

CHAPTER 120

LIQUOR LICENSES AND WINE AND BEER PERMITS

120.01 License or Permit Required
120.02 General Prohibition
120.03 Investigation

120.04 Action by Council
120.05 Prohibited Sales and Acts
120.06 Amusement Devices

120.01 LICENSE OR PERMIT REQUIRED. No person shall manufacture for sale, import, sell, or offer or keep for sale, alcoholic liquor, wine, or beer without first securing a liquor control license, wine permit or beer permit in accordance with the provisions of Chapter 123 of the *Code of Iowa*.

(Code of Iowa, Sec. 123.22, 123.122 & 123.171)

120.02 GENERAL PROHIBITION. It is unlawful to manufacture for sale, sell, offer or keep for sale, possess or transport alcoholic liquor, wine or beer except upon the terms, conditions, limitations and restrictions enumerated in Chapter 123 of the *Code of Iowa*, and a license or permit may be suspended or revoked or a civil penalty may be imposed for a violation thereof.

(Code of Iowa, Sec. 123.2, 123.39 & 123.50)

120.03 INVESTIGATION. Upon receipt of an application for a liquor license, wine or beer permit, the Clerk may forward it to the Police Chief, who shall then conduct an investigation and submit a written report as to the truth of the facts averred in the application. The Fire Chief may also inspect the premises to determine if they conform to the requirements of the City. The Council shall not approve an application for a license or permit for any premises which does not conform to the applicable law and ordinances, resolutions and regulations of the City.

(Code of Iowa, Sec. 123.30)

120.04 ACTION BY COUNCIL. The Council shall either approve or disapprove the issuance of the liquor control license or retail wine or beer permit and shall endorse its approval or disapproval on the application, and thereafter the application, necessary fee and bond, if required, shall be forwarded to the Alcoholic Beverages Division of the State Department of Commerce for such further action as is provided by law.

(Code of Iowa, Sec. 123.32 [2])

120.05 PROHIBITED SALES AND ACTS. A person or club holding a liquor license or retail wine or beer permit and the person's or club's agents or employees shall not do any of the following:

1. Sell, dispense or give to any intoxicated person, or one simulating intoxication, any alcoholic liquor, wine or beer.

(Code of Iowa, Sec. 123.49 [1])

2. Sell or dispense any alcoholic beverage, wine or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday; however, a holder of a license or permit granted the privilege of selling alcoholic liquor, beer or wine on Sunday may sell or dispense

alcoholic liquor, beer or wine between the hours of 8:00 a.m. on Sunday and 2:00 a.m. of the following Monday, and further provided that a holder of any class of liquor control license or the holder of a class "B" beer permit may sell or dispense alcoholic liquor, wine or beer for consumption on the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on Monday when that Monday is New Year's Day and beer for consumption off the premises between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday when that Sunday is the day before New Year's Day.

(Code of Iowa, Sec. 123.49[2b and 2k] & 123.150)

3. Sell alcoholic beverages, wine or beer to any person on credit, except with bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, or to retail sales by the managing entity of a convention center, civic center or events center.

(Code of Iowa, Sec. 123.49[2c])

4. Employ a person under eighteen (18) years of age in the sale or serving of alcoholic liquor, wine or beer for consumption on the premises where sold.

(Code of Iowa, Sec. 123.49 [2f])

5. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine or any other beverage in or about the permittee's place of business.

(Code of Iowa, Sec. 123.49 [2i])

6. Knowingly permit any gambling, except in accordance with Iowa law, or knowingly permit any solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49 [2a])

7. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

(Code of Iowa, Sec. 123.49 [2j])

8. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the Alcoholic Beverages Division of the State Department of Commerce and except mixed drinks or cocktails mixed on the premises for immediate consumption.

(Code of Iowa, Sec. 123.49 [2d])

9. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been reused or adulterated.

(Code of Iowa, Sec. 123.49 [2e])

10. Allow any person other than the licensee, permittee or employees of the licensee or permittee to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as allowed by State law.

(Code of Iowa, Sec. 123.49 [2g])

11. Permit or allow any person under twenty-one (21) years of age to remain upon licensed premises unless over fifty percent (50%) of the dollar volume of the business

establishment comes from the sale and serving of prepared foods. This provision does not apply to holders of a class “C” beer permit only.

12. Sell, give, possess, or otherwise supply a machine that is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.

(Code of Iowa, Sec. 123.49[21])

120.06 AMUSEMENT DEVICES. The following provisions pertain to electronic or mechanical amusement devices, which are allowed only in premises with a liquor control license or beer permit as specifically authorized in Section 99B.10 of the *Code of Iowa*.

