

CHAPTER 25: ZONING

ARTICLE 21. ADULT ESTABLISHMENTS

Sec. 25-210 Findings and Purpose.

- 1.0 Studies conducted by the Minnesota attorney general, the American Planning Association and cities such as St. Paul, Minnesota; Indianapolis, Indiana; Alexandria, Minnesota; Rochester, Minnesota; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; have studied the impacts that adult establishments have in those communities. These studies have concluded that adult establishments have adverse impact on the surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. Based on these studies and conclusions, the City Council of the City of Oakdale finds:
 - 1.1 Adult establishments have adverse secondary impacts of the types set forth above.
 - 1.2 The adverse impacts caused by adult establishments tend to diminish if adult establishments are governed by locational requirements, licensing requirements and health requirements.
 - 1.3 It is not the intent of the City Council to prohibit adult establishments from having a reasonable opportunity to locate in the City.
 - 1.4 It is not the intent of the City Council to regulate on the basis of content, only on the basis of likely adverse secondary effects.
 - 1.5 Minnesota Statutes Section 462.357, authorizes the City to adopt regulations to promote the public health, safety, morals and general welfare.
 - 1.6 The public health, safety, morals and general welfare will be promoted by the City adopting reasonable regulations governing adult establishments.

Sec. 25-211 Definitions.

The following terms have the meanings given them below.

- 1.0 ***Principal Adult Establishment.*** A business which meets any of the following criteria, is engaged in any of the following activities or which utilizes any of the following business procedures or practices:
 - 1.1 A business that is conducted exclusively for the patronage of adults and to which minors are specifically excluded from patronage, either by operation of law or by the owners of such business;
 - 1.2 Any business that:
 - 1.2.1 Devotes more than ten percent of the floor area of the business, or at least 100 square feet, whichever is smaller, to items, merchandise or other materials distinguished or characterized by an emphasis on material depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas, such floor area

not to include storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public, or

1.2.2 Has at least ten percent of its inventory, stock and trade or publicly displayed merchandise comprised of such items, merchandise, or materials, or

1.2.3 Derives at least one-third of any month's gross sales from the sale or rental of such items, merchandise or other materials.

2.0 **Accessory Adult Establishment.** A business which meets any of the following criteria, is engaged in any of the following activities or which utilizes any of the following business procedures or practices:

2.1 Any business that devotes less than ten percent of the sales floor area, up to a maximum of 100 square feet, of an otherwise permitted business (not including storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public) to materials or persons depicting, exposing, describing, discussing, or relating to Specified Sexual Activities or Specified Anatomical Areas, and is available for barter, rental, or sale for off the premise use only. Accessory Adult Establishment sales do not include the sale of instruments, devices or paraphernalia, which are used or designed for use in connection with Specified Sexual Activities. In order to qualify, Accessory Adult Establishment sales shall at all times be out of view by any persons under the age of eighteen (18), and hereunder, they shall be restricted from and prohibit access to persons under age eighteen (18) by physical separation, except for sales of print media, which shall be displayed with a completely opaque cover excluding the media's title, and shall be kept a minimum of five (5) feet off the floor. Any business with accessory adult establishment sales not meeting the requirements of this definition shall be considered a Principal Adult Establishment, subject to all requirements for such businesses.

3.0 **Adult Use.** An adult use is any of the activities, uses and businesses described below:

3.1 **Adult Body Painting Studio:** An establishment or business, which provides the service of applying paint or other substance, whether transparent or non-transparent, to the body of a patron when such person is nude.

3.2 **Adult Bookstore:** An establishment or business used for the barter, rental or sale, or other means of distribution of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film 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 such business:

3.2.1 Devotes at least ten percent of the floor area of the business, or at least 100 square feet, whichever is smaller, to items, merchandise or other materials distinguished or characterized by an emphasis on material depicting, exposing, describing, discussing or relating to specified sexual activities or specified anatomical areas, such floor area not to include storerooms, stock areas, bathrooms, basements or any portion of the business not open to the public, or

3.2.2 Has at least ten percent of its inventory, stock and trade or publicly displayed merchandise comprised of such items, merchandise, or materials, or

