely incidental to the primary activity and goods and/or services offered by the establishment, and, individually or in combination, comprise less than 5 square feet of the floor area of the establishment in which it is located, or less than 5 square feet of shelf or wall area. Adult Uses - Exempt do not involve or include any activity except the sale or rental of merchandise, and no external or internal advertising of any adult merchandise is permitted.

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