

**Chapter 18
ADULT BUSINESSES**

	Page
ARTICLE I. IN GENERAL.....	18-2
Sec. 18-1. Requirements.....	18-2
Sec. 18-2. Required Distances.....	18-2
Sec. 18-3. Signage.....	18-2
Sec. 18-4. Zone District.....	18-3
Sec. 18-5. Prohibited.....	18-3
Sec. 18-6. Definitions	18-3
Secs. 18-7 to 18-10. Reserved.....	18-5
ARTICLE II. REQUIREMENTS FOR REVIEW AND APPLICATION	18-5
Sec. 18-11. Review Requirements	18-5
Sec. 18-12. Adult Business Application Requirements	18-7

Chapter 18 ADULT BUSINESSES

ARTICLE I. IN GENERAL

Sec. 18-1. Requirements.

No person, partnership, corporation, or other organization shall establish or operate an adult oriented business establishment as defined in Section 12-184 of this Code without first obtaining a special use permit (Section 26-8-5), a business license from the city, and fully complying with the requirements of this chapter.

(Code 2007, 18-1)

Sec. 18-2. Required Distances.

No adult oriented business shall be operated or maintained within:

1. One thousand (1,000) feet of a residential zone district, whether or not a dwelling exists within one thousand (1,000) feet from the adult oriented business;
2. One thousand (1,000) feet of a church;
3. One thousand (1,000) feet of a state licensed day care facility established prior to the effective date of this section;
4. One thousand (1,000) feet of a public library;
5. One thousand (1,000) feet of a public educational facility which serves persons age seventeen (17) or younger; or a private kindergarten or day care center licensed by the State of New Mexico, a private elementary school, a private middle school or private high school;
6. One thousand (1,000) feet of another adult oriented business;
7. One thousand (1,000) feet of a public park with playground equipment, a public swimming pool, public tennis courts or public athletic fields, including baseball fields, softball fields, soccer fields or football fields, outdoor basketball courts and children's museums.

The distance limitations shall be measured in a straight line from property line to property line.

(Code 2007, 18-2)

Sec. 18-3. Signage.

All uses, not signed as of the effective date of this section shall be subject to all provisions of this Code and the following restrictions shall also be applicable:

1. The amount of total allowable sign area including freestanding and wall signs shall be one (1) square foot of street sign per foot of lot frontage and shall not exceed the sign limitations established for the zone district in which the use is located.

2. No merchandise, picture or depiction of the products or entertainment on the premises shall be displayed in windowed areas or in any area where they may be viewed from the public right-of-way or adjacent property owners.
3. No flashing signs shall be permitted.
4. The sexual nature of the items or services shall not be depicted, directly or indirectly, on the sign or in any name associated with the adult oriented business establishment.
(Code 2007, 18-3)

Sec. 18-4. Zone District.

No adult oriented business shall be operated or maintained except within the C-2 general commercial and wholesale district (Section 26-15) or M-1 light manufacturing district (Section 26-16).

(Code 2007, 18-4)

Sec. 18-5. Prohibited.

1. Private viewing areas prohibited. It shall be a violation of this Code to operate an adult arcade or adult entertainment center as a part of any adult oriented establishment unless the building is internally constructed so that the viewing areas in such arcades or establishments are visible from a continuous main aisle and are not obscured by any curtain, wall, door, or other enclosure.
2. Nude modeling studio. In addition to the restrictions set forth above, it shall be a misdemeanor for any person to employ, in any capacity, at a nude modeling studio, any person under the age of eighteen (18) years. Further, no sofa, bed, mattress, chair, or mat may be utilized in any such studio. Provided, however, that nothing herein shall be deemed to prohibit the presence of a couch or chairs in a public reception area nor in any office area.
(Code 2007, 18-5)

Sec. 18-6. Definitions.

Adult only bookstore

An establishment having a substantial or significant portion of its stock in trade, books, magazines, films or videos for sale, rental or viewing on the premises by means of motion picture devices or other coin operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined below, or an establishment with a segment or section devoted to the sale or display of such materials for sale or rental to patrons therein.