- 3.2.3 Derives at least one-third of any month's gross sales from the sale or rental of such items, merchandise or other materials.
- 3.3 **Adult Cabaret:** A business or establishment that provides dancing or other live entertainment to patrons if the dancing and live entertainment is distinguished and characterized by an emphasis on the presentation, display, depiction of matter that seeks to evoke, arouse or excite the patrons' sexual or erotic feelings or desire.
- 3.4 **Adult Companionship Establishment:** A business or establishment that excludes minors by reason of age, and 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."
- 3.5 **Adult Conversation/Rap Parlor:** A business or establishment that excludes minors by reason of age, and which provides the services of engaging in or listening to conversation, talk, or discussion, if such service is distinguished and characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- 3.6 **Adult Health/Sport Club:** A health/sport club which excludes minors by reason of age, if such club is distinguished and characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- 3.7 **Adult Hotel or Motel:** A hotel or motel from which minors are specifically excluded from patronage and where material is presented which is distinguished and characterized by an emphasis on matter depicting, describing or relating, to "specified sexual activities" or "specified anatomical areas."
- 3.8 **Adult 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 and characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- 3.9 **Adult Mini-Motion Picture Theater:** A business or establishment with a capacity for less than 50 persons used for presenting material if such material is distinguished and characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
- 3.10 **Adult Modeling Studio:** A business or establishment that provides customers 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.
- 3.11 **Adult Motion Picture Arcade:** Any place to which the public is permitted or invited where coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion 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 and characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

- 3.12 ***Adult Motion Picture Theater:*** A motion picture theater with a capacity of 50 or more persons used for presenting material if such theater as a prevailing practice excludes minors by reason 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.
- 3.13 ***Adult Novelty Business:*** A business which has as a principal activity the sale of materials or devices which stimulate human genitals, which are designed for sexual stimulation, or which depict or relate to specified anatomical areas or specified sexual activities.
- 3.14 ***Adult Sauna:*** A sauna which excludes minors by reason of age, and 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."
- 3.15 ***Adult Steam Room/Bathhouse 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 and if the service provided by the steam room/bathhouse facility is distinguished and characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

4.0 ***Nude or Specified Anatomical Areas.***

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

5.0 ***Specified Sexual Activities.***

- 5.1 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, zooerastia; or
- 5.2 Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or
- 5.3 Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
- 5.4 Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or

- 5.5 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
- 5.6 Erotic or lewd touching, fondling or other sexually oriented contact with an animal by a human being; or
- 5.7 Human excretion, urination, menstruation, vaginal or anal irrigation.

Sec. 25-212 Location.

- 1.0 A Principal Adult Establishment may be located only in commercial and/or industrial districts subject to the limitations listed hereunder:
 - 1.1 A principal adult establishment may not be located within any of the following areas:
 - 1.1.1 Within 1,000 feet of another principal adult establishment; or
 - 1.1.2 Within 750 feet of a park, school, library, place of worship, day care facility, or facility devoted to activities or recreation for minors, regardless of whether such facilities are public or private in nature; or
 - 1.1.3 Within 750 feet of any property zoned for residential purposes or from a site used for residential purposes.
 - 1.1.4 Distances shall be measured from the property line of the proposed adult use and the nearest boundary of the property containing any of the land uses noted above.
- 2.0 An Accessory Adult Establishment may be located only in the commercial and industrial districts.
 - 2.1 The accessory use shall meet all of the requirements as stated in the definition of Adult Establishment-Accessory, or shall be considered a principal adult establishment, and subject to all of the requirements stated above and consequently must be licensed. If an establishment has an accessory adult use it must be identified as part of the business in the licensing process with the City and is subject to all of the regulations listed herein.

Sec. 25-213 Hours of Operation.

- 1.0 No principal adult establishment may be open to the public between the hours of 10:00 p.m. and 8:00 a.m.

Sec. 25-214 Additional Conditions for Adult Cabarets.

- 1.0 The following additional conditions apply to adult cabarets:
 - 1.1 No owner, operator or manager of an adult cabaret shall permit or allow any dancer or other live entertainer to perform nude.

