



Memphis and Shelby County
Office of Planning and Development

CITY HALL 125 NORTH MAIN STREET-SUITE 468 MEMPHIS, TENNESSEE 38103-2084 (901) 576-6601

**REQUEST FOR WAIVER OF THE SPECIAL USE PERMIT
REQUIREMENT FOR NON-HOURLY RATE HOTELS/MOTELS
AND WAIVER AGREEMENT**

DATE FILED: _____

NAME OF APPLICANT: _____

NAME OF HOTEL/MOTEL: _____

ADDRESS OF HOTEL/MOTEL: _____

INSTRUCTIONS

Any entity acquiring an existing non-hourly rate hotel/motel may request waiver of the requirement of a Special Use Permit necessary for issuance of a construction and/or Use and Occupancy permit. Each proposed new owner shall execute the attached Application and Agreement and submit, in writing, responses to the questions attached as Exhibit B. The Agreement shall be recorded with the Shelby County Register of Deeds at the expense of the waiver applicant.

This one(1) original Agreement, exhibits thereto and one (1) copy collated into individual packets, the order of which shall follow sequentially as outlined in Exhibit B to the Agreement, and a compact disc with all application documents in PDF format and any proposed conditions in WORD format shall be delivered to the Office of Planning and Development (OPD), Room 476, City Hall, 125 North Main Street, Memphis, TN 38103 together with a non-refundable application fee of two hundred and fifty dollars (\$250.00), which may be applied against the Special Use Permit fee should the Council refuse to grant a waiver. OPD shall forward the application to the City Council office and Council Records (and/or County Commission and Commission Records for hotels outside of the City) within 21 days of receipt (see Sub-Sec. 9.6.6C of the Unified Development Code).

The applicant or representative shall appear before the Planning and Zoning Committee on the designated date and time to respond to questions about the Hotel/Motel. A Resolution will be prepared by the City Council office which will go before the City Council for approval the same evening. If approved, the Resolution granting the waiver of a Special Use Permit will then be certified through the Council Records office two weeks later when the minutes from the previous meeting date are read and approved. After approval of the minutes for the meeting at which the waiver was approved, the Hotel/motel owner may call Council Records at 901-576-6140 to obtain a copy of the certified Resolution. Construction Code Enforcement will issue the appropriate permit upon presentation of the certified Council Resolution waiving the requirement of a Special Use Permit. If after the required inspections of the premises all other construction code requirements are met, a new Certificate of Occupancy can be granted.

APPLICANT'S AGREEMENTS

The Applicant, by executing and submitting this request for waiver application to the City of Memphis, agrees the Hotel/ the Motel will not be operated as a public nuisance, or as an adult or "hourly rate" motel. Applicant understands that he/she/it has the absolute right to seek a special use permit and is not required to seek a waiver or to make any of the agreements contained herein, but in order to induce the City to waive the requirement and attendant time and expense of obtaining a special use permit, the Applicant agrees that the following terms, covenants and conditions shall apply to its use, occupancy and operation of the subject Hotel/Motel should the Council determine, in its discretion, to grant the requested waiver.

1. Definitions. For the purpose of this Agreement, the capitalized terms shall

mean: "LAND" means the real estate described in Exhibit "A" attached hereto and made a part hereof by reference.

"ADULT MOTEL" means a hotel, motel or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; sexually-oriented material, devices, or paraphernalia or specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live.
- b. Offers a sleeping room for rent more than two times in a period of ten hours; or
- c. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours; or
- d. Offers or allows a discount or refund which is less than half the normal daily rate. "HOURLY RATE HOTEL/MOTEL"

"MOTEL" means a building in which lodging, or boarding and lodging, are provided and offered to the public for compensation and in which at least a portion of the rooms are directly accessible from a public or private right-of-way, from a parking lot or space or from the exterior of the building. As such, it is open to the general public in contradistinction to a boarding house or apartment. To be considered an hourly rate motel, such lodging must be offered to the public more than twice within any ten-(10) hour period.

"HOTEL" means a building in which lodging or boarding and lodging are provided and offered to the public for compensation, and in which ingress and egress to and from all rooms are made through an inside lobby or office supervised by a person in charge at all contradistinction to a boarding house, a lodging house, or an apartment. To be considered an hourly rate Hotel, such lodging must be offered to the public more than twice within any ten-(10) hour period.

"OPERATES OR CAUSES TO BE OPERATED" means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated an Adult Motel whether or not that person is an owner, part-time owner, or permittee of the business.

"PERSON" means an individual, proprietorship, partnership, corporation, association or other legal entity.

"RESIDENTIAL DISTRICT" means a district whose designation begins with the letter "R" according to the Memphis and Shelby County Zoning Ordinances.