(Code of Iowa, Sec. 99B.10C)

1. As used in this section an “electronic or mechanical amusement device” means a device that awards a prize redeemable for merchandise on the premises where the device is located and that is required to be registered with the Iowa Department of Inspection and Appeals.

2. It is unlawful for any person under the age of twenty-one (21) to participate in the operation of an electrical or mechanical amusement device.

3. It is unlawful for any person owning or leasing an electrical or mechanical amusement device, or an employee of a person owning or leasing an electrical or mechanical amusement device, to knowingly allow a person under the age of 21 to participate in the operation of an electrical or mechanical amusement device.

4. It is unlawful for any person to knowingly participate in the operation of an electrical or mechanical amusement device with a person under the age of 21.

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CHAPTER 121

CIGARETTE AND TOBACCO PERMITS

121.01 Definitions
121.02 Permit Required
121.03 Application
121.04 Fees
121.05 Issuance and Expiration

121.06 Refunds
121.07 Persons Under Legal Age
121.08 Self-Service Sales Prohibited
121.09 Permit Revocation

121.01 DEFINITIONS. For use in this chapter the following terms are defined:
(*Code of Iowa, Sec. 453A.1*)

1. “Carton” means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
2. “Cigarette” means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, this definition is not to be construed to include cigars.
3. “Package” or “pack” means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.
4. “Place of business” means any place where cigarettes or tobacco products are sold, stored or kept for the purpose of sale or consumption by a retailer.
5. “Retailer” means every person who sells, distributes or offers for sale for consumption, or possesses for the purpose of sale for consumption, cigarettes, irrespective of the quantity or amount or the number of sales or who engages in the business of selling tobacco products to ultimate consumers.
6. “Self-service display” means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.
7. “Tobacco products” means the following: cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts or refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking, but does not mean cigarettes.

121.02 PERMIT REQUIRED.

1. Cigarette Permits. It is unlawful for any person, other than a holder of a retail permit, to sell cigarettes at retail and no retailer shall distribute, sell, or solicit the sale of any cigarettes within the City without a valid permit for each place of business.

The permit shall, at all times, be publicly displayed at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business.

(Code of Iowa, Sec. 453A.13)

2. Tobacco Permits. It is unlawful for any person to engage in the business of a retailer of tobacco products at any place of business without first having received a permit as a tobacco products retailer for each place of business owned or operated by the retailer.

(Code of Iowa, Sec. 453A.47A)

A retailer who holds a cigarette permit is not required to also obtain a tobacco permit. However, if a retailer only holds a cigarette permit and that permit is suspended, revoked or expired, the retailer shall not sell any cigarettes or tobacco products during such time.

121.03 APPLICATION. A completed application on forms provided by the State Department of Revenue and accompanied by the required fee shall be filed with the Clerk. Renewal applications shall be filed at least five (5) days prior to the last regular meeting of the Council in June. If a renewal application is not timely filed, and a special Council meeting is called to act on the application, the costs of such special meeting shall be paid by the applicant.

(Code of Iowa, Sec. 453A.13 & 453A.47A)

121.04 FEES. The fee for a retail cigarette or tobacco permit shall be as follows:

(Code of Iowa, Sec. 453A.13 & 453A.47A)

FOR PERMITS GRANTED DURING:	FEE:
July, August or September	\$ 75.00
October, November or December	\$ 56.25
January, February or March	\$ 37.50
April, May or June	\$ 18.75

121.05 ISSUANCE AND EXPIRATION. Upon proper application and payment of the required fee, a permit shall be issued. Each permit issued shall describe clearly the place of business for which it is issued and shall be nonassignable. All permits expire on June 30 of each year. The Clerk shall submit a duplicate of any application for a permit, and any permit issued, to the Iowa Department of Public Health within thirty (30) days of issuance.

121.06 REFUNDS. A retailer may surrender an unrevoked permit and receive a refund from the City, except during April, May or June, in accordance with the schedule of refunds as provided in Section 453A.13 or 453A.47A of the *Code of Iowa*.

(Code of Iowa, 453A.13 & 453A.47A)

121.07 PERSONS UNDER LEGAL AGE. No person shall sell, give or otherwise supply any tobacco, tobacco products or cigarettes to any person under eighteen (18) years of age. The provision of this section includes prohibiting a minor from purchasing cigarettes or tobacco products from a vending machine. If a retailer or employee of a retailer violates the provisions of this section, the Council shall, after written notice and hearing, and in addition to the other penalties fixed for such violation, assess the following:

1. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars (\$300.00). Failure to pay the civil penalty as ordered under

this subsection shall result in automatic suspension of the permit for a period of fourteen (14) days.