- 1.2 No dancer, live entertainer, performer, patron or other person shall be nude in an adult cabaret.
- 1.3 The owner, operator or manager of an adult cabaret shall provide the following information to the City concerning any persons who dance or perform live entertainment at the adult cabaret: The person's name, home address, home telephone number, date of birth and any aliases.
- 1.4 No dancer, live entertainer or performer shall be under 18 years old. All dancing or live entertainment shall occur on a platform intended for that purpose and which is raised at least two feet from the level of the floor.
- 1.5 No dancer or performer shall perform any dance or live entertainment closer than 10 feet to any patron.
- 1.6 No dancer or performer shall fondle or caress any patron and no patron shall fondle or caress any dancer or performer.
- 1.7 No patron shall pay or give any gratuity to any dancer or performer.
- 1.8 No dancer or performer shall solicit any pay or gratuity from any patron.

Sec. 25-215 License Required.

- 1.0 *License Required.* No person shall own or operate principal adult establishment without having first secured a license as provided for in this subsection. Accessory adult establishments do not require a separate license, but must be an identified use with the city at the time of requesting a business license.
- 2.0 *Application.* The application for an adult establishment license shall be submitted on a form provided by the City and shall include:
 - 2.1 If the applicant is an individual, the name, residence, phone number, and birth date of the applicant. If the applicant is a partnership, the name, residence, phone number, and birth date of each general and limited partner. If the applicant is a corporation, the names, residences, phone numbers, and birth dates of all those persons holding more than five (5) percent of the issued and outstanding stock of the corporation.
 - 2.2 The name, address, phone number, and birth date of the operator and manager of such operation, if different from the owners; the address and legal description of the premises where the adult establishment is to be located; the activities and types of business to be conducted; the hours of operation; and a building plan of the premises detailing all internal operations and activities.
 - 2.3 A statement detailing any gross misdemeanor or felony convictions relating to sex offenses, obscenity or the operation of an adult establishment or adult business by the applicant, operator or manager and whether or not the applicant, operator or manager has ever applied for or held a license to operate a similar type of business in other communities. In the case of a corporation, a statement detailing any felony convictions by the owners of more than five (5) percent of the issued and outstanding stock of the corporation, and whether or not those

owners have ever applied for or held a license to operate a similar type of business in other communities.

- 3.0 *Annual License Fee.* The annual license fee is set by council resolution as amended from time to time.
- 3.1 Each application for a license shall be submitted to the City Administrator and payment made to the City. Each application for a license shall be accompanied by payment in full of the required license fee. Upon rejection of any application for a license, the City shall refund the license fee.
- 3.2 All licenses shall expire on the last day of June in each year. Each license shall be issued for a period of one (1) year, except that if a portion of the license year has elapsed when the application is made, a license may be issued for the remainder of the year for a pro rated fee. In computing such fee, any unexpired fraction of a month shall be counted as one (1) month.
- 3.3 No part of the fee paid by any license shall be refunded, except that a pro rata portion of the fee shall be refunded in the following instances upon application to the City Administrator within 30 days from the happening of the event, provided that such event occurs more than 30 days before the expiration of the license: Destruction or damage of the licensed premises by fire or other catastrophe; the licensee's illness the licensee's death; or a change in the legal status making unlawful for licensed business to continue.
- 3.4 Each application shall contain a provision on the application in bold print indicating that any withholding of information or the providing of false or misleading information will be grounds for denial or revocation of a license. Any changes in the information provided on the application or provided during the investigation shall be brought to the attention of the City Council by the application or licensee. If said changes take place during the investigation, said data shall be provided to the Police Chief or the City Administrator in writing and they shall report the changes to the City Council. Failure to report said changes by the applicant(s) or the licensee may result in a denial or revocation of a license.
- 4.0 *Investigative Fee.* The investigative fee for an adult establishment license shall be determined as follows:
- 4.1 Upon applying for the license, the applicant shall pay an investigative fee set by the City per person identified on the application as an owner, operator or manager.
- 4.2 If it appears that the investigative costs will exceed the amount estimated by the City, the City Administrator shall notify the applicant and give the applicant an estimate of costs. The applicant shall either make an additional deposit equal to the difference or shall withdraw the application. If the additional deposit is not paid within 14 days, the application shall be deemed withdrawn.
- 4.3 If the costs of administration, issuance and investigation are less than the deposit, the balance shall be refunded upon the issuance or denial of the license. No license shall be issued until the applicant has paid the entire cost of administration, issuance and investigation.
- 5.0 *Granting of License.*