Adults only motion picture theater

An enclosed building used regularly and routinely for presenting programs, material distinguished or characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, as defined below, for observation by patrons herein. As used herein, an adult only motion picture theater shall provide seating for five or more patrons.

Adult oriented business

An adult oriented business shall include an adult only bookstore, adult only motion picture theater, adult motel, adult entertainment center, nude model studio, or sexual encounter center or adult arcade.

Adult entertainment center

An enclosed building or part of an enclosed building, no portion of which enclosed business is licensed to sell liquor which contains one or more coin operated mechanisms which when activated permit a customer to view a live person unclothed or in such attire, costume or clothing as to expose any portion of the female breast below the top of the areola, or any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals, or penis or the charging of any admission or fee for the viewing of any such person or activity.

Adult arcade

Any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically or mechanically controlled, 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 or characterized by the depicting or describing of specified sexual conduct or specified anatomical areas defined or described in this section.

Nudity

The showing of the human male or female genitals, pubic hair or buttocks with less than a fully opaque covering or the showing of a female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

Adult motel

A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration and which provides patrons with closed circuit television, transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities and which offers a sleeping room for rent for a period of time that is less than eight (8) hours, or which provides for rental rates in increments of eight (8) hours or less.

Sexual encounter center

A business or commercial enterprise that, as one of its primary business purposes, offers for consideration:

- Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity, whether or not there is physical contact between the participants. This definition shall not apply to any state licensed practitioner of the healing arts.

Specified sexual activity

Means and includes any of the following:

- The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breasts;
- The sex acts, normal or abnormal, actual or simulated including intercourse, or copulation, or sodomy;
- Masturbation, actual or simulated or excretory functions as a part of or in connection with any of the activities set forth in paragraphs a. through c. above.

Specified anatomical area

Any part of the human genitalia in a state of sexual arousal.

Sexual conduct

Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks, or if such person be a female, her breasts.

Sadomasochistic abuse

Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Residential zone district

Any district where a house, apartment, duplex, mobile home or manufactured home may be located by right.

(Code 2007, 18-6)

Secs. 18-7 to 18-10. Reserved.

ARTICLE II. REQUIREMENTS FOR REVIEW AND APPLICATION

Sec. 18-11. Review Requirements.

1. Standards. The city commission shall grant a special use permit (Section 26-8-5) for an adult oriented business establishment if:
 - (1) The applicant has established that the location of the proposed establishment complies with all of the location restrictions of Section 18-2; and
 - (2) The commission determines that the owner/manager of the establishment shall qualify for a license pursuant to the criteria set forth in Chapter 11, Article III, Business Licenses; and
 - (3) The site plan and sign plan presented by the applicant shall comply with the provisions of this chapter and the zone district in which it is to be located.
2. Waiver of distance limitation. The city commission may, at its discretion, make an exemption from the location or restrictions of Sections 18-2 and 18-4 if it makes the following findings:

- (1) The location of the proposed sexual adult oriented business will not have a detrimental effect on nearby properties nor be contrary to the public safety or welfare;
 - (2) That the granting of the exemption will not violate the spirit and intent of this chapter of the Code;
 - (3) That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban light;
 - (4) That the location of the adult oriented business in the area will not be contrary to any existing program of neighborhood conservation or will interfere with any efforts of urban renewal or restoration;
 - (5) That adequate buffering exists to protect neighboring zones;
 - (6) That all other applicable provisions of this section will be observed;
 - (7) In granting a special use permit, the city commission may make such additional conditions to approval of the site plan as it deems appropriate, on a case-by-case basis. Including, but without limitation, the commission may require screening, may require that the parking lot be visible from any street, that additional exterior lighting be required, or that appropriate landscaping be required.
3. Time limitations for acting on special use permit applications. The Community Development Department shall, not later than sixty (60) days from receipt of a completed application for an adult oriented business special use permit forward the same, together with its recommendations, to the city commission for final action. In the event that the Community Development Department has failed to take any action within sixty (60) days from the date of its receipt of a completed application, the application shall be referred to the city commission for final action without recommendation. Any application forwarded to the city commission shall be acted upon by the commission not more than sixty (60) days following receipt by the commission of the report of the Community Development Department. Final action shall therefore occur within sixty (60) days from the date of receipt by the city of a properly completed adult oriented business special use permit application. The failure of the city commission to either grant or deny the application within such time period shall be deemed to constitute an approval of the adult oriented business special use permit. Nothing herein shall prohibit the applicant from agreeing to an extension of any time periods. A request made by the applicant for extension of time, that an application be tabled or that action be postponed by the city commission shall extend the time for final action by the period of time the applicant has requested a postponement.