2. For a second violation within a period of two (2) years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00) or the retailer's permit shall be suspended for a period of thirty (30) days. The retailer may select its preference in the penalty to be applied under this subsection.

3. For a third violation within a period of three (3) years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00) and the retailer's permit shall be suspended for a period of thirty (30) days.

4. For a fourth violation within a period of three (3) years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00) and the retailer's permit shall be suspended for a period of sixty (60) days.

5. For a fifth violation with a period of four (4) years, the retailer's permit shall be revoked.

The Clerk shall give ten (10) days' written notice to the retailer by mailing a copy of the notice to the place of business as it appears on the application for a permit. The notice shall state the reason for the contemplated action and the time and place at which the retailer may appear and be heard.

(Code of Iowa, Sec. 453A.2, 453A.22 and 453A.36[6])

121.08 SELF-SERVICE SALES PROHIBITED. Beginning January 1, 1999, except for the sale of cigarettes through a cigarette vending machine as provided in Section 453A.36(6) of the *Code of Iowa*, a retailer shall not sell or offer for sale cigarettes or tobacco products, in a quantity of less than a carton, through the use of a self-service display.

(Code of Iowa, Sec. 453A.36A)

121.09 PERMIT REVOCATION. Following a written notice and an opportunity for a hearing, as provided by the *Code of Iowa*, the Council may also revoke a permit issued pursuant to this chapter for a violation of Division I of Chapter 453A of the *Code of Iowa* or any rule adopted thereunder. If a permit is revoked, a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the Council. The Clerk shall report the revocation or suspension of a retail permit to the Iowa Department of Public Health within thirty (30) days of the revocation or suspension.

(Code of Iowa, Sec. 453A.22)

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CHAPTER 122

PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

122.01 Purpose	122.11 Revocation of License
122.02 Definitions	122.12 Notice
122.03 License Required	122.13 Hearing
122.04 Application for License	122.14 Record and Determination
122.05 License Fees	122.15 Appeal
122.06 Bond Required	122.16 Effect of Revocation
122.07 License Issued	122.17 Rebates
122.08 Display of License	122.18 License Exemptions
122.09 License Not Transferable	122.19 Charitable and Nonprofit Organizations
122.10 Time Restriction	122.20 Location

122.01 PURPOSE. The purpose of this chapter is to protect residents of the City against fraud, unfair competition and intrusion into the privacy of their homes by licensing and regulating peddlers, solicitors and transient merchants.

122.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. “Peddler” means any person carrying goods or merchandise who sells or offers for sale for immediate delivery such goods or merchandise from house to house or upon the public street.
2. “Solicitor” means any person who solicits or attempts to solicit from house to house or upon the public street any contribution or donation or any order for goods, services, subscriptions or merchandise to be delivered at a future date.
3. “Transient merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever, or who operates out of a vehicle which is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader or auctioneer does not exempt any person from being considered a transient merchant.

122.03 LICENSE REQUIRED. Any person engaging in peddling, soliciting or in the business of a transient merchant in the City without first obtaining a license as herein provided is in violation of this chapter.

122.04 APPLICATION FOR LICENSE. An application in writing shall be filed with the City Clerk for a license under this chapter. Such application shall set forth the applicant’s name, permanent and local address and business address if any. The application shall also set forth the applicant’s employer, if any, and the employer’s address, the nature of the applicant’s business, the last three places of such business and the length of time sought to be covered by the license.

122.05 LICENSE FEES. License fees as established by Council resolution shall be paid to the Clerk prior to the issuance of any license.

122.06 BOND REQUIRED. Before a license under this chapter is issued to a transient merchant, an applicant shall provide to the Clerk evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the *Code of Iowa*.

122.07 LICENSE ISSUED. If the Clerk finds the application is completed in conformance with the requirements of this chapter, the facts stated therein are found to be correct and the license fee paid, a license shall be issued immediately.

122.08 DISPLAY OF LICENSE. Each solicitor or peddler shall keep such license in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's license in the merchant's place of business.

122.09 LICENSE NOT TRANSFERABLE. Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

122.10 TIME RESTRICTION. All peddler's and solicitor's licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 7:00 p.m.

122.11 REVOCATION OF LICENSE. After notice and hearing, the Clerk may revoke any license issued under this chapter for the following reasons:

1. Fraudulent Statements. The licensee has made fraudulent statements in the application for the license or in the conduct of the business.
2. Violation of Law. The licensee has violated this chapter or has otherwise conducted the business in an unlawful manner.
3. Endangered Public Welfare, Health or Safety. The licensee has conducted the business in such manner as to endanger the public welfare, safety, order or morals.