2. The Applicant agrees that it will not operate the hotel/ motel or cause the hotel motel to be operated as an hourly rate hotel/motel or as an Adult Motel. For the purposes of monitoring compliance with this Agreement, the Applicant agrees to periodic, random inspections of books and records pertaining to the hotel/motel's operation and rentals. Where there is an apparent pattern that rooms have been rented and vacated more than 2 times in less than 10 hours, a rebuttable presumption is created that the establishment is an Adult Motel.
3. In addition, the Applicant, employee, agent or independent contractor employed on the premises shall not:
 - a. Allow excessive use of alcoholic beverages while on the business premises;
 - b. Refuse to allow an unimpeded inspection of the business premises as authorized by this Agreement;
 - c. Knowingly permit gambling by any person on the business premises;
 - d. Demonstrate inability to operate or manage a business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers;
 - e. Give false or misleading information in the material submitted during the waiver application process;
 - f. Allow possession, use or sale of controlled substances on the premises by any person;
 - g. Allow prostitution on the premises;
 - h. Operate the business during a period of time when the a required permit is suspended;
 - i. Be delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the business.
4. The Applicant agrees any violation of the Applicant's agreement not to operate the Motel as an Adult Motel will cause irreparable harm to the City and its citizens and damages alone for any such violation will be inadequate and as a result of any breach or threatened breach of this Agreement by the Applicant, its successors and assignees, the City may
 - (a) seek any and all remedies available to it including but not limited to injunctive relief, both affirmative and negative;
 - (b) by Resolution of the City Council terminate the Agreement or revoke the waiver and the Certificate of Occupancy.The Applicant agrees to pay the reasonable attorneys fees and court costs of the City's attorneys should they be successful in obtaining relief against the Applicant for violation of this Agreement.
5. The Applicant's obligations hereunder shall be deemed continuing and shall bind its successors and assignees and to this extent shall run with the land.
6. Each of the covenants contained herein shall be deemed a separate covenant, each being enforceable irrespective of enforceability (with or without reformation) of other covenants contained in this Agreement. If any provision of this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provisions had never comprised a part hereof.
7. This Agreement constitutes the entire understanding and agreement between the Applicant and the City with regard to all matters herein; except that any conditions imposed by the Council in Resolution approving the waiver and/or this Agreement shall be incorporated herein by reference. There are no other agreements, conditions or representations, oral or written, express or implied, between the Applicant and the City concerning matters addressed herein.

8. This Agreement may be amended only in writing and signed by the Applicant with approval of the City Council.
9. This Agreement is executed in and will be performed in the State of Tennessee and shall be construed, controlled and interpreted according to the laws of the State of Tennessee.
10. This Agreement is binding upon and shall inure the benefit of the respective parties hereto, their successors and assignees and this Agreement shall specifically run with the Land and be binding upon the Applicant's successors in interest in the Land and improvements.

COMPANY NAME

BY: _____
NAME

**STATE OF TENNESSEE
COUNTY OF SHELBY**

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/herself to be the owner of _____, a corporation, and that he as such owner, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such owner.

WITNESS my hand and seal at office, on this the ____ day of _____ 20____.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT 'A'
LEGAL DESCRIPTION

EXHIBIT 'B' SUPPLEMENTAL INFORMATION

1. Site Plan – a sketch or diagram must be included with the Agreement showing the configuration of the premises such as a site plan or plot plan taken from a survey of the property and include a building footprint, display of parking areas, landscaping areas, any type of existing or proposed fencing and access to and from the property. The site plan or plot plan need not be professionally prepared but must be drawn to scale of no smaller than 1 inch equaling 100 feet.
2. Identify every person who has an ownership interest in the subject application whether they be the current owners, the contract buyers, or the lenders. If current owner and/or contract buyer is a public corporation, please note the fact and list no other owners. Only lenders which are not institutions (banks, saving and loans or credit unions) need be listed.
3. A statement as to whether or not the applicant or any officer, director, partner, managing agent or manager has been employed at a sexually oriented business as defined in the Tennessee Code Annotated for the previous five (5) years.
4. Whether or not the applicant or any officer, director, partner, managing agent or manager has been convicted of a crime involving the following:
 - a. Aggravated rape;
 - b. Rape;
 - c. Rape of a child;
 - d. Aggravated sexual battery;
 - e. Sexual battery by an authority figure;
 - f. Sexual battery;
 - g. Statutory rape;
 - h. Public indecency;
 - i. Prostitution;
 - j. Promoting prostitution;
 - k. Distribution of obscene materials;
 - l. Sale, loan or exhibition to a minor of material harmful to minors;
 - m. The display for sale or rental of material harmful to minors;
 - n. Sexual exploitation of a minor;
 - o. Aggravated sexual exploitation of a minor;
 - p. Especially aggravated sexual exploitation of a minor;
 - q. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses.
5. Whether the hotel, motel or similar commercial establishment offers accommodations to the public for consideration and provides patrons with closed circuit television transmissions, films, motion pictures, videos, slides or any other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” as defined by Appendix A – Zoning, Section 2 and whether the hotel, motel or similar commercial establishment displays signs visible from the public right-of-way which advertises the availability of this type of photographic reproduction. This definition shall not include “R-Rated” films so defined by the Motion Picture Association.

6. Whether the hotel, motel or similar commercial establishment offers a sleeping room for rent more than two (2) times in a period of less than ten (10) hours.
7. Whether the hotel, motel or similar commercial establishment allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.
8. Whether the hotel, motel or similar commercial establishment offers or allows a discount or refund which is less than half the normal daily rate.
9. The names of any commercial lenders financing the acquisition, construction and/or renovation of the facility.
10. A copy of the instrument or purchase agreement pursuant to which the owner or applicant acquired or will acquire title to the property and the names and addresses of any lessees or sub-lessees of the facility including a legal description.