- 5.1 The City Administrator and Police Chief, or such persons as they shall designate, shall complete their investigation within 30 days after the City Administrator receives a complete application and all license and investigative fees.
 - 5.2 If the application is for a renewal, the applicant shall be allowed to continue business until the Council has determined to renew or refuse to renew a license.
 - 5.3 If, after such investigation, it appears that the applicant and the place proposed for the business are eligible for a license under the criteria set forth in this subsection, then the license shall be issued by the City Council within 30 days after the investigation is completed. Otherwise the license shall be denied.
 - 5.4 Each license shall be issued to the applicant only and shall not be transferable to another holder. Each license shall be issued only for the premises described in the application. No license may be transferred to another premise without the approval of the City Council. If the licensee is a partnership or a corporation, a change in the identity of any of the principals of the partnership or corporation shall be deemed a transfer of the license. All adult establishments existing at the time of the adoption of this subsection shall be required to obtain an annual license.
- 6.0 *Persons Ineligible for License.* No license shall be granted to or held by any person:
- 6.1 Under twenty-one (21) years of age;
 - 6.2 Who is overdue or whose spouse is overdue in his or her payment to the City, county or state of taxes, fees, fines or penalties assessed against them or imposed upon them;
 - 6.3 Who has been convicted or whose spouse has been convicted of a gross misdemeanor or felony or of violating any law of this state or local ordinance relating to sex offenses, obscenity offenses or adult establishments;
 - 6.4 Who is not the proprietor of the establishment for which the license is issued;
 - 6.5 Who is residing with a person who has been denied a license by the City or any other Minnesota municipal corporation to operate an adult establishment, or residing with a person whose license to operate an adult establishment has been suspended or revoked within the preceding twelve (12) months;
 - 6.6 Who has not paid the license and investigative fees required by this subsection.
- 7.0 *Places Ineligible for License.*
- 7.1 No license shall be granted for adult establishments on any premises where the applicant or any of its officers, agents or employees has been convicted of a violation of this subsection, or where any license hereunder has been revoked for cause, until one (1) year has elapsed after such conviction or revocation.

7.2 No license shall be granted for any adult establishment which is not in full compliance with the City Code, the City's zoning ordinance, the Building Code, the Fire Code, the City's Health Regulations and all provisions of state and federal law.

8.0 *Conditions of License.*

8.1 Every license shall be granted subject to the following conditions and all other provisions of this subsection, and of any applicable sections of the City Code, the City's zoning ordinance, the Building Code, the Fire Code, the City's Health Regulations and all provisions of state and federal law.

8.2 All licensed premises shall have the license posted in a conspicuous place at all times.

8.3 No minor shall be permitted on the licensed premises.

8.4 Any designated inspection officer of the City shall have the right to enter, inspect, and search the premises of a licensee during business hours.

8.5 Every licensee shall be responsible for the conduct of his/her place of business and shall maintain conditions of order.

8.6 No adult goods or material services shall be offered, sold, transferred, conveyed, given, displayed, or bartered to any minor.

9.0 *Suspension or Revocation for Violation.*

9.1 Any violation of this section shall be a basis for the suspension or revocation of any license granted hereunder. In the event that the City Council proposes to revoke or suspend the license, the licensee shall be notified in writing of the basis for such proposed revocation or suspension. The Council shall hold a hearing for the purpose of determining whether to revoke or suspend the license, which hearing shall be within thirty (30) days of the date of the notice.

9.2 The City Council shall determine whether to suspend or revoke a license within thirty (30) days after the close of the hearing or within 60 days of the date of the notice, whichever is sooner, and shall notify the licensee of its decision within that period.

10.0 *Right of Appeal.*

10.1 In the event that the Council determines to suspend, or revoke a license, such suspension or revocation shall not be effective until fifteen (15) days after notification of the decision to the licensee. If, within that fifteen (15) days, the licensee files and serves an action in state or federal court challenging the Council's action, then the suspension or revocation shall be stayed until the conclusion of such action.