122.12 NOTICE. The Clerk shall send a notice to the licensee at the licensee's local address, not less than five (5) calendar days before the date set for a hearing on the possible revocation of a license. Such notice shall contain particulars of the complaints against the licensee, the ordinance provisions or State statutes allegedly violated, and the date, time and place for hearing on the matter.

122.13 HEARING. The Clerk shall conduct a hearing at which both the licensee and any complainants shall be present to determine the truth of the facts alleged in the complaint and notice. Should the licensee, or authorized representative, fail to appear without good cause, the Clerk may proceed to a determination of the complaint.

122.14 RECORD AND DETERMINATION. The Clerk shall make and record findings of fact and conclusions of law, and shall revoke a license only when upon review of the entire record the Clerk finds clear and convincing evidence of substantial violation of this chapter or State law.

122.15 APPEAL. If the Clerk revokes or refuses to issue a license, the Clerk shall make a part of the record the reasons therefor. The licensee, or the applicant, shall have a right to a hearing before the Council at its next regular meeting. The Council may reverse, modify or

affirm the decision of the Clerk by a majority vote of the Council members present and the Clerk shall carry out the decision of the Council.

122.16 EFFECT OF REVOCATION. Revocation of any license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of the revocation.

122.17 REBATES. Any licensee, except in the case of a revoked license, shall be entitled to a rebate of part of the fee paid if the license is surrendered before it expires. The amount of the rebate shall be determined by dividing the total license fee by the number of days for which the license was issued and then multiplying the result by the number of full days not expired. In all cases, at least five dollars (\$5.00) of the original fee shall be retained by the City to cover administrative costs.

122.18 LICENSE EXEMPTIONS. The following are excluded from the application of this chapter.

1. Newspapers. Persons delivering, collecting for or selling subscriptions to newspapers.
2. Club Members. Members of local civic and service clubs, Boy Scout, Girl Scout, 4-H Clubs, Future Farmers of America and similar organizations.
3. Local Residents and Farmers. Local residents and farmers who offer for sale their own products (to include the weekly farmers market within the City Park).
4. Students. Students representing the West Sioux School District conducting projects sponsored by organizations recognized by the school.
5. Route Sales. Route delivery persons who only incidentally solicit additional business or make special sales.
6. Resale or Institutional Use. Persons customarily calling on businesses or institutions for the purposes of selling products for resale or institutional use.

122.19 CHARITABLE AND NONPROFIT ORGANIZATIONS. Authorized representatives of charitable or nonprofit organizations operating under the provisions of Chapter 504 of the *Code of Iowa* desiring to solicit money or to distribute literature are exempt from the operation of Sections 122.04 and 122.05. All such organizations are required to submit in writing to the Clerk the name and purpose of the cause for which such activities are sought, names and addresses of the officers and directors of the organization, the period during which such activities are to be carried on, and whether any commissions, fees or wages are to be charged by the solicitor and the amount thereof. If the Clerk finds that the organization is a bona fide charity or nonprofit organization, the Clerk shall issue, free of charge, a license containing the above information to the applicant. In the event the Clerk denies the exemption, the authorized representatives of the organization may appeal the decision to the Council, as provided in Section 122.15 of this chapter.

122.20 LOCATION. Peddlers, solicitors and transient merchants shall be prohibited from setting up at a location in any park, public property or public right-of-way except for the farmers market, and except for festivals as approved by the Council.

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CHAPTER 123

ADULT ORIENTED BUSINESSES

123.01 Purpose and Findings	123.13 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos
123.02 Definitions	123.14 Regulations Pertaining to Adult Cabarets
123.03 Classification	123.15 Loitering, Exterior Lighting, Visibility and Monitoring Requirements
123.04 License Required	123.16 Penalties and Enforcement
123.05 Issuance of License	123.17 Applicability to Existing Businesses
123.06 Fees	123.18 Prohibited Activities
123.07 Inspection	123.19 Scienter Required to Prove Violation or Liability
123.08 Expiration of License	123.20 Failure of City to Meet Deadline
123.09 Suspension	123.21 Restrictions on Location
123.10 Revocation	
123.11 Hearing; Denial, Revocation and Suspension; Appeal	
123.12 Transfer of License	

123.01 PURPOSE AND FINDINGS.

1. Rationale. It is the purpose of this chapter to regulate adult oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult oriented businesses within the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

2. Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the following cases: *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 2004 U.S. LEXIS 4026 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), dismissed for want of a substantial federal question, 435 U.S. 982 (1978); *Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jakes Ltd. v. City of Coates*, 284 F.3d 884 (2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Green v. City of St. Paul*, 1999 U.S. App. LEXIS 12057 (8th Cir. 1999) (unreported); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *Excalibur Group v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8th Cir. 1994); *Alexander v. Minneapolis*, 928 F.2d 278 (8th Cir. 1991); *John Doe v. Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Thames Enters. v. St. Louis*, 851 F.2d 199 (8th Cir. 1988); *MRM, Inc. v. City of Davenport*, 290 N.W.2d 338 (Iowa 1980); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *World Wide Video of Washington, Inc. v. City of Spokane*, 2004 U.S. App. LEXIS 10443 (9th Cir., May 27, 2004) (including exhibits

cited therein), aff'g 227 F.Supp.2d 1143 (E.D. Wash. 2002); Bigg Wolf Discount Video v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); Z.J. Gifts D-4 L.L.C. v. City of Littleton, 93 P.3d 633 (Colo. App. 2004); County of Cook v. Renaissance Arcade and Bookstore, 122 Ill. 2d 123 (1988) (including cases cited therein); and other cases; and on reports concerning secondary effects in and around adult uses, including, but not limited to, Summaries of Key Reports Concerning the Negative Secondary Effects of Adult Oriented Businesses; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Phoenix, Arizona -1979, 1995-1998; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Tucson, Arizona – 1990; Indianapolis, Indiana – 1984; St. Cloud, Minnesota - 1994; Amarillo, Texas; Centralia, Washington - 2003; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; and Dallas, Texas - 1997; New York Times Square study - 1994; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Adult uses, (June 6, 1989, State of Minnesota), the Council finds:

- A. Adult oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation.
- B. Sexual acts, including masturbation, oral and anal sex, sometimes occur inside the premises of or in the parking lot of unregulated adult oriented businesses, including but not limited to those which provide private or semi-private booths, rooms, or cubicles for viewing films, videos, or live sexually explicit shows, which acts pose a risk to public health through the spread of sexually transmitted diseases.
- C. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating, and said substantial interest exists independent of any comparative analysis between adult oriented and non-sexually oriented businesses.

123.02 DEFINITIONS. The following terms are defined for use in this chapter.

1. “Adult arcade” means 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 regularly show images distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas, and where the booth(s) or room(s) in which such images are shown contain less than twenty (20) individual seats for patrons.
2. “Adult bookstore or adult video store” means a commercial establishment that:
 - A. Has a substantial portion of its displayed merchandise which consists of, or
 - B. Has a substantial portion of the wholesale value of its displayed merchandise which consists of, or

- C. Has a substantial portion of the retail value of its displayed merchandise which consists of, or
- D. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of, or
- E. Maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

The term adult bookstore or adult video store shall also include a commercial establishment which regularly maintains one or more adult arcades.

3. “Adult cabaret” means a nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear nude or semi-nude.

4. “Adult model studio” means any place where a person, who regularly appears in a state of nudity or state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. It is a defense to prosecution for any violation of this chapter that a person appearing in a state of nudity or state of semi-nudity did so in a modeling class operated:

- A. By a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three days in advance of the class.:

5. “Adult motel” means a motel, hotel, or similar commercial establishment which offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by their emphasis upon the exhibition of specified sexual activities or specified anatomical areas and which regularly advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television. Public accommodations shall include a full sized bed or larger, separate private bathroom facilities, and amenities for storing and hanging clothes.

6. “Adult motion picture theater” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions or visual images which are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas

are regularly shown for any form of consideration, and where the booth(s) or room(s) in which such images are shown contain more than twenty (20) individual seats for patrons.

7. “Adult oriented business” means an adult bookstore or adult video store, an adult cabaret, an adult motel, an adult motion picture theater, a sexual device shop, a semi-nude model studio, or a sexual encounter center.

8. “Adult theater” means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of semi-nudity or live performances which are distinguished or characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

9. “Distinguished or characterized by their emphasis upon” means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films which are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or principal character and theme are the exhibition or description of specified anatomical areas or specified sexual activities.

10. “Employ, employee, and employment” describe and pertain to any person who performs any service on the premises of an adult oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

11. “Established” means and includes any of the following:

A. The opening or commencement of any adult oriented business as a new business; or

B. The conversion of an existing business, whether or not an adult oriented business, to another adult oriented business.

12. “Features” means to offer the goods or services so modified by that term to the public as one of the intended profit-making objectives of the commercial enterprise, which enterprise holds itself forth to the public, through marketing, advertising, signage, promotions, or merchandise display, as a place where said goods or services may be obtained.

13. “Influential interest” means any of the following:

A. The actual power, directly or indirectly, to control the operation, management or policies of a business or entity,

B. Ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business; or

C. Holding an office (e.g., president, vice president, secretary, treasurer, etc.) or directorship in a legal entity which operates the adult oriented business.