As used herein, final action shall mean the action of the city commission taken in open session granting or denying an application for an adult oriented business. The fact that the city commission may require additional time to prepare written findings and conclusions shall not operate to extend the time for final action nor shall it be deemed a failure to act within the mandatory period for action.

(Ord. 2010-393, eff. 2011-Jan-14; Code 2007, 18-11)

Sec. 18-12. Adult Business Application Requirements.

1. Application information. The city shall require of the applicant the following information:
 - (1) The name, address, and business organization of the applicant and the location where the applicant intends to transact business.
 - (2) A specific description of the nature of the business to be transacted.
 - (3) If the applicant is an individual, the city shall obtain the current residence address of the applicant together with the applicant's social security number. If the applicant is a partnership, the applicant shall disclose the names of all partners. If the applicant is a corporation, the applicant shall disclose the state of incorporation, the date of incorporation, the name and address sufficient for service of process of the registered agent within New Mexico and of each officer and director of the corporation. Further, the city shall obtain the social security number of each officer or director of the corporation, it being the intention of this provision that the social security number shall be utilized to assist in obtaining background information on the officers and directors of the corporation. If applicant is other than an individual, the applicant shall name a managing agent and provide that person's address and social security number.
 - (4) The applicant shall provide evidence that the corporation is either a New Mexico corporation or is authorized and qualified to do business in the State of New Mexico.
 - (5) The applicant shall provide the necessary state and federal tax identification numbers.
2. Disqualifying factors. An application for an adult oriented business license shall be denied for the following reasons:
 - (1) The denial of a special use permit in accordance with Section 26-8-5.
 - (2) Evidence that the owner, registered agent, resident manager, or any officer or director of any corporation has been convicted or pled guilty to any felony or misdemeanor involving a crime of moral turpitude including, but not limited to, sex offenses or violation of child pornography laws or other laws restricting or regulating the dissemination of adult oriented material within the five years preceding the date of this application.
 - (3) If the applicant is a corporation, failure to supply evidence that the corporation has qualified and is authorized to do business in the State of New Mexico.
3. Background check. Within two (2) working days after receipt of a completed application for an adult oriented business license, the city shall transmit a copy of the application to the Aztec Police Department who shall perform a background check on the officer, directors, partners, managing agent, and owner of the business. Said background check shall be completed not less than twelve (12) working days following the transmission of the same to the chief of police. The applicant shall be notified of the date that the application is transmitted.
4. Issuance of license. In the event that the application is completed, the background check of the applicant indicates that no owner, partner, officer, director or managing agent has been convicted of any of those offenses which would disqualify the applicant from obtaining a

license, and in the event a special use permit has been granted by the city commission, the city shall issue a business license to the applicant.

5. Annual renewal. The applicant shall annually renew the license and shall submit to the background check set forth herein. In the event the application is filed prior to the expiration of the existing license, the applicant shall be entitled to continue business until such time as notified that any disqualifying factor has been determined.
6. Refusal, revocation procedures. Any revocation of an adult oriented business license shall be conducted in accordance with the provisions and policies established in this section 11-49 (refusal, revocation) of this chapter and/or the following special conditions:
 - (1) The revocation of the special use permit by the city commission.
 - (2) The subsequent conviction of any owner, officer, director or managing agent of the business of any of the crimes which would have disqualified the licensee from obtaining a license.
 - (3) Any subsequent change in these portions of this Code governing adult oriented businesses resulting from a change in state or federal law which authorizes the city to exercise greater control over the same.
7. Transition period. Any adult oriented business transacting business as of the effective date of this section shall apply for a new license prior to the expiration of any current business registration.
(Code 2007, 18-12)