10.2 If the City Council determines not to renew a license, the licensee may continue its business for fifteen (15) days after receiving notice of such non-renewal. If the licensee files and serves an action in state or federal court within that fifteen (15) days for the purpose of

determining whether the City acted properly, the licensee may continue in business until the conclusion of the action.

- 10.3 If the City Council decides not to grant a license to an applicant, then the applicant may commence an action in state or federal court within fifteen (15) days for the purpose of determining whether the City acted properly. The applicant shall not commence doing business unless the action is concluded in its favor.

11.0 *Penalty.*

- 11.1 Any person violating any provision of this section shall be guilty of a misdemeanor, punishable not more than the maximum penalty for a misdemeanor as prescribed by state law. Each day of violation may be charged as a separate misdemeanor.

12.0 *Separability.*

- 12.1 If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid, such decisions shall not affect the validity of the remaining portion so of this Article.

Sec 25-216 Premises Conducive to High-Risk Sexual Conduct.

- 1.0 *Purpose.* The purpose of this section of the City Code is to prescribe regulations governing commercial premises, buildings, and structures that are conducive, by virtue of design, activity and use, to high-risk sexual conduct which can result in the spread of sexually transmitted diseases to persons frequenting such premises, buildings, and structures.
- 2.0 *Findings.* The City Council of the City of Oakdale makes the following findings regarding the need to regulate commercial premises, buildings, and structures that are conducive to the spread of communicable disease of danger to persons in order to further the substantial interest of public health:
 - 2.1 The experience of other cities establishes that certain commercial premises, buildings, and structures, or parts thereof, by reason of the design and use of such premises, buildings, or structures are conducive to the spread of communicable disease of danger to persons frequenting such premises, buildings, or structures, as well as to the general public, and that the risk of spreading infectious and contagious diseases can be minimized by regulating such commercial premises, buildings, and structures.
 - 2.2 The experience of other cities where such commercial premises, buildings, and structures are present indicates that the risk of spreading the sexually transmittable disease of Acquired Immune Deficiency Syndrome (AIDS) is increased by the presence of such premises, buildings, and structures, because the design or use of such premises, buildings, and structures, or parts thereof can facilitate high-risk sexual conduct.
 - 2.3 Medical publications of the Center for Disease Control of the United States Department of Health and Human Services indicate that the sexually transmittable disease of AIDS is currently irreversible and uniformly fatal. Medical research has further established that high-risk sexual conduct is among the leading risk factors for obtaining or spreading AIDS.

- 3.0 *Definitions.* The following words and phrases when used in this section shall have the following meanings unless the context indicates otherwise:
- 3.1 *Booths, stalls, or partitioned portions of a room or individual room:* (a) enclosures specifically offered to persons for a fee or as an incident to performing high-risk sexual conduct, or (b) enclosures which are part of a business operated on the premises which offers movies or other entertainment to be viewed within the enclosure, including enclosures wherein movies or other entertainment is dispensed for a fee. The phrase "booths, stalls, or partitioned portions of a room or individual room" does not mean enclosures which are private offices used by the owner, managers, or persons employed by the premises for attending to the tasks of their employment, and which are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.
- 3.2 *Doors, curtains or portal partitions:* full, complete, nontransparent closure devices through which one cannot see or view activity taking place within the enclosure.
- 3.3 *Hazardous site:* any commercial premises, building or structure, or any part thereof, which is a site of high-risk sexual conduct as defined herein.
- 3.4 *High-risk sexual conduct:* Fellatio; anal intercourse; and/or vaginal intercourse with persons who engage in sexual acts in exchange for money.
- 3.5 *Open to an adjacent public room so that the area inside is visible to persons in the adjacent public room:* either the absence of any entire "door, curtain or portal partition" or a door or other device which is made of clear, transparent material such as glass, plexiglass or other similar material meeting building code and safety standards, which permits the activity inside the enclosure to be entirely viewed or seen by persons outside the enclosure.
- 3.6 *Public Health Official:* an agent or employee of the city, county or state charged with the enforcement of the state or local health laws.
- 4.0 *Public Health Regulations.*
- 4.1 No commercial building, structure, premises or part thereof, or facilities therein shall be so constructed, used, designed or operated in the City for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.
- 4.2 No person shall own, operate, manage, rent, lease, or exercise control of any commercial building, structure, premise, or portion or part thereof in the City, which contains:
- 4.3 Partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity, including but not limited to vaginal intercourse, anal intercourse, or fellatio, between persons on either side of the partition.
- 4.4 "Booths, stalls, or partitioned portions of a room or individual room" as defined herein which have "doors, curtains or portal partitions" as defined herein unless such booths, stalls, partitioned portions of a room or individual room have at least one side open to an adjacent