14. “Licensed day-care center” means a facility licensed by the State whether situated within the City or not, that provides care, training, education, custody, treatment or supervision for more than six children under fourteen years of age, where

such children are not related by blood, marriage or adoption to the owner or operator of the facility, for a period of less than twenty-four hours per day, regardless of whether or not the facility is operated for a profit or charges for the services it provides.

15. “Licensee” means a person in whose name a license to operate an adult oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for an adult oriented business license.

16. “Nudity” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

17. “Operate” means to cause to function or to put or keep in a state of doing business. A person may be found to be operating or causing to be operated an adult oriented business regardless of whether that person is an owner or part owner of the business.

18. “Operator” or “manager” means a person who exercises supervisory control over the employees, activities, premises, or a portion of the premises of the sexually oriented business.

19. “Regularly” means and refers to the consistent and repeated doing of the act so described.

20. “Semi-nude or state of semi-nudity” means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

21. “Sexual device” means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs, and shall also include certain devices with non-sex related utility, such as leather whips, straps, and ligatures when said devices are marketed in a context promoting sexual or sadomasochistic uses. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

22. “Sexual device shop” means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

23. “Sexual encounter center” means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration, physical contact in the form of wrestling or tumbling between two or more persons, where one or more of the persons is in a state of nudity or state of semi-nudity.

24. “Specified anatomical areas” means human genitals, anus, cleft of the buttocks, or the female breast.

25. “Specified criminal activity” means any of the following specified crimes for which less than five years elapsed since the date of conviction, guilty plea, plea of *nolo contendere*, or the date of release from confinement for the conviction, guilty plea, or plea of *nolo contendere*, whichever is the later date:

- A. Vice offenses (Iowa Code Ch. 725);
- B. Obscenity offenses (Iowa Code Ch. 728);
- C. Sexual abuse offenses (Iowa Code Ch. 709);
- D. Money laundering (Iowa Code § 706B.2); or
- E. Controlled substances offenses (Iowa Code Ch. 124, Div. IV);

or any offense committed in another jurisdiction that, had the predicate acts been committed in Iowa, would constitute any of the foregoing specified Iowa offenses.

26. “Specified sexual activities” means any of the following:

- A. Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or
- B. Excretory functions as a part of or in connection with any of the activities described in paragraph A above.

27. “Substantial” means more than twenty-five percent (25%) of the item so modified.

28. “Viewing room” means the room, booth, or area where a patron of an adult oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

123.03 CLASSIFICATION. The classifications for adult oriented businesses shall be as follows:

- 1. Adult bookstores or adult video stores;
- 2. Adult cabarets;
- 3. Adult motels;
- 4. Adult motion picture theaters;
- 5. Semi-nude model studios;
- 6. Sexual device shops;
- 7. Sexual encounter centers.

123.04 LICENSE REQUIRED.

1. It is unlawful for any person to operate an adult oriented business in the City without a valid adult oriented business license.

2. An applicant for an adult oriented business license shall file, in person, at the City Administrator’s office a completed application made on a form provided by the City Administrator. The application shall be signed as required herein and shall be notarized. An application shall be considered complete when it contains, for each

person required to sign the application, the information and/or items required in paragraphs A through G below, accompanied by the appropriate fee:

- A. The applicant's full true name and any other names used by the applicant in the preceding five (5) years.
- B. Current business address or another mailing address of the applicant.
- C. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- D. The business name, location, legal description, mailing address and phone number of the adult oriented business.
- E. The name and business address of the statutory agent or other agent authorized to receive service of process.
- F. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- G. A statement of whether any adult oriented business in which an applicant has had an influential interest has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (1) Been declared by a court of law to be a nuisance; or
 - (2) Been subject to a court order of closure or padlocking.

The information provided pursuant to paragraphs A through G of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the City Administrator's office within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

3. An application for an adult oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Section 123.13 and Section 123.14 of this chapter shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

4. If a person who wishes to operate an adult oriented business is an individual, the person shall sign the application for a license as applicant. If a person who wishes to operate an adult oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 123.05 and each applicant shall be considered a licensee if a license is granted. If the applicant is an Iowa corporation or limited liability company it shall provide a certified copy of its articles and all amendments thereto on file with the Iowa Secretary of State. If a foreign corporation or limited liability company it shall provide a certified copy of its certificate of authority to transact business in this state.

5. The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the City Administrator's office.

123.05 ISSUANCE OF LICENSE.

1. Upon the filing of a completed application under Section 123.04 (2) for an adult oriented business license, the City Administrator's office shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the City to deny or grant an annual license. Within twenty (20) days of the filing date of a completed adult oriented business license application, the City Administrator shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The City Administrator shall issue a license unless:

- A. An applicant is less than eighteen (18) years of age.
- B. An applicant has failed to provide information as required by Section 123.04 for issuance of a license or has falsely answered a question or request for information on the application form.
- C. The license application fee required by this chapter has not been paid.
- D. The adult oriented business is not in compliance with the interior configuration requirements of this chapter or is not in compliance with the City zoning regulations.
- E. Any adult oriented business in which the applicant has had an influential interest has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (1) Been declared by a court of law to be a nuisance; or
 - (2) Been subject to an order of closure or padlocking.
- F. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.
- G. Less than twelve months have expired since a license issued to the licensee was revoked.

123.06 FEES. The initial license and annual renewal fees for adult oriented business licenses shall be as follows:

- 1. Five hundred dollars (\$500.00) for the initial license.
- 2. Two hundred seventy-five dollars (\$275.00) for annual license renewal.

123.07 INSPECTION.

1. Adult oriented businesses shall permit the City Administrator to inspect, from time to time on an occasional basis, the portions of the adult oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the adult oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

2. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

123.08 EXPIRATION OF LICENSE.

1. Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Section 123.04 and Section 123.06.
2. Application for renewal should be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

123.09 SUSPENSION. The City shall issue a written letter of intent to suspend an adult oriented business license for a period not to exceed thirty (30) days if the adult oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter.

123.10 REVOCATION.

1. The City shall issue a letter of intent to revoke an adult oriented business license if the licensee knowingly violates this chapter or has knowingly allowed an employee to violate this chapter and the licensee's license has been suspended within the previous twelve (12) month period.
2. The City shall issue written intent to revoke an adult oriented business license, if:
 - A. The licensee has knowingly given false information in the application for the adult oriented business license.
 - B. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises.
 - C. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises.
 - D. The licensee knowingly or recklessly operated the adult oriented business during a period of time when the license was finally suspended or revoked.
 - E. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.
 - F. The licensee has knowingly or recklessly violated a City, federal or state law relative to the operation of an adult entertainment business.
3. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
4. When, after the notice and hearing procedure described in Section 123.11, the City Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult oriented business license for one (1) year from the

date revocation becomes effective. Said revocation shall terminate any nonconforming use rights to use the property as an adult oriented business.

123.11 HEARING; DENIAL, REVOCATION AND SUSPENSION; APPEAL.

1. When the City Administrator issues a written notice of intent to deny, suspend, or revoke a license, the City Administrator shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Administrator for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the City Administrator shall conduct a hearing on the intent to deny, suspend, or revoke the license.

2. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City Administrator's witnesses. The City Administrator shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The City Administrator shall issue a written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five (5) days after the hearing. The decision of the City Administrator is final.

3. If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the City Administrator's decision finds that no grounds exist for denial, suspension, or revocation of the license, the City Administrator shall, contemporaneously with the issuance of the decision, immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Administrator shall contemporaneously therewith issue the license to the applicant.

4. If any court action challenging the City Administrator's decision is initiated, the City Administrator shall prepare and transmit to the court a record of the hearing within ten (10) days after receiving written notice of the filing of the court action. The City Administrator shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult oriented business that is in operation as of the effective date[†] of this chapter: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the adult oriented business and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement.

[†] *The effective date of this chapter is the effective date of the ordinance adopting the Code of Ordinances of the City of Hawarden, Iowa, 2005.*

123.12 TRANSFER OF LICENSE. A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult oriented business under the authority of a license at any place other than the address designated in the adult oriented business license application.

123.13 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

1. A person who operates or causes to be operated an adult oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

A. Each application for an adult oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. It is the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph A above.

C. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It is the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

D. It is the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

E. It is the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (1) That the occupancy of viewing rooms is limited to one person.
- (2) That sexual activity on the premises is prohibited.

- (3) That the making of openings between viewing rooms is prohibited.
- (4) That violators will be required to leave the premises.
- (5) That violations of subparagraphs (2), (3) and (4) of this paragraph are unlawful.

It is the duty of the operator to enforce the regulations articulated in (1 though 5) above.

F. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. Viewing rooms shall not contain a door or curtains at the entrance to the room. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It is the duty of the operator, and also the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- 2. It is unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

123.14 REGULATIONS PERTAINING TO ADULT CABARETS.

- 1. A person who operates or causes to be operated an adult cabaret shall comply with the following requirements:

A. Each application for an adult oriented business license to operate an adult cabaret shall contain a diagram of the premises showing the location of the bar, tables, booths, restrooms, private rooms, employee's station, video cameras and monitors installed for monitoring purposes and any private rooms on the premises. The diagram shall also designate all portions of the premises where patrons will not be permitted. Restrooms shall not contain video reproduction equipment. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. It is the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated in the application filed pursuant to paragraph A above as an area in which patrons will not be permitted.