public room so that the area inside is visible to persons in the adjacent public room as defined herein. Booths, stalls, and/or partitioned portions of a room or individual room that are so open to an adjacent public room shall be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

- 5.0 *Exceptions.* The regulations set forth in this section shall not apply to premises, buildings, or structures that are lawfully operating and licensed as hotels, motels, apartment complexes, condominiums, townhomes, or boarding houses, which are subject to other general health and sanitation requirements under state and local law.
- 6.0 *Health Enforcement Powers.* In exercising powers conferred by this or any other section of this Code relating to communicable diseases, the Public Health Official shall be guided by the most recent instructions, opinions and guidelines of the Center for Disease Control of the United States Department of Health and Human Services, which relate to the spread of infectious diseases.
- 7.0 *Inspections.* In order to ascertain the source of infection and reduce its spread, the Public Health Official, and persons under the Public Health Official's direction and control, shall have full power and authority to inspect or cause to be inspected, and to issue orders regarding any commercial building, structure or premises, or any part thereof, which may be a site of high-risk sexual conduct. If the Public Health Official determines that a hazardous site as defined herein exists, the Public Health Official shall declare it to be a public health hazard and public health nuisance and shall then:
- 7.1 Notify the manager, owner, or tenant of the hazardous site that the Public Health Official has reasonable belief that the premises, building or structure is a hazardous site as defined herein,
- 7.2 Issue two written warnings at least ten (10) days apart to the manager, owner, or tenant of the premises stating the specific reasons for the Public Health Official's opinion that the premises, building, or structure is a hazardous site as defined herein,
- 7.3 Once such notices and warnings have been issued, the Public Health Official or the Public Health Official's appointee shall proceed as follows:
- 7.3.1 After the manager, owner or tenant of the premises has been notified in writing as to the basis of the Public Health Officials determination, the manager, owner or tenant shall have ten (10) days from the date of the last warning to request a hearing before the Public Health Official or the Public Health Official's appointee for the determination as to the existence of such hazardous site. If the manager, owner or tenant of the premises does not request a hearing within ten (10) days of the date of the last warning notice, the Public Health Official shall then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site and the Public Health Official shall cause orders to be issued to the manager, owner or tenant of the premise constituting the hazardous site to take specified corrective measures to prevent high-risk sexual conduct from taking place within the premises.
- 7.3.2 If the manager, owner, or tenant of the premises requests a hearing, the hearing shall be held before the Public Health Official or the Public Health Official's appointee at a

date not more than thirty (30) days after demand for a hearing. After considering all evidence, the Public Health Official or the Public Health Official's appointee shall make a determination as to whether the premises constitute a hazardous site, as defined herein and issue a decision based upon all hearing evidence presented. If the Public Health Official or the Public Health Official's appointee makes a determination that the premises constitute a hazardous site, the Public Health Official shall then issue orders to the manager, owner, or tenant of the premises to take corrective measures to prevent high-risk sexual conduct from taking place within the premises and cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site.

7.3.3 If, within thirty (30) days from issuance of the orders to the manager, owner, or tenant of the hazardous site, the Public Health Official determines that such corrective measures have not been undertaken, the Public Health Official may order the abatement of the hazardous site as a public nuisance, which shall be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction, or may secure a court order for the closure of the premises constituting the hazardous site until the premises, building, or structure is in compliance with the regulations set forth in Section 9.14 of this section.

8.0 *Penalty.* Any person violating any provision of this chapter or any person who removes, destroys or defaces warnings posted on premises by the Public Health Official pursuant to this chapter shall be guilty of a misdemeanor.

Sec 25-217 Reserved