C. It is unlawful for an operator to permit a patron to be in a private room unless an employee is available at the bar or an employee's station that provides unobstructed view of the private room.

D. It is the duty of the operator, and of any employees present on the premises to ensure that no specified sexual activity occurs in or on the licensed premises.

E. It is the duty of the operator or the licensee to post conspicuous signs in well-lighted entry areas of the business stating:

- (1) That sexual activity on the premises is prohibited.
- (2) That violators will be required to leave the premises.
- (3) That a violation of subparagraph (1) of this paragraph is unlawful.

F. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the bartender's station or any manned employee's station of the premises including the interior of each private room but excluding restrooms to which any patron is permitted access for any purpose. An employee's station shall not exceed thirty-two square feet of floor area. If the premises has two or more employee stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the employee's station at all times that any patron is on the premises. It is the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

G. Private rooms shall not contain a door or curtains at the entrance to the room. For the purpose of this paragraph a "private room" is an area on the licensed premises containing at least sixty-four square feet of floor space enclosed by four walls intended to be used for dancing or any other conduct by and between a patron and an employee.

H. It is unlawful to allow a person under the age of 18 to enter or be on the premises at any time that the establishment is open for business. It is the duty of the operator to ensure that an attendant is stationed at each public entrance to the premises at all times during business hours to prohibit any person under the age of 18 from entering.

2. It is the duty of the operator to enforce the regulations articulated in this section. It is unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

123.15 LOITERING, EXTERIOR LIGHTING, VISIBILITY AND MONITORING REQUIREMENTS.

1. It is the duty of the operator of an adult oriented business to:
 - A. Post conspicuous signs stating that no loitering is permitted on such property;
 - B. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and
 - C. Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
2. No adult oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.
3. It is unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

123.16 PENALTIES AND ENFORCEMENT.

1. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be in violation of this Code of Ordinances. Each day a violation is committed, or permitted to continue, shall constitute a separate offense.
2. The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this chapter, or any of the laws or ordinances in force in the City or to exempt anyone violating this chapter or any part of the said laws from any penalty which may be incurred.

123.17 APPLICABILITY TO EXISTING BUSINESSES. All existing adult oriented businesses are hereby granted a de facto temporary license to continue operation for a period of one hundred eighty (180) days following the effective date of this chapter[†]. By the end of said one hundred eighty days, all adult oriented businesses must conform to and abide by the requirements of this chapter.

123.18 PROHIBITED ACTIVITIES. It is unlawful for an adult oriented business to knowingly violate, or to knowingly allow an employee or any other person to violate, the following regulations.

[†] *The effective date of this chapter is the effective date of the ordinance adopting the Code of Ordinances of the City of Hawarden, Iowa, 2005.*

1. It is a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in an adult oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
2. It is a violation of this chapter for a person to knowingly or intentionally, in an adult oriented business, appear in a semi-nude condition unless the person is an employee. It is a violation of this chapter for an employee to touch any specified anatomical area of a patron or for a patron to touch any specified anatomical area of an employee or for an employee and a patron to engage in any specified sexual activities on the adult oriented business premises.
3. It is a violation of this chapter for any employee who regularly appears semi-nude in an adult oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult oriented business.
4. It is a violation of this chapter for any person to possess or consume any alcoholic beverage, beer or wine on the premises of an adult oriented business and for the operator of such business to knowingly permit such possession or consumption.
5. A sign, in a form to be prescribed by the City Administrator and summarizing the provisions of subsections 1, 2 and 3 of this section, shall be posted near the entrance of the adult oriented business in such a manner as to be clearly visible to patrons upon entry.

123.19 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY. This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

123.20 FAILURE OF CITY TO MEET DEADLINE. In the event that a City official is required to take an action or do a thing pursuant to this chapter within a prescribed time, and fails to take such action or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the action required of the City official under this chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of an applicant's or licensee's application for an adult oriented business license, the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the City's action has passed.

123.21 RESTRICTIONS ON LOCATION. An adult oriented business shall be permitted only as a conditional use in a B-2 Commercial District provided that it is not operated within 300 feet of:

1. A church, mosque, synagogue or other place of religious worship;
2. A public or private elementary or secondary school;
3. A public park;

4. The boundary of a residential district, or;
5. A licensed day care center.

For purposes of this section, measurement shall be in a straight line without regard for intervening structures or objects from the nearest edge of the property line on which the business is located to the nearest edge of the property line or boundary line of the use identified in 1 through 5 above.

[The next page is